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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 minor-ities of Pennsylvania and Maryland, by a FOREIGN SPECTATOR.*

NUMBER XXIV.

We have now considered the numerous amendments on the legislative, executive, and judicial powers of the federal government, and proceed to those which are intended to secure a good administration of it.

By the 4th sect. 1st art. of the constitution, "The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof: but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators." On this the following amendments are proposed: *That Congress do not exercise the powers vested in them by this section, but in cases, when a state neglects or refuses to make the regulations therein mentioned, or shall make regulations subversive of the rights of the people, to a free and equal representation in Congress, agreeable to the constitution:* 3d am. conv. of Mass. and N. Hamp. *That whereas it is essential to the preservation of the rights reserved to the several states, and the freedom of the people under the operations of a general government, that the right of prescribing the manner, times, and places for holding the elections for delegates to the federal legislature, should be for ever inseparably annexed to the sovereignty of the several states—the same ought to remain to all posterity a perpetual and fundamental right in the local, exclusive of the interference of the general government, except in cases where the legislatures of the states shall refuse or neglect to perform and fulfil the same, according to the tenor of the said constitution.* "Conv. of S. Car." *That Congress shall not alter, modify, or interfere in the times, places, &c. except when the legislature of any state shall neglect, refuse, or be disabled by invasion or rebellion to prescribe the same.* Virg. and N. Carol. 16 and 17 am. *That the Congress shall not make or alter any regulation in any state, respecting the times, &c. unless the legislature shall neglect or refuse, &c. or from any circumstance be incapable of making the same; and then only, until the legislature of such state shall make provision in the premises; provided, that Congress may prescribe the time for the election of representatives,* conv. of N. York, 9th am. *That elections shall remain free; that the several states shall have power to regulate the elections for senators and representatives, without being controuled either directly or indirectly by any interference on the part of Congress,* minor. of Penns. 10 am. The minority of Maryl. in the 2d am. makes a similar demand, permitting

Congress to interfere only when a state shall neglect to make regulations, or to execute them, or shall be prevented by invasion or rebellion; and then only until the cause be removed. There is some variation in these amendments. The minority of Pennsylvania forbid all interference of Congress directly or indirectly in any case whatever: The conventions of Virg. and N. Carol. admit the necessity of it in the case of absolute neglect or refusal by the legislature, or its incapacity by invasion or rebellion: The minority of Maryland adds the case of not executing prescribed regulations: The convention of N. York permit the Congress to prescribe the time for the election of representatives: That of S. Carolina, which has made but a few moderate demands, urges this with pressing anxiety as a fundamental, inseparable right of the sovereignty of the states; yet it seems to grant Congress the right of judging when the legislatures of the states neglect to perform and fulfil the regulation of elections *according to the tenour* of the constitution: The conventions of Mass. and N. Hampshire, give a superintendance to Congress, when a state shall make regulations subversive of the rights of the people. There is, however, more unanimity on this than any other object of amendments; which and its real importance require an attentive discussion.

Two questions then are to be resolved, first, whether the regulation of the federal elections is a right of the union, or of the respective states; secondly, whether the exercise of this power may be more safely lodged in the state governments, than in the hands of Congress.

The best constitution avails but little without a good administration: this requires a well formed representation; the very idea of which implies a good election. To provide all necessary means for this must then be a constitutional right of every government, which it cannot resign, without submitting its operations, and perhaps eventually, its existence to the discretion of another power. The states would not give each other a controul over the election of their legislatures; nor would they confer such authority on Congress—why then should the United States depend on the state legislatures for federal elections? It is admitted by all parties that the federal government is distinct from those of the states, equally necessary with them, and consequently entitled to the same independence.

The state governments have not, as such, any right in this matter; but the question properly lies between Congress and the people of the United States. The constitution of every free government should point out the mode in which the people may best exercise the important right of election. Whatever is essential and susceptible of a fixed regulation, ought to be expressly declared; and what must be accomodated to future circumstances, should be left to the care of the government. This distinction is very material; capital alterations would change the very constitution, and must when necessary, be made by the people through the medium of delegates chosen for the purpose; but less momentous changes may be safely entrusted with the ordinary representatives. This principle is received in the state-constitutions; that of New-York has this remarkable clause, “if after a full and fair experiment of voting by ballot, the same shall be found less conducive to the safety or interest of the state, than the method of voting *viva voce*, it shall be lawful and constitutional for the legislature to abolish the same; provided two thirds of the members present in each house respectively shall concur therein.”^(a) The federal constitution has determined the principal matters respecting elections. The electors of the representatives in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature. 1 art. 2 sect. Consequently the great body of the people enjoy this right, and will preserve it by virtue of their own state constitutions, which cannot be altered, either by

Congress or by their own legislature. They may choose for representatives any persons “who shall have attained to the age of twenty-five years, been seven years citizens of the United States, and are, when elected, inhabitants of their own state,” *ibid*; thus they are not confined to *any particular class* of men, but may freely choose any fellow-citizens whom they deem worthy of so high a trust. The senators are chosen by the legislatures of the respective states, which are themselves elected by the people without any interference of Congress: the choice is equally free; the age of thirty, citizenship of the United States for nine preceding years, and that of the state at the time of the election, being the only conditions required. 1 art. 3 sect. The federal constitution having fixed these important points, found it impossible to lay down other particulars with precision. It could not be foreseen what species of corruption might be devised, and what remedies might be most effectual. The very novelty of a government so complicated renders a previous detail impracticable. Such regulations as experience shall suggest are then very properly left to the wisdom and integrity of Congress. The legislatures of the states are to exercise this power in the first instant; which itself is a matter of condescension: such authority without controul would be inconsistent with the principles of a federal government.

