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House of Representatives, Amendments to the Constitution

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[8 June]

Mr. Madison rose, and reminded the House that this was the day that he had heretofore named for bringing forward amendments to the Constitution, as contemplated in the fifth article of the Constitution, addressing the Speaker as follows: This day, Mr. Speaker, is the day assigned for taking into consideration the subject of amendments to the Constitution. As I considered myself bound in honor and in duty to do what I have done on this subject, I shall proceed to bring the amendments before you as soon as possible, and advocate them until they shall be finally adopted or rejected by a Constitutional majority of this House. With a view of drawing your attention to this important object, I shall move that this House do now resolve itself into a Committee of the Whole on the state of the Union; by which an opportunity will be given, to bring forward some propositions, which I have strong hopes will meet with the unanimous approbation of this House, after the fullest discussion and most serious regard. I therefore move you, that the House now go into a committee on this business.

Mr. Smith was not inclined to interrupt the measures which the public were so anxiously expecting, by going into a Committee of the Whole at this time. He observed there were two modes of introducing this business to the House. One by appointing a select committee to take into consideration the several amendments proposed by the State Conventions; this he thought the most likely way to shorten the business. The other was, that the gentleman should lay his propositions on the table, for the consideration of the members; that they should be printed, and taken up for discussion at a future day. Either of these modes would enable the House to enter upon business better prepared than could be the case by a sudden transition from other important concerns to which their minds were strongly bent. He therefore hoped that the honorable gentleman would consent to bring the subject forward in one of those ways, in preference to going into a Committee of the Whole. For, said he, it must appear extremely impolitic to go into the consideration of amending the Government, before it is organized, before it has begun to operate. Certainly, upon reflection, it must appear to be premature. I wish, therefore, gentlemen would consent to the delay: for the business which lies in an unfinished state--I mean particularly the collection bill--is necessary to be passed; else all we have hitherto done is of no effect. If we go into the discussion of this subject, it will take us three weeks or a month; and during

all this time, every other business must be suspended, because we cannot proceed with either accuracy or despatch when the mind is perpetually shifted from one subject to another.

Mr. Jackson.--I am of opinion we ought not to be in a hurry with respect to altering the Constitution. For my part, I have no idea of speculating in this serious manner on theory. If I agree to alterations in the mode of administering this Government, I shall like to stand on the sure ground of experience, and not be treading air. What experience have we had of the good or bad qualities of this Constitution? Can any gentleman affirm to me one proposition that is a certain and absolute amendment? I deny that he can. Our Constitution, sir, is like a vessel just launched, and lying at the wharf; she is untried, you can hardly discover any one of her properties. It is not known how she will answer her helm, or lay her course; whether she will bear with safety the precious freight to be deposited in her hold. But, in this state, will the prudent merchant attempt alterations? Will he employ workmen to tear off the planking and take asunder the frame? He certainly will not. Let us, gentlemen, fit out our vessel, set up her masts, and expand her sails, and be guided by the experiment in our alterations. If she sails upon an uneven keel, let us right her by adding weight where it is wanting. In this way, we may remedy her defects to the satisfaction of all concerned; but if we proceed now to make alterations, we may deface a beauty, or deform a well proportioned piece of workmanship. In short, Mr. Speaker, I am not for amendments at this time; but if gentlemen should think it a subject deserving of attention, they will surely not neglect the more important business which is now unfinished before them. Without we pass the collection bill we can get no revenue, and without revenue the wheels of Government cannot move. I am against taking up the subject at present, and shall therefore be totally against the amendments, if the Government is not organized, that I may see whether it is grievous or not.

When the propriety of making amendments shall be obvious from experience, I trust there will be virtue enough in my country to make them. Much has been said by the opponents to this Constitution, respecting the insecurity of jury trials, that great bulwark of personal safety. All their objections may be done away, by proper regulations on this point, and I do not fear but such regulations will take place. The bill is now before the Senate, and a proper attention is shown to this business. Indeed, I cannot conceive how it could be opposed; I think an almost omnipotent Emperor would not be hardy enough to set himself against it. Then why should we fear a power which cannot be improperly exercised?

We have proceeded to make some regulations under the Constitution; but have met with no inaccuracy, unless it may be said that the clause respecting vessels bound to or from one State be obliged to enter, clear, or pay duties in another, is somewhat obscure; yet that is not sufficient, I trust, in any gentleman's opinion to induce an

amendment. But let me ask what will be the consequence of taking up this subject? Are we going to finish it in an hour? I believe not; it will take us more than a day, a week, a month--it will take a year to complete it! And will it be doing our duty to our country, to neglect or delay putting the Government in motion, when every thing depends upon its being speedily done?

