Joint Committee Report on Amendments, 24 February 1790

Commonwealth of Massachusetts.

REPORT.

The COMMITTEE of both HOUSES, appointed to consider further AMENDMENTS in the *Constitution of the United States*—

REPORT,

That having carefully examined and considered the subject referred to them; they are fully of opinion, that further Amendments in that Constitution are necessary to secure the Liberties of the People, and the blessings of a free and efficient system of Government; and that such Amendments ought now to be attended to, and made so particular, as will have a tendency to preserve the forms of a Federal Republic, and to prevent a consolidation of the States.—As this important subject, is now brought before the Legislature; and the people have a favourable opportunity to deliberate upon it, the Committee think it is proper for the General Court, at the present time, to suggest to the Members from this State in Congress, several principles of Amendments, to be attended to, as soon as the important business now before Congress, will admit.

It is with diffidence, the Committee express their opinion on this very interesting subject; but as it is made their duty, they have made it their endeavour, to consider the objects referred to them, with the attention they deserve: And though they think the States have been highly favored in laying the foundation of a good Government; yet they conceive much is to be done, to define and complete the System.

The committee in their enquiries, have been influenced by those truths and principles, which are held sacred in all free and enlightened Countries; and have inferred the proposed Amendments, from what they conceive to be the fundamental principles of a free and energetic System of Government for an extensive Community.

They feel the fullest conviction, that the liberties and prosperity of the United States, must rest on a general Government, adequate to the common defence and general welfare and on State or local governments, constitutionally secured in their proper stations; and therefore, that every good man will seasonably oppose a consolidation of the States—an event that must, probably, be attended with the loss of every thing dear to a free, virtuous and manly people.

Your Committee believe it is a truth, very generally admitted in this country, that the greatest portion of political happiness is enjoyed in that equality which prevails in well regulated Republics;—That there is a constant effort in each order of men to destroy this equality, to exalt itself and depress the others: To prevent the ruinous effects of which, many checks must be engrafted into the Constitution; and every part of the people have its constitutional influence, and proper means of defence in the government: And to this end, not only a Senatorial Branch, but a full and substantial representation of the body of the people, must be effectually provided for.

That it is a fundamental principle, that such a representation, and power to lay and collect taxes—to form and controul the military forces of a community, ought to go together in all cases, where not evidently impracticable;—And that the Legislature of the Society, ought to be so formed, that the sense of the majority therein, may correspond with the sense of the major part of the people.

That the powers of those who govern, ought to be accurately limited and defined by the instruments and compacts of association; and that where the sovereignty is divided and qualified, and lodged in a Federal Head for certain purposes, and in local Governments, to certain other purposes, the line of distinction ought to be very carefully drawn, to prevent encroachments.

On attentively examining the Constitution of the United States, the Committee are of opinion, that the powers of the general Government, in several instances, are not well defined or limited; that there is not a just line of distinction drawn between them, and the powers of the local Governments; and that there is no such representation as before mentioned, in the Legislature of the Union.

It appears to the Committee, that it is agreeable to the very essence and design of a Federal System, that there be a general Legislature, composed of a few Members; and that a more numerous and substantial representation of the people be assembled in the State Legislatures; and, therefore it follows, that the councils of the Union, must have a natural biass to vigor, order, and an aristocratical system of policy; and that the State Governments must have a like biass to popular liberty, and popular measures: To make the democratic temper of the latter, and the different temper of the former, mutual checks on each other, and thereby conducive to the happiness of the whole, is peculiar, perhaps, to a Republic like ours; and a part of political science, yet, in some measure, to be learned.

In a single Legislature, the senatorial and popular branches prevent the extremes of each other by mutual negatives in all, or particular cases; and how far this fundamental principle can, with safety and propriety be extended to a general and State Government in a great Republic,

must require much discernment and reflection, time and experience to determine: The Committee conceive, however, that some important means to lessen the abuses of democracy on the one hand, and of aristocracy on the other, now present themselves.—By encreasing and improving the representation in the general Government, and making some of the State Governments (if necessary) less popular, they will become less destructive of each other; and by giving a negative in certain cases when practicable, each will be enabled to defend itself against the other, and a medium between the extreme views of both, be happily produced; and by limiting and defining powers, and by a proper distinguishing line, each may be kept in its proper place. As the Constitution now stands, the Committee are of opinion it will cherish those natural inequalities among men, from which will in time, result constitutional distinctions, or an uneasiness in the body of the people, which, by sudden commotions may endanger or demolish the whole system.

The Committee by no means agree with those who contend, that the natural tendency of a system like ours, is towards an undue encrease of the powers of the State Governments, nor with those who contend that the democratic temper of the people, is a sufficient check upon the extensive powers of the general Government.—Certain it is, that this temper must tend to destroy all Government, if not constitutionally directed. It must have its due weight in order to prevent the making of certain laws, or irregularly operate to prevent their execution.