To me this plain and simple reasoning appears convincing. The citizens of every state are also citizens of the united states: in the first relation they have a state-constitution and a state-government: in the second a federal constitution and a federal administration; those regulate elections within the state, these the federal elections. Congress does not meddle with the state-legislature; therefore this has no right to regulate the election of Congress. Nevertheless I should not lay any weight on these arguments, if the result was not perfectly consistent with the public good; because no principles, however just and clear they might appear, should ever establish a dangerous system. Let us then examine whether this power is more safe in the hands of the state-governments, than in the disposition of Congress. The president with a majority of Congress will certainly not be so infatuated by enthusiastic zeal for the federal government, as to strike at public liberty by oppressive election-laws. Such attempts must arise from bold and wicked personal views. Could such corruption exist in this *very essence* of the body politic, while it was, as yet, formed by the free choice of the people, I should suspect that we have not virtue enough for a republican government. But admitting this, the most artful and best executed schemes could not secure them or their friends in the administration; and an impeachment with its consequences would probably be the just reward of the principal traitor. I assume it as an axiom, that in a country *so republican as this*, no junto, though composed by persons of the first abilities and fortunes, could possibly either purchase or force the people. The only rational supposition is then, that a great part of the people (at least one half) will at all events support a federal government, and approve of any proceedings, however fraudulent or violent, provided they are federal; that the party will on this principle justify the appointment of the federal elections in a few places, where the inhabitants are well disposed, where the majority of the people cannot conveniently attend, and where the few may consequently be easily gained; that they will also establish the method of voting *viva voce*, in order to play with greater certainty on the hopes and fears of men, &c. &c.^(b) I grant that tyranny of party may do this and much more; but the best constitution is ruined by this fatal disease; the most necessary constitutional powers become mortal weapons in the hands of madmen. I assert, however, that such a party cannot long support itself, because the people have a natural bias to their own state by all the local and personal attachments that bind

the human heart, which bias cannot long be suspended by any extraordinary attraction of the union.

There is much more reason to fear that this local bias may preponderate too much, and at times be wielded by influential characters against the federal interest. It certainly is more probable that a faction inimical to the union may prevail in the legislature of one state, than that a majority in Congress may wish to infringe the constitutional rights of the states.

To modify the superintending power of Congress in the manner proposed by the convention of Mass. and N. Hamp. would be a source of contention between the federal government and those of the states; because the former could not then interfere in federal elections without a positive declaration that the state legislature had *subverted the rights of the people to a free and equal representation*; whereas in the present form Congress may be supposed to make such regulations merely for the sake of uniformity, or otherwise for the general interest.

I shall conclude by taking notice of a sensible author, who in his defence of the constitution, excepts this only clause; *Americans*, he says, *never resign that right*. Unwilling to criticize a man of genius, I beg leave to observe that this gentleman may be mistaken in this, as he certainly is in another remarkable assertion, that “the system of the great Montesquieu will ever be erroneous, till the words *property and lands in fee simple*, are substituted for *virtue* throughout the *spirit of laws*.”^(c) Competent property is no doubt very favourable to independence and to moral virtue itself; but is it not the only pillar of republican liberty. We are always needy when our desires exceed the means of gratification; a man with a 1000 l. a year, may thus be as venal, as a day labourer. The importance of virtue is acknowledged by himself in these words: “The privileges of freemen are interwoven into the very feelings and habits of the Americans; *liberty* stands on the immoveable basis of a general distribution of property and diffusion of knowledge; but the Americans must cease to *contend, to fear and to hate* before they can realize the benefits of independence and government, or enjoy the blessings, which heaven has lavished in rich profusion on this western world.”^(d) As for the point in dispute, the objections arise partly from an overdriven jealousy, and partly from an erroneous judgment on the constitutional rights of the union and the states.

Those who are not satisfied with the above arguments must at least candidly allow, that no amendment can safely be admitted in the present unsettled state of the confederacy; and that any alteration hereafter should not translate the power of regulating elections from the Congress to the legislatures of the states; but rather fix the times, places and manner independent of either.

(a) *Constitution of New-York* [Article VI of the New York constitution of 1777].

(b) *I speak of this merely as abused by party without any positive judgment as to its real merit.*

(c) *An examination into the leading principles of the Federal Constitution, printed in Philadelphia in 1787, page 47.*

(d) *Page 55, ibid.*

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