Let the Constitution have a fair trial; let it be examined by experience, discover by that test what its errors are, and then talk of amending; but to attempt it now is doing it at a risk, which is certainly imprudent. I have the honor of coming from a State that ratified the Constitution by the unanimous vote of a numerous convention: the people of Georgia have manifested their attachment to it, by adopting a State Constitution framed upon the same plan as this. But although they are thus satisfied, I shall not be against such amendments as will gratify the inhabitants of other States, provided they are judged of by experience and not merely on theory. For this reason, I wish the consideration of the subject postponed until the 1st of March, 1790.

Mr. Goodhue.--I believe it would be perfectly right in the gentleman who spoke last, to move a postponement to the time he has mentioned; because he is opposed to the consideration of amendments altogether. But I believe it will be proper to attend to the subject earlier; because it is the wish of many of our constituents, that something should be added to the Constitution, to secure in a stronger manner their liberties from the inroads of power. Yet I think the present time premature; inasmuch as we have other business before us, which is incomplete, but essential to the public interest. When that is finished, I shall concur in taking up the subject of amendments.

Mr. Burke thought amendments to the Constitution necessary, but this was not the proper time to bring them forward. He wished the Government completely organized before they entered upon this ground. The law for collecting the revenue is immediately necessary; the Treasury Department must be established; till this, and other important subjects are determined, he was against taking this up. He said it might interrupt the harmony of the House, which was necessary to be preserved in order to despatch the great objects of legislation. He hoped it would be postponed for the present, and pledged himself to bring it forward hereafter, if nobody else would.

Mr. Madison.--The gentleman from Georgia (Mr. Jackson) is certainly right in his opposition to my motion for going into a Committee of the Whole, because he is unfriendly to the object I have in contemplation; but I cannot see that the gentlemen who wish for amendments to be proposed at the present session, stand on good ground when they object to the House going into committee on this business.

When I first hinted to the House my intention of calling their deliberations to this object, I mentioned the pressure of other important subjects, and submitted the

propriety of postponing this till the more urgent business was despatched; but finding that business not despatched, when the order of the day for considering amendments arrived, I thought it a good reason for a farther delay; I moved the postponement accordingly. I am sorry the same reason still exists in some degree, but operates with less force, when it is considered that it is not now proposed to enter into a full and minute discussion of every part of the subject, but merely to bring it before the House, that our constituents may see we pay a proper attention to a subject they have much at heart; and if it does not give that full gratification which is to be wished, they will discover that it proceeds from the urgency of business of a very important nature. But if we continue to postpone from time to time, and refuse to let the subject come into view, it may occasion suspicions, which, though not well founded, may tend to inflame or prejudice the public mind against our decisions. They may think we are not sincere in our desire to incorporate such amendments in the Constitution as will secure those rights, which they consider as not sufficiently guarded. The applications for amendments come from a very respectable number of our constituents, and it is certainly proper for Congress to consider the subject, in order to quiet that anxiety which prevails in the public mind. Indeed, I think it would have been of advantage to the Government, if it had been practicable to have made some propositions for amendments the first business we entered upon; it would have stifled the voice of complaint, and made friends of many who doubted the merits of the Constitution. Our future measures would then have been more generally agreeably supported; but the justifiable anxiety to put the Government into operation prevented that; it therefore remains for us to take it up as soon as possible. I wish then to commence the consideration at the present moment; I hold it to be my duty to unfold my ideas, and explain myself to the House in some form or other without delay. I only wish to introduce the great work, and, as I said before, I do not expect it will be decided immediately; but if some step is taken in the business, it will give reason to believe that we may come to a final result. This will inspire a reasonable hope in the advocates for amendments, that full justice will be done to the important subject; and I have reason to believe their expectation will not be defeated. I hope the House will not decline my motion for going into a committee.

Mr. Sherman.--I am willing that this matter should be brought before the House at a proper time. I suppose a number of gentlemen think it their duty to bring it forward; so that there is no apprehension it will be passed over in silence. Other gentlemen may be disposed to let the subject rest until the more important objects of Government are attended to; and I should conclude, from the nature of the case, that the people expect the latter from us in preference to altering the Constitution; because they have ratified that instrument, in order that the Government may begin to operate. If this was not their wish, they might as well have rejected the Constitution, as North Carolina has done, until the amendments took place. The State I have the honor to come from

adopted this system by a very great majority, because they wished for the Government; but they desired no amendments. I suppose this was the case in other States; it will therefore be imprudent to neglect much more important concerns for this. The executive part of the Government wants organization; the business of the revenue is incomplete, to say nothing of the judiciary business. Now, will gentlemen give up these points to go into a discussion of amendments, when no advantage can arise from them? For my part, I question if any alteration which can be now proposed would be an amendment, in the true sense of the word; but nevertheless, I am willing to let the subject be introduced. If the gentleman only desires to go into committee for the purpose of receiving his propositions, I shall consent; but I have strong objections to being interrupted in completing the more important business; because I am well satisfied it will alarm the fears of twenty of our constituents where it will please one.

