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CONGRESS.

HOUSE OF REPRESENTATIVES.

THURSDAY, Oct. 26, 1803.

DEBATE on the AMENDMENT to the CONSTITUTION,

(Mr. HUGER, concluded.)

Thirteen colonies at this time composing the United States, spread over an extensive continent, having been threatened with a privation of their rights and liberties, were induced to form a league offensive and defensive, and to unite for their mutual and common defence. After a bloody though not inglorious contest, they severed themselves forever from the mother country, and they became and were acknowledged as 13 independent and distinct republics or sovereignties. Under what gloomy and critical circumstances they found themselves for some few years after the close of the war, it would be superfluous for me to detail to this house. Let it suffice to say, that their situation was such as seriously to alarm all classes of our citizens, and to threaten complete anarchy, perhaps political dissolution, unless some bond of union, better adapted to their wants and necessities than the original confederacy could be established. That band of worthies therefore, as they have been aptly styled, were sent from twelve I believe, of the states, who, having met together in convention, ultimately formed that compact, which having been since ratified by all the states, now happily unites us in one great union.—But by whom and by what authority were the members of the convention delegated? Whom did they represent when assembled together? They were not, it must be acknowledged, even in the degree that the members of this House are, the immediate representatives of the people, inhabiting that part of this vast continent in which the United States are comprised. They were not selected by the people at large, nor did they represent them in their original and individual capacities. No, sir, they were sent to represent the interests and views of thirteen distinct sovereignties; they were appointed by the governments of the different states and they held their authority from the states, as states, and not from the people of the United States generally and indiscriminately. When met therefore, in convention, their object was not to form one general consolidated government for the inhabitants scattered over this vast territory, but to modify still further, and to draw still closer the bands of alliance, by which these states were already connected. And it cannot surely be forgotten, that one of the strongest objections, one of those most insisted on against the constitution, was, that federative principles had not been sufficiently retained, or rather that they had been totally abandoned, and that the constitution approached too nearly to a consolidation of the different members of the confederacy, and one general national government. It is not necessary for me here to detail the difficulties, which opposed themselves to the formation and adoption of any compact, more efficient than that of the old confederacy, nor would the opportunities I have had of knowing them, (for I was not only under age, but absent from America, when the convention met) enable me to do justice to the subject.—Every one knows, however, that difficulties without number did present themselves, and that the convention was more than once on the eve of dissolving itself without agreeing upon any thing. It is a fact equally well ascertained, that the great bone of contention, the point of all others, which it was most difficult to adjust, was the jarring interests and opposite pretensions of the large and small states. This was the point upon which the whole business turned, and gentlemen will see at once the justice of the remark, when they recollect that although every other amendment whatever, after the year eighteen hundred and eight, may be made to the constitution, by two thirds of both houses of congress, when ratified by the legislatures of three fourths of the states, yet a single exception is made, and it is particularly specified, that no state without its consent, shall be deprived of its equal suffrage in the senate.

Why then this single exception, but because the interest and opposite pretensions of the large and small states were the great bone of contention, and the equal suffrage in the Senate the great, the essential compromise between these conflicting interests and pretensions? But this though the most important, the *sine qua non* of any compromise, was by no means the only compromise, which took place between them.

