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Foreign Spectator X Philadelphia *Federal Gazette*, 21 November 1788

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 X.

We shall now consider the amendments relative to the regulation of commerce. The conventions of Massachusetts, New-Hampshire, and North-Carolina, request *that Congress erect no company of merchants with exclusive advantages of commerce*, 5th, 5th and 22d am. respectively; that of New-York extends the restriction, by the 6th am. *that Congress do not grant monopolies, or erect any company with exclusive advantages of commerce.*

Monopolies are in general pernicious, and therefore adopted but in extraordinary cases by the politicians of the present enlightened æra. In this, as in many other political maxims, exceptions must be admitted. It is not my business to show when or how they may be useful in America; but only to prove that an absolute prohibition should not fetter our commercial operations. I beg leave then to quote a celebrated author on this subject, as his reasoning is very plain and sensible: “When a company of merchants undertake, at their own risk and expence, to establish a new trade with some remote and barbarous nation, it may not be unreasonable to incorporate them into a joint stock company, and to grant them, in case of their success, a monopoly of the trade for a certain number of years. It is the easiest and most natural way to which the state can recompence them for hazarding a dangerous and expensive experiment, of which the public is afterwards to reap the benefit. A temporary monopoly of this kind may be vindicated upon the same principles upon which a like monopoly of a new machine is granted to its inventor, and that of a new book to its author. But upon the expiration of the term, the monopoly ought certainly to terminate, &c.”^(a) “To render the establishment of a joint stock company perfectly reasonable, with the circumstance of being reducible to strict rule and method, two other circumstances ought to concur. First, it ought to appear with the clearest evidence, that the undertaking is of greater and more general utility, than the greater part of common trades. And secondly, that it requires a greater capital than can easily be collected into a private co-partnery.”^(b) He then applies this theory to four particular trades—banks, insurance from fire, sea risk and capture in time of war; making and maintaining a navigable canal; bringing water for the supply of a great city. At the same time he disapproves of granting any other privileges to such companies than what are indispensable for the undertaking. In this young and extensive country, few individuals

have large capitals; yet many great sources of industry may be opened by a joint stock, as manufactures, public roads, and canals, mines, fisheries, trade with the interior and still unexplored regions. As to those monopolies, which by way of premiums, are granted for certain years to ingenious discoveries in medicine, machines and useful arts; they are common in all countries, and more necessary in this, as the government has no resources to reward extraordinary merit.

The convention of New-York desires, *that the power of Congress to pass uniform laws concerning bankruptcy, shall only extend to merchants and other traders; and that the states respectively may pass laws for the relief of other insolvent debtors*, 19th am. It is difficult to describe with accuracy the class of traders; every man that buys and sells may be so called. Besides, if a general distinction between citizens and landed proprietors is necessary, it may be drawn by Congress, which represents all the states, and all the different classes of society. Uniform laws of this kind are certainly very necessary, because the people of the United States will have as much intercourse as if they formed only one empire; and by 2d sect. 4th art. *the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states*. The evils of tender-laws will in a great measure remain, while a debt due in another state may be cancelled, reduced, or suspended by a fluctuating local system. Foreigners have a claim to equal justice with domestic creditors, and without it we can expect no beneficial intercourse with them.

The 24th am. of the North Carolina convention, concerning the latter part of the 5th par. of 9th sect. of 1st art. seems to be only an explanation; as the expression in that place is too concise to be clear. If it means to guard against duties on exportation, it is needless, because by the first part of that par. no tax or duty shall be laid on articles exported from any state.

The same convention proposes by the 25th am. *that congress shall not directly or indirectly either by themselves or through the judiciary, interfere with any one of the states in the redemption of paper money already emitted, and now in circulation, or in liquidating and discharging the public securities of any one of the states: but each and every state shall have the exclusive right of making such laws and regulations for the above purposes, as they will think proper*. The perplexed finances of some states will not permit them to cancel the paper money before the new government commences. Indeed this inveterate and extensive evil must be abolished with such a discretion, as the public good and justice to individuals require. At the same time it is necessary for the general prosperity of the union, that it should be done with all public expedition; and that the laws and regulations made in any state should not injure other states, nor even a part of the people in that state. I have no doubt but this business may be settled with a moderation and prudence that shall please all parties.

The convention of New-York proposes by the 8th amend. *That no money be borrowed on the credit of the United States, without the assent of two-thirds of the senators and representatives present in each house*.

Borrowing is not a more important trust, than many others, which must be given to the federal government. Very probable this resource will not be considerable for several years; neither foreign nations nor the people of this country will, lend until they see the confederacy well established; an extraordinary majority is not therefore necessary in this case.

The conventions of Virginia and North-Carolina request *that no navigation laws, or law regulating commerce shall be passed without the consent of two-thirds of the members present in both houses*, 8th amend. respectively. The minority of Maryland, in the 1st am. signifies the same

in words a little different.¹ Systematic regulations of commerce embrace many objects, and if they prove wrong in the course of operations, cannot be changed without confusion, and various disadvantages; they should therefore be made with mature deliberation; especially as they do not require a pressing expedition. It appears therefore reasonable to stipulate a greater majority in this case. Yet although this condition is not expressed, there is no danger that any navigation act will be passed without a large majority, because it will affect the states in a sensible and permanent manner. A bare majority will certainly never dare to make an act of oppression against nearly one half! no, three-fourths would not attack the other fourth. The federal government with all the parade of powers has no real strength without a very great unanimity. Any twelve would never presume to affront one of the great states. As for the small ones, they are blended with the others from north to south, and have respectively the same commercial interest with a powerful neighbour; from which they derive an additional security.

Finally, any partiality that might disgrace congress is considerably checked by the express declaration in the 5th par. 9th sect. 1st art. that *no preference shall be given by any regulation of commerce or revenue, to the ports of one state over those of another.*

Commercial treaties will be considered under the amendment that respects the senate.

(a) *Smith on the wealth of nations, 3d vol. p. 143–4.*

(b) *Ditto, 147–8.*

1. This is actually the seventh amendment in the list of amendments not agreed to by the committee.

CITE AS: John P. Kaminski et al., eds., *The Documentary History of the Ratification of the Constitution*, Vol. XXXIX: Bill of Rights [3] (Madison, Wis.: Wisconsin Historical Society Press, 2023), 368–72.