Mr. White.--I hope the House will not spend much time on this subject, till the more pressing business is despatched; but, at the same time, I hope we shall not dismiss it altogether, because I think a majority of the people who have ratified the Constitution, did it under the expectation that Congress would, at some convenient time, examine its texture and point out where it was defective, in order that it might be judiciously amended. Whether, while we are without experience, amendments can be digested in such a manner as to give satisfaction to a Constitutional majority of this House, I will not pretend to say; but I hope the subject may be considered with all convenient speed. I think it would tend to tranquillize the public mind; therefore, I shall vote in favor of going into a Committee of the Whole, and, after receiving the subject, shall be content to refer it to a special committee to arrange and report. I fear, if we refuse to take up the subject, it will irritate many of our constituents, which I do not wish to do. If we cannot, after mature consideration, gratify their wishes, the cause of complaint will be lessened, if not removed. But a doubt on this head will not be a good reason why we should refuse to inquire. I do not say this as it affects my immediate constituents, because I believe a majority of the district which elected me do not require alterations; but I know there are people in other parts who will not be satisfied unless some amendments are proposed.

Mr. Smith, of South Carolina, thought the gentleman who brought forward the subject had done his duty: he had supported his motion with ability and candor, and if he did not succeed, he was not to blame. On considering what had been urged for going into a committee, he was induced to join the gentleman; but it would be merely to receive his propositions, after which he would move something to that effect: That, however desirous this House may be to go into the consideration of amendments to the Constitution, in order to establish the liberties of the people of America on the securest foundation, yet the important and pressing business of the Government prevents their entering upon that subject at present.

Mr. Page.--My colleague tells you he is ready to submit to the Committee of the Whole his ideas on this subject. If no objection had been made to his motion, the whole business might have been finished before this. He has done me the honor of showing me certain propositions which he has drawn up; they are very important, and I sincerely wish the House may receive them. After they are published, I think the people will wait with patience till we are at leisure to resume them. But it must be very disagreeable to them to have it postponed from time to time, in the manner it has been for six weeks past; they will be tired out by a fruitless expectation. Putting myself into the place of those who favor amendments, I should suspect Congress did not mean seriously to enter upon the subject; that it was vain to expect redress from them. I should begin to turn my attention to the alternative contained in the fifth article, and think of joining the Legislatures of those States which have applied for calling a new convention. How dangerous such an expedient would be I need not mention; but I venture to affirm, that unless you take early notice of this subject, you will not have power to deliberate. The people will clamor for a new convention; they will not trust the House any longer. Those, therefore, who dread the assembling of a convention, will do well to acquiesce in the present motion, and lay the foundation of a most important work. I do not think we need consume more than half an hour in the Committee of the Whole; this is not so much time but we may conveniently spare it, considering the nature of the business. I do not wish to divert the attention of Congress from the organization of the Government, nor do I think it need be done, if we comply with the present motion.

Mr. Vining.--I hope the House will not go into a Committee of the Whole. It strikes me that the great amendment which the Government wants is expedition in the despatch of business. The wheels of the national machine cannot turn, until the impost and collection bill are perfected; these are the desiderata which the public mind is anxiously expecting. It is well known, that all we have hitherto done amounts to nothing, if we leave the business in its present state. True; but, say gentlemen, let us go into committee; it will take up but a short time; yet may it not take a considerable proportion of our time? May it not be procrastinated into days, weeks, nay, months? It is not the most facile subject that can come before the Legislature of the Union. Gentlemen's opinions do not run in a parallel on this topic; it may take up more time to unite or centre them than is now imagined. And what object is to be attained by going into a committee? If information is what we seek after, cannot that be obtained by the gentleman's laying his propositions on the table; they can be read, or they can be printed. But I have two other reasons for opposing this motion; the first is, the uncertainty with which we must decide on questions of amendment, founded merely on speculative theory; the second is a previous question, how far it is proper to take the subject of amendments into consideration, without the consent of two-thirds of both Houses? I will submit it to gentlemen, whether the words of the Constitution,