The great outlines of the Constitution were I presume, Mr. Speaker, agreed on without much difficulty and pretty generally acquiesced in. It was understood on all hands, that the government should be formed on republican principles—that the great departments, of which it must necessarily consist, should be distinct and as far as possible, independent of each other—the difficulty was in the detail, and more especially in respect to the quantum of state sovereignty, which was to be yielded to the union, and the degree of influence, which was to be respectively given up or retained by the large and small states.—Both were at that time, independent of each other, and perfectly equal in their rights and sovereign powers; though very unequal in size, strength, wealth and population. The basis of a republican government however, is no doubt the will of the people, and that will could only be expressed and brought into action in a country as extensive as ours, by representation and elections. How then was that representation to be apportioned and those elections organized. To adopt the most common and simple principle in the abstract; and allow the representation to depend entirely on numbers, and the elections to be made indiscriminately and without modification by the people at large, would have been to put an end at once and at one blow to all state sovereignty, to amalgamate the inhabitants of thirteen free and independent Republics into one common mass, and to place the smaller and more feeble completely and forever at the mercy of the more powerful and larger states. But was this done, was such a result desirable; would the states at that day have acquiesced in any similar arrangement? Most certainly not, and consequently a totally different modification and compromise took place. The legislative department of the government was divided into two distinct branches—a Senate and House of Representatives. In the latter it is true, the principal of numbers and population was to a certain degree adopted, yet still under very important modifications and with evident deviation from the abstract principle. In the first place, a certain class of people, who unfortunately existed in one portion of the Union, though not allowed any immediate interest themselves in the government and regarded rather as property than as beings entitled to any civil or political rights, were included at a certain ratio, in the calculation of the number of Representatives who were to have a seat in this house. This difficult and knotty point happily settled, it was in the second place determined, that the members of this body, though understood to be the immediate representative of the People, should not be elected by the people of the United States at large, as one people; but its share of the whole representation according to the ratio and in conformity to the compromise above specified, was apportioned to each respective state and is to be exclusively elected by the people of that state. Notwithstanding every modification however, which could be devised, it was evident and perfectly understood, that although the smaller states would have a voice and proportionate vote, yet the interest and the will of the larger must virtually prevail in the house of representatives, and that they would in fact dispose of this body at their will. As a partial check, therefore, as some little safeguard against this over-weening power on their part—the federative principle was completely retained in its utmost purity and without the smallest modification in the other branch of the legislature, the Senate; and not only an equal vote and representation is given to all the states, however large, or however small; but the members who compose the senate, are not even to be elected by the people of the several states, but are to be chosen by and immediately to represent the government of each individual state. The difficulties which presented themselves in organizing the legislative department of the government being thus surmounted and compromised, another question no less embarrassing and difficult to solve arose, viz. in what manner the executive powers ought to be disposed of.

Before I proceed to investigate this part of the constitution—it may not be amiss Mr. Speaker, to observe—that in the formation of any political association upon free principles, it has ever been deemed the gordian-knot, the great desideratum, to find out and to ascertain the best mode of disposing of and organizing the executive branch of the government, nor is the experiment, which these states are now (I trust successfully) making of the practicability of uniting so vast a territory, as is comprised in the American confederacy, under one general and national government, (founded on free and republican principles,) more interesting or important to the interests of mankind, in any one point of view than as relates to the creation and disposal of the executive power. The history and experience of past ages shew us indeed, the rocks and quicksands, among which our bark may probably be stranded and wrecked; but we are still left without a chart or compass, by the assistance of which we might be enabled to avail ourselves of the mistakes and misfortunes of those who have gone before us, and steer our course in safety and security—Divide the executive power and place it in the hands of many, and you so distract, weaken and enfeeble it, that it becomes unequal to its end: the security and protection of the body politic. Hence it seems to be the received axiom, that this branch of the government should be as compact and as concentrated, as a due respect to existing circumstances may permit. A serious difficulty, nevertheless, remains yet to be gotten over, in relation to the mode and manner, in which it is to be created and brought into action. The first impulse of our feelings, and common sense untaught by experience and waving local objections, would seem no doubt to point out at once, the mode of election: yet such have been the inconveniences, such the fatal and bloody effects of creating the executive branch in this way, that we have found not only in monarchical, but in some even of those governments deemed most free, an hereditary has been thought preferable to an elective executive.