This subject of Amendments is too extensive to be treated at large, or in particular detail; the Committee therefore, have more particularly in this Report, made it an object to bring into view, such principles as appear to them, to be deserving of more immediate attention.—It appears to them to be a most important object, duly to examine the legislative powers of Congress, respecting internal Taxes. The militia peace establishments, regulations of elections, the Federal Judiciary and Federal Territories, and in various ways to check and limit those powers in their exercise.—It is very obvious, that the legislative powers of the general Government, as to these objects, may be so exercised, as in a short period of time, materially to alter the condition of the Community, and the first principles of the Government: and it is, in the opinion of the Committee, equally obvious, that the body of the people, ought to have some further and more effectual controul on the formation of the Laws, and over those who make the Laws, relative to these subjects.

If it be necessary, that Congress should retain and exercise the powers vested in that Body; yet many useful checks may be provided—merely to elect the Senators and Representatives of a Federal Head, can be but imperfect security to the body of the people, against a system of politics, very repugnant to their general sentiments—for it is clear, that in a Federal Republic, the aristocratical part of the community, will very generally be elected to administer the general Government.

In altering the Constitution all agree, that the body of the people, in their State Legislatures, or in their State Conventions, ought to be consulted; because, otherwise, the public opinion could not be known, and all parts of the Federal System be secure; and perhaps,

this principle, under different modifications, may well be applied to some few important cases in Federal Legislation.

The Committee are sensible, the weakness and embarrassments of the Confederation, and the many obstructions in the forms of Government in the United Netherlands, are to be avoided; but a Federal Head, possessing almost entire Sovereignty, and no ways checked by the local Governments, may be equally dangerous, and distructive of the system, of which it is intended as a part.—If a direct tax, a plan for forming the militia, or a large peace establishment [i.e., a standing army], should be proposed by the general Government, and be disapproved, by a large majority of the State Legislatures, ought such measures to be adopted?

Having made the foregoing observations, the Committee submit the following principles of Amendments for consideration, and that constitutional provision be made.

First.

That Congress shall not interfere in the regulations of the elections of its Members, except in cases, where the State Legislatures shall neglect, or refuse to make regulations; and that the qualifications of Senators and Representatives, be expressly defined in the Constitution.

Second.

That Congress erect no company with exclusive advantages of commerce.

Third.

That Congress have power to establish a uniform rule of inhabitancy or settlement of the poor of the different States throughout the United States.

Fourth.

That republican forms of Government be established in the districts which are, or shall be ceded to the United States.

Fifth.

That Congress shall by law provide for calling forth the posse comitatus for executing the laws of the United States.

Sixth.

That the general Government exercise no power but what is expressly delegated.

Seventh.

That a part of the internal resources of taxation be appropriated to the United States, and that a part thereof be exclusively reserved to the respective States, with such exceptions, however, and under such limitations as war and other extraordinary exigencies may require.

Eighth.

That no system for forming the militia be established, and that no establishment of troops in a time of peace, beyond a limited number, be made, if disapproved by a specified number of the State Legislatures, within a limited time after the bills for those purposes shall be laid before them.

Ninth.

That the Judiciary powers of the United States be more explicitly defined, and more accurately distinguished from those of the respective States.

Tenth.

That the Senate shall not possess all the Executive and Judicial Powers now vested in that body.

Eleventh.

That it be left to the several States, to make compensations to their Senators and Representatives respectively, for their services in Congress.

Twelfth.

That the State Legislatures have power to recall when they may think it expedient their Federal Senators, and to send others in their stead—And that the Senators be chosen, all at the same time, and for the term of four years.

In the foregoing investigations, it has been the main object of the Committee to bring into view, amendments which shall secure the blessings of freedom without injuring the nerves of Government.

As to internal taxes, the Committee further observe, that so long as there shall remain in all cases, concurrent power in Congress, and the respective State Legislatures to tax the same objects, it will be impracticable for the Union or seperate States to estimate their revenues; and, consequently to estimate, with any degree of certainty, on performing their respective engagements.

Permanently to secure the liberties and happiness of America, the Committee believe a due modification of the Legislative Powers before mentioned, and further checks in the Constitution are essential; as well as a fair and honest administration of the general and local Governments.

The Committee are convinced that the people of this State, when they adopted the Constitution of the United States, wished for, and expected further amendments, than those which have been recommended; and that they are now anxious to have their liberties more explicitly secured to them.

After dilating on general principles, the Committee have brought into view more particular propositions, resting assured that from the premises laid down, will result such amendments as will answer the just expectations of all our citizens.

CITE AS: John P. Kaminski et al., eds., *The Documentary History of the Ratification of the Constitution*, Vol. XXXVII: Bill of Rights: Origins, 506-09.