"the Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments," do not bear my construction, that it is as requisite for two-thirds to sanction the expediency of going into the measure at present, as it will be to determine the necessity of amending at all. I take it that the fifth article admits of this construction, and think that two-thirds of the Senate and House of Representatives must concur in the expediency, as to the time and manner of amendments, before we can proceed to the consideration of the amendments themselves. For my part, I do not see the expediency of proposing amendments. I think, sir, the most likely way to quiet the perturbation of the public mind, will be to pass salutary laws; to give permanency and stability to Constitutional regulations, founded on principles of equity and adjusted by wisdom. Although hitherto we have done nothing to tranquillize that agitation which the adoption of the Constitution threw some people into, yet the storm has abated and a calm succeeds. The people are not afraid of leaving the question of amendments to the discussion of their representatives; but is this the juncture for discussing it? What have Congress done towards completing the business of their appointment? They have passed a law regulating certain oaths; they have passed the impost bill; but are not vessels daily arriving, and the revenue slipping through our fingers? Is it not very strange that we neglect the completion of the revenue system? Is the system of jurisprudence unnecessary? And here let me ask gentlemen how they propose to amend that part of the Constitution which embraces the judicial branch of Government, when they do not know the regulations proposed by the Senate, who are forming a bill on this subject?

If the honorable mover of the question before the House does not think he discharges his duty without bringing his propositions forward, let him take the mode I have mentioned, by which there will be little loss of time. He knows, as well as any gentleman, the importance of completing the business on your table, and that it is best to finish one subject before the introduction of another. He will not, therefore, persist in a motion which tends to distract our minds, and incapacitates us from making a proper decision on any subject. Suppose every gentleman who desires alterations to be made in the Constitution were to submit his propositions to a Committee of the Whole; what would be the consequence? We should have strings of them contradictory to each other, and be necessarily engaged in a discussion that would consume too much of our precious time.

Though the State I represent had the honor of taking the lead in the adoption of this Constitution, and did it by a unanimous vote; and although I have the strongest predilection for the present form of Government, yet I am open to information, and willing to be convinced of its imperfections. If this be done, I shall cheerfully assist in correcting them. But I cannot think this a proper time to enter upon the subject, because more important business is suspended; and, for want of experience, we are as

likely to do injury by our prescriptions as good. I wish to see every proposition which comes from that worthy gentleman on the science of Government; but I think it can be presented better by staying where we are, than by going into committee, and therefore shall vote against his motion.

Mr. Madison.--I am sorry to be accessory to the loss of a single moment of time by the House. If I had been indulged in my motion, and we had gone into a Committee of the Whole, I think we might have rose and resumed the consideration of other business before this time; that is, so far as it depended upon what I proposed to bring forward. As that mode seems not to give satisfaction, I will withdraw the motion, and move you, sir, that a select committee be appointed to consider and report such amendments as are proper for Congress to propose to the Legislatures of the several States, conformably to the fifth article of the Constitution.

I will state my reasons why I think it proper to propose amendments, and state the amendments themselves, so far as I think they ought to be proposed. If I thought I could fulfil the duty which I owe to myself and my constituents, to let the subject pass over in silence, I most certainly should not trespass upon the indulgence of this House. But I cannot do this, and am therefore compelled to beg a patient hearing to what I have to lay before you. And I do most sincerely believe, that if Congress will devote but one day to this subject, so far as to satisfy the public that we do not disregard their wishes, it will have a salutary influence on the public councils, and prepare the way for a favorable reception of our future measures. It appears to me that this House is bound by every motive of prudence, not to let the first session pass over without proposing to the State Legislatures some things to be incorporated into the Constitution, that will render it as acceptable to the whole people of the United States, as it has been found acceptable to a majority of them. I wish, among other reasons why something should be done, that those who have been friendly to the adoption of this Constitution may have the opportunity of proving to those who were opposed to it that they were as sincerely devoted to liberty and a Republican Government, as those who charged them with wishing the adoption of this Constitution in order to lay the foundation of an aristocracy or despotism. It will be a desirable thing to extinguish from the bosom of every member of the community, any apprehensions that there are those among his countrymen who wish to deprive them of the liberty for which they valiantly fought and honorably bled. And if there are amendments desired of such a nature as will not injure the Constitution, and they can be ingrafted so as to give satisfaction to the doubting part of our fellow-citizens, the friends of the Federal Government will evince that spirit of deference and concession for which they have hitherto been distinguished.