The members of the convention, however, were too well acquainted with the feelings and sentiments of the American people to hesitate long on this point, and it was consequently determined, that the executive powers should be lodged in the hands of a single individual, under the title of President, who should hold his office during the term of four years, at the end of which period a new election should take place. But the real difficulty in the organization of this department under our constitution now naturally suggests itself to the mind, viz. how, and by whom, this President was to be elected; for it must be obvious, that all those jealousies and conflicting views and interests of the large and small states, which had been happily compromised, as relates to the legislative authority would, of course, apply with encreased force in the case of the executive. To divide this branch, as had been done in the former instance, would be, as I have already shewn, to enfeeble it, to deprive it of all energy, to render it inefficient and entirely unequal to the purposes for which it was intended. If the executive power, on the other hand, was to be vested in a single person, and be elected by the people of the United States, or even on the modified principles upon which the members of the House of Representatives were to be elected, it followed of necessity, that the larger states would elect whom they pleased, and consequently, the executive branch of the government would be entirely under their control, and the champion and promoter of their views and interests. But the large states have an entire controul over one of the two houses, of which the national legislature is composed, an equality of votes, (with all the advantages accruing from superior strength and power, and consequently superior influence) in the other. If, then in addition to all this, the election of the executive is put in their hands, you add strength to the strong, grant more power to those already too powerful, and yield up virtually to the large states that branch of the government, which not only was to have a partial veto on the proceedings of the legislature; but would probably give impulse to the whole, and be always on the watch and ever ready to avail itself of such favorable occurrences and favorable moments as might best enable them to carry their projects of aggrandisement and encroachment on their more feeble associates, into execution: On the other hand, the larger states, to whom fortune and the nature of the case necessarily gave a preponderating influence in this instance, could scarcely be expected to make a sacrifice of this advantage to the jealousies and fears of the small and weaker, and suffer them as a thing, of course, to take possession of the executive branch of the government. In this dilemma, what was done by the convention. As usual, a compromise took place, and as nearly as possible, upon the same principles upon which every other provision of the constitution is predicated. It was decided that the executive power should rest in a single individual. It was agreed that he should be elected, not by the people at large, not by the people of each state in the first instance: but by a number of electors (equal to the combined representation of the states in the Senate, and that of the people of the several states in the House of Representatives) elected by the people of the several states in the proportion to which they might be respectively entitled according to the complicated ratio which had been adopted. This modified and complicated mode of election notwithstanding, it was evident the election of the President would be in the hands of the larger states. Every additional security therefore was sought for, the ingenuity of the convention was put to the rack to invent and devise some further means of quieting the fears and apprehensions of the smaller states, affording them every safeguard and putting in their hands every check which the nature of the case would admit of, against the preponderating influence of the interest opposed to them; and I have ever understood—I have ever been taught to believe by those few of the original framers of the constitution with whom I have had the happiness to be acquainted, or to converse on the subject, that this very provision which obliges the electors in each state to vote indiscriminately for two persons to fill the offices of President and Vice-President, and which it is now proposed to do away, was regarded as the best, the most effectual means, and that which did in fact tend most to sooth and quiet the fears of the smaller states, and was in this view and for this very purpose adopted as a part of the constitution. The more I turn the subject over in my mind indeed—the more closely I endeavor to examine and investigate it; the more confirmed are my impressions and convictions, that this really was the case—that the proposition to alter or amend the constitution in the manner proposed, is neither more or less than a state question, a question between the different states of the union, regarded, in their original capacity, as sovereign and independent states, a question which involves in it the vital principle upon which the Federal compact was formed, viz. a compromise between the fears and jealousies, the jarring interests and pretensions of the large and small states. I feel myself, I confess, Sir, unequal to this part of the subject—I am sensible of my inability to calculate all the chances of influence and consequent protection, which this, in my humble opinion, little understood provision, affords to the small states, or to point out the various modes in which it was anticipated, that it might and would in various instances and on various occasions operate in their favor. Waving, however, one happy and material effect, which I think, it must have in regard to the union at large, viz. that it tends to create a moral necessity on the part of the electors to bring forward the most eminent characters, as well to fill the office of Vice-President, as that of President, waving this certainly not unimportant consideration, I think I can prove to demonstration that this indiscriminate mode of electing the President and Vice-President, affords to the smaller states a degree of influence over the election, places an important barrier to the superiority which the large states possess in this instance, and in every event, and at the worst, insures to the former a safe guard and defence against the encroachments of the latter, which they would not otherwise possess, and of which, if the proposed alteration takes place, they will be absolutely deprived.