It cannot be a secret to the gentlemen in this House, that, notwithstanding the ratification of this system of Government by eleven of the thirteen United States, in

some cases unanimously, in others by large majorities; yet still there is a great number of our constituents who are dissatisfied with it; among whom are many respectable for their talents and patriotism, and respectable for the jealousy they have for their liberty, which, though mistaken in its object, is laudable in its motive. There is a great body of the people falling under this description, who at present feel much inclined to join their support to the cause of Federalism, if they were satisfied on this one point. We ought not to disregard their inclination, but, on principles of amity and moderation, conform to their wishes, and expressly declare the great rights of mankind secured under this constitution. The acquiescence which our fellow-citizens show under the Government, calls upon us for a like return of moderation. But perhaps there is a stronger motive than this for our going into a consideration of the subject. It is to provide those securities for liberty which are required by a part of the community; I allude in a particular manner to those two States that have not thought fit to throw themselves into the bosom of the Confederacy. It is a desirable thing, on our part as well as theirs, that a reunion should take place as soon as possible. I have no doubt, if we proceed to take those steps which would be prudent and requisite at this juncture, that in a short time we should see that disposition prevailing in those States which have not come in, that we have seen prevailing in those States which have embraced the Constitution.

But I will candidly acknowledge, that, over and above all these considerations, I do conceive that the Constitution may be amended; that is to say, if all power is subject to abuse, that then it is possible the abuse of the powers of the General Government may be guarded against in a more secure manner than is now done, while no one advantage arising from the exercise of that power shall be damaged or endangered by it. We have in this way something to gain, and, if we proceed with caution, nothing to lose. And in this case it is necessary to proceed with caution; for while we feel all these inducements to go into a revisal of the Constitution, we must feel for the Constitution itself, and make that revisal a moderate one. I should be unwilling to see a door opened for a reconsideration of the whole structure of the Government--for a re-consideration of the principles and the substance of the powers given; because I doubt, if such a door were opened, we should be very likely to stop at that point which would be safe to the Government itself. But I do wish to see a door opened to consider, so far as to incorporate those provisions for the security of rights, against which I believe no serious objection has been made by any class of our constituents: such as would be likely to meet with the concurrence of two-thirds of both Houses, and the approbation of three-fourths of the State Legislatures. I will not propose a single alteration which I do not wish to see take place, as intrinsically proper in itself, or proper because it is wished for by a respectable number of my fellow-citizens; and therefore I shall not propose a single alteration but is likely to meet the concurrence required by the Constitution. There have been objections of various kinds made

against the Constitution. Some were levelled against its structure because the President was without a council; because the Senate, which is a legislative body, had judicial powers in trials on impeachments; and because the powers of that body were compounded in other respects, in a manner that did not correspond with a particular theory; because it grants more power than is supposed to be necessary for every good purpose, and controls the ordinary powers of the State Governments. I know some respectable characters who opposed this Government on these grounds; but I believe that the great mass of the people who opposed it, disliked it because it did not contain effectual provisions against encroachments on particular rights, and those safeguards which they have been long accustomed to have interposed between them and the magistrate who exercises the sovereign power; nor ought we to consider them safe, while a great number of our fellow-citizens think these securities necessary.

It is a fortunate thing that the objection to the Government has been made on the ground I stated; because it will be practicable, on that ground, to obviate the objection, so far as to satisfy the public mind that their liberties will be perpetual, and this without endangering any part of the Constitution, which is considered as essential to the existence of the Government by those who promoted its adoption.

The amendments which have occurred to me, proper to be recommended by Congress to the State Legislatures, are these:

First, That there be prefixed to the Constitution a declaration, that all power is originally vested in, and consequently derived from, the people.

That Government is instituted and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty, with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety.

That the people have an indubitable, unalienable, and indefeasible right to reform or change their Government, whenever it be found adverse or inadequate to the purposes of its institution.

Secondly. That in article 1st, section 2, clause 3, these words be struck out, to wit: "The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative, and until such enumeration shall be made;" and that in place thereof be inserted these words, to wit: "After the first actual enumeration, there shall be one Representative for every thirty thousand, until the number amounts to -----, after which the proportion shall be so regulated by Congress, that the number shall never be less than -----, nor more than -----, but each State shall, after the first enumeration, have at least two Representatives; and prior thereto."

Thirdly. That in article 1st, section 6, clause 1, there be added to the end of the first sentence, these words, to wit: "But no law varying the compensation last ascertained shall operate before the next ensuing election of Representatives."

Fourthly. That in article 1st, section 9, between clauses 3 and 4, be inserted these clauses, to wit: The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.

The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.

The people shall not be restrained from peaceably assembling and consulting for their common good; nor from applying to the Legislature by petitions, or remonstrances, for redress of their grievances.

The right of the people to keep and bear arms shall not be infringed; a well armed and well regulated militia being the best security of a free country: but no person religiously scrupulous of bearing arms shall be compelled to render military service in person.

No soldier shall in time of peace be quartered in any house without the consent of the owner; nor at any time, but in a manner warranted by law.

No person shall be subject, except in cases of impeachment, to more than one punishment or one trial for the same offence; nor shall be compelled to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor be obliged to relinquish his property, where it may be necessary for public use, without a just compensation.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The rights of the people to be secured in their persons; their houses, their papers, and their other property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched, or the persons or things to be seized.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to be informed of the cause and nature of the accusation, to be confronted with

his accusers, and the witnesses against him; to have a compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

The exceptions here or elsewhere in the Constitution, made in favor of particular rights, shall not be so construed as to diminish the just importance of other rights retained by the people, or as to enlarge the powers delegated by the Constitution; but either as actual limitations of such powers, or as inserted merely for greater caution.

Fifthly. That in article 1st, section 10, between clauses 1 and 2, be inserted this clause, to wit:

No State shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases.

Sixthly. That, in article 3d, section 2, be annexed to the end of clause 2d, these words, to wit:

But no appeal to such court shall be allowed where the value in controversy shall not amount to ----- dollars: nor shall any fact triable by jury, according to the course of common law, be otherwise re-examinable than may consist with the principles of common law.

Seventhly. That in article 3d, section 2, the third clause be struck out, and in its place be inserted the clauses following, to wit:

The trial of all crimes (except in cases of impeachments, and cases arising in the land or naval forces, or the militia when on actual service, in time of war or public danger) shall be by an impartial jury of freeholders of the vicinage, with the requisite of unanimity for conviction, of the right of challenge, and other accustomed requisites; and in all crimes punishable with loss of life or member, presentment or indictment by a grand jury shall be an essential preliminary, provided that in cases of crimes committed within any county which may be in possession of an enemy, or in which a general insurrection may prevail, the trial may by law be authorized in some other county of the same State, as near as may be to the seat of the offence.

In cases of crimes committed not within any county, the trial may by law be in such county as the laws shall have prescribed. In suits at common law, between man and man, the trial by jury, as one of the best securities to the rights of the people, ought to remain inviolate.

Eighthly. That immediately after article 6th, be inserted, as article 7th, the clauses following, to wit:

The powers delegated by this Constitution are appropriated to the departments to which they are respectively distributed: so that the Legislative Department shall never exercise the powers vested in the Executive or Judicial nor the Executive exercise the powers vested in the Legislative or Judicial, nor the Judicial exercise the powers vested in the Legislative or Executive Departments.

The powers not delegated by this Constitution, nor prohibited by it to the States, are reserved to the States respectively.

Ninthly. That article 7th be numbered as article 8th.

The first of these amendments relates to what may be called a bill of rights. I will own that I never considered this provision so essential to the Federal Constitution, as to make it improper to ratify it, until such an amendment was added; at the same time, I always conceived, that in a certain form, and to a certain extent, such a provision was neither improper nor altogether useless. I am aware, that a great number of the most respectable friends to the Government, and champions for republican liberty, have thought such a provision, not only unnecessary, but even improper; nay, I believe some have gone so far as to think it even dangerous. Some policy has been made use of, perhaps, by gentlemen on both sides of the question: I acknowledge the ingenuity of those arguments which were drawn against the Constitution, by a comparison with the policy of Great Britain, in establishing a declaration of rights; but there is too great a difference in the case to warrant the comparison: therefore, the arguments drawn from that source were in a great measure inapplicable. In the declaration of rights which that country has established, the truth is, they have gone no farther than to raise a barrier against the power of the Crown; the power of the Legislature is left altogether indefinite. Although I know whenever the great rights, the trial by jury, freedom of the press, or liberty of conscience, come in question in that body, the invasion of them is resisted by able advocates, yet their Magna Charta does not contain any one provision for the security of those rights, respecting which the people of America are most alarmed. The freedom of the press and rights of conscience, those choicest privileges of the people, are unguarded in the British Constitution.

But although the case may be widely different, and it may not be thought necessary to provide limits for the legislative power in that country, yet a different opinion prevails in the United States. The people of many States have thought it necessary to raise barriers against power in all forms and departments of Government, and I am inclined to believe, if once bills of rights are established in all the States as well as the Federal Constitution, we shall find that although some of them are rather unimportant, yet, upon the whole, they will have a salutary tendency.

It may be said, in some instances, they do no more than state the perfect equality of mankind. This, to be sure, is an absolute truth, yet it is not absolutely necessary to be inserted at the head of a Constitution.

In some instances they assert those rights which are exercised by the people in forming and establishing a plan of Government. In other instances, they specify those rights which are retained when particular powers are given up to be exercised by the Legislature. In other instances, they specify positive rights, which may seem to result from the nature of the compact. Trial by jury cannot be considered as a natural right, but a right resulting from a social compact which regulates the action of the community, but is as essential to secure the liberty of the people as any one of the pre-existent rights of nature. In other instances, they lay down dogmatic maxims with respect to the construction of the Government; declaring that the Legislative, Executive, and Judicial branches shall be kept separate and distinct. Perhaps the best way of securing this in practice is, to provide such checks as will prevent the encroachment of the one upon the other.