By that article of the constitution, to which I have so often had occasion to allude, and in which it is now the object to make so material an alteration, it is provided "that two persons shall be indiscriminately voted for as President and Vice-President, by the electors in the respective states, one of whom at least shall not be of the same state with themselves." In carrying this provision into operation, the larger states must necessarily do one of three things. They must either (in the hope of securing to themselves both the President and Vice-President) give an equal number of votes to the two candidates, whom they may agree upon, or at least a very large portion, if not exactly an equal number of votes to them both, or confining themselves to the securing the office of President to the individual whom they prefer—they must be satisfied to give one of the two votes, to which each of their electors is entitled, exclusively to him, and throw away the other. What follows in either case. In the first place—if two candidates have an equal vote and at the same time a majority of the votes of the whole number of electors appointed, it devolves on the House of Representatives to select which of them they please as President. And as the constitution has (in the spirit I have already described, and for the purpose of affording every possible check and security to the smaller states, which the nature of the thing would permit) provided, that in every instance, in which the choice of the President devolves on the House of Representatives, the votes shall be taken by states, and the whole representation of each state shall have one equal vote—it follows of course, that in every case of this kind, they are all, large and small, placed precisely upon an equal footing. But in the case of two or more candidates having an equal vote yet less than a majority of the votes of the whole number of electors appointed, a further advantage accrues to the smaller states, for then according to the constitution, they not only vote by states, the representation of each state having one vote, but they may chuse the President from the five highest candidates on the list, and of course have a wider field for choice, and a greater and even equal chance of making him President whom their electors perhaps had originally supported as such.

In order to avoid this, suppose the larger states support two candidates; giving to the one however a few less votes than to the other. What advantages in this instance are afforded to the smaller states? Why, in the first place it gives them a greater chance of bringing in their own candidate, at least as Vice-President; for their opponents in order to secure to themselves the office of President, and to avoid an ultimate election by the House of Representatives, have not thought proper to give their full support to him whom they run as Vice-President; but have thrown away from him a part of their votes. In the next place, if it is discovered, (and this will not always be as difficult a point to ascertain, as might at first view be supposed) how many votes are to be thrown away; the electors of the smaller states may give an equal number of votes, and thus putting the two candidates on an equality, bring the final election into the House of Representatives, where each state representation has an equal vote in deciding the election.

Nor is this their only alternative; for although it is true, that they will not from their inferior number of votes, have it in their power to select from all the citizens of the union, the individual, whom they might prefer, yet in the case supposed (of the larger states giving a considerable portion, though not exactly an equal number of votes to the two candidates, whom they have determined to support) the smaller states will at least have it at their option to chuse between the two candidates; and by giving him their votes, ensure the election of that one of them, against whom they have the fewest objections, and who sensible that the preference given him in the election ultimately turned on their votes and possibly not being taken from the very largest and most powerful states, would probably feel less inimical to their interests, and in fact have it less in his power to injure them.

The third and last case is that, in which the large states, in order to secure the election of the individual, they wish, to the office of President, unite in giving one of the two votes, to which each elector is entitled, exclusively to him and throw away the other. The obvious and necessary consequence is, that the Vice-Presidency remains completely at the disposal of the small states, and they make whom they please Vice-President; a point of far more importance than gentlemen seem to suppose, or are perhaps aware of. It is in the first place to be recollected, that as the person, who will usually be thought most worthy of being raised to the office of chief magistrate, will most probably be advanced in years; there must be more than the common chances of his demise in the course of the term, for which he was elected, and of the heir apparent, the Vice-President consequently succeeding to his station, and becoming himself in fact the President. Exclusively however, and waving this consideration, let it be moreover recollected, that the Senate have a part of the treaty making power, participate in the appointment of the judiciary and of the other public officers, and form in short to a certain degree a portion of the exe-