But whatever may be the form which the several States have adopted in making declarations in favor of particular rights, the great object in view is to limit and qualify the powers of Government, by excepting out of the grant of power those cases in which the Government ought not to act, or to act only in a particular mode. They point these exceptions sometimes against the abuse of the Executive power, sometimes against the Legislative, and, in some cases, against the community itself; or, in other words, against the majority in favor of the minority.

In our Government it is, perhaps, less necessary to guard against the abuse in the Executive Department than any other; because it is not the stronger branch of the system, but the weaker: It therefore must be levelled against the Legislative, for it is the most powerful, and most likely to be abused, because it is under the least control. Hence, so far as a declaration of rights can tend to prevent the exercise of undue power, it cannot be doubted but such declaration is proper. But I confess that I do conceive, that in a Government modified like this of the United States, the great danger lies rather in the abuse of the community than in the Legislative body. The prescriptions in favor of liberty ought to be levelled against that quarter where the greatest danger lies, namely, that which possesses the highest prerogative of power. But this is not found in either the Executive or Legislative departments of Government, but in the body of the people, operating by the majority against the minority.

It may be thought that all paper barriers against the power of the community are too weak to be worthy of attention. I am sensible they are not so strong as to satisfy gentlemen of every description who have seen and examined thoroughly the texture of

such a defence; yet, as they have a tendency to impress some degree of respect for them, to establish the public opinion in their favor, and rouse the attention of the whole community, it may be one means to control the majority from those acts to which they might be otherwise inclined.

It has been said, by way of objection to a bill of rights, by many respectable gentlemen out of doors, and I find opposition on the same principles likely to be made by gentlemen on this floor, that they are unnecessary articles of a Republican Government, upon the presumption that the people have those rights in their own hands, and that is the proper place for them to rest. It would be a sufficient answer to say, that this objection lies against such provisions under the State Governments, as well as under the General Government; and there are, I believe, but few gentlemen who are inclined to push their theory so far as to say that a declaration of rights in those cases is either ineffectual or improper. It has been said, that in the Federal Government they are unnecessary, because the powers are enumerated, and it follows, that all that are not granted by the Constitution are retained; that the Constitution is a bill of powers, the great residuum being the rights of the people; and, therefore, a bill of rights cannot be so necessary as if the residuum was thrown into the hands of the Government. I admit that these arguments are not entirely without foundation; but they are not conclusive to the extent which has been supposed. It is true, the powers of the General Government are circumscribed, they are directed to particular objects; but even if Government keeps within those limits, it has certain discretionary powers with respect to the means, which may admit of abuse to a certain extent, in the same manner as the powers of the State Governments under their constitutions may to an indefinite extent; because in the Constitution of the United States, there is a clause granting to Congress the power to make all laws which shall be necessary and proper for carrying into execution all the powers vested in the Government of the United States, or in any department or officer thereof; this enables them to fulfil every purpose for which the Government was established. Now, may not laws be considered necessary and proper by Congress, for it is for them to judge of the necessity and propriety to accomplish those special purposes which they may have in contemplation, which laws in themselves are neither necessary nor proper; as well as improper laws could be enacted by the State Legislatures, for fulfilling the more extended objects of those Governments. I will state an instance, which I think in point, and proves that this might be the case. The General Government has a right to pass all laws which shall be necessary to collect its revenue; the means for enforcing the collection are within the direction of the Legislature: may not general warrants be considered necessary for this purpose, as well as for some purposes which it was supposed at the framing of their constitutions the State Governments had in view? If there was reason for restraining the State Governments from exercising this power, there is like reason for restraining the Federal Government.

It may be said, indeed it has been said, that a bill of rights is not necessary, because the establishment of this Government has not repealed those declarations of rights which are added to the several State constitutions; that those rights of the people, which had been established by the most solemn act, could not be annihilated by a subsequent act of that people, who meant, and declared at the head of the instrument, that they ordained and established a new system, for the express purpose of securing to themselves and posterity the liberties they had gained by an arduous conflict.

I admit the force of this observation, but I do not look upon it to be conclusive. In the first place, it is too uncertain ground to leave this provision upon, if a provision is at all necessary to secure rights so important as many of those I have mentioned are conceived to be, by the public in general, as well as those in particular who opposed the adoption of this Constitution. Besides, some States have no bills of rights, there are others provided with very defective ones, and there are others whose bills of rights are not only defective, but absolutely improper; instead of securing some in the full extent which republican principles would require, they limit them too much to agree with the common ideas of liberty.

It has been objected also against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration; and it might follow, by implication, that those rights which were not singled out, were intended to be assigned into the hands of the General Government, and were consequently insecure. This is one of the most plausible arguments I have ever heard urged against the admission of a bill of rights into this system; but, I conceive, that it may be guarded against. I have attempted it, as gentlemen may see by turning to the last clause of the fourth resolution.

It has been said, that it is unnecessary to load the Constitution with this provision, because it was not found effectual in the constitution of the particular States. It is true, there are a few particular States in which some of the most valuable articles have not, at one time or other, been violated; but it does not follow but they may have, to a certain degree, a salutary effect against the abuse of power. If they are incorporated into the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the Legislative or Executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights. Besides this security, there is a great probability that such a declaration in the federal system would be enforced; because the State Legislatures will jealously and closely watch the operations of this Government, and be able to resist with more effect every assumption of power, than any other power on earth can do; and the greatest opponents to a Federal Government admit the State Legislatures to be sure guardians of the people's liberty. I conclude,

from this view of the subject, that it will be proper in itself, and highly politic, for the tranquillity of the public mind, and the stability of the Government, that we should offer something, in the form I have proposed, to be incorporated in the system of Government, as a declaration of the rights of the people.

In the next place, I wish to see that part of the Constitution revised which declares that the number of Representatives shall not exceed the proportion of one for every thirty thousand persons, and allows one Representative to every State which rates below that proportion. If we attend to the discussion of this subject, which has taken place in the State conventions, and even in the opinion of the friends to the Constitution, an alteration here is proper. It is the sense of the people of America, that the number of Representatives ought to be increased, but particularly that it should not be left in the discretion of the Government to diminish them, below that proportion which certainly is in the power of the Legislature as the Constitution now stands; and they may, as the population of the country increases, increase the House of Representatives to a very unwieldy degree. I confess I always thought this part of the Constitution defective, though not dangerous; and that it ought to be particularly attended to whenever Congress should go into the consideration of amendments.

There are several minor cases enumerated in my proposition, in which I wish also to see some alteration take place. That article which leaves it in the power of the Legislature to ascertain its own emolument, is one to which I allude. I do not believe this is a power which, in the ordinary course of Government, is likely to be abused. Perhaps of all the powers granted, it is least likely to abuse; but there is a seeming impropriety in leaving any set of men without control to put their hand into the public coffers, to take out money to put in their pockets; there is a seeming indecorum in such power, which leads me to propose a change. We have a guide to this alteration in several of the amendments which the different conventions have proposed. I have gone, therefore, so far as to fix it, that no law, varying the compensation, shall operate until there is a change in the Legislature; in which case it cannot be for the particular benefit of those who are concerned in determining the value of the service.

I wish also, in revising the Constitution, we may throw into that section, which interdicts the abuse of certain powers in the State Legislatures, some other provisions of equal, if not greater importance than those already made. The words, "No State shall pass any bill of attainder, *ex post facto* law," &c. were wise and proper restrictions in the Constitution. I think there is more danger of those powers being abused by the State Governments than by the Government of the United States. The same may be said of other powers which they possess, if not controlled by the general principle, that laws are unconstitutional which infringe the rights of the community. I should therefore wish to extend this interdiction, and add, as I have stated in the 5th resolution, that no State shall violate the equal right of conscience, freedom of the

press, or trial by jury in criminal cases; because it is proper that every Government should be disarmed of powers which trench upon those particular rights. I know, in some of the State constitutions, the power of the Government is controlled by such a declaration; but others are not. I cannot see any reason against obtaining even a double security on those points; and nothing can give a more sincere proof of the attachment of those who opposed this Constitution to these great and important rights, than to see them join in obtaining the security I have now proposed; because it must be admitted, on all hands, that the State Governments are as liable to attack these invaluable privileges as the General Government is, and therefore ought to be as cautiously guarded against.

I think it will be proper, with respect to the judiciary powers, to satisfy the public mind on those points which I have mentioned. Great inconvenience has been apprehended to suitors from the distance they would be dragged to obtain justice in the Supreme Court of the United States, upon an appeal on an action for a small debt. To remedy this, declare that no appeal shall be made unless the matter in controversy amounts to a particular sum; this, with the regulations respecting jury trials in criminal cases, and suits at common law, it is to be hoped, will quiet and reconcile the minds of the people to that part of the Constitution.

I find, from looking into the amendments proposed by the State conventions, that several are particularly anxious that it should be declared in the Constitution, that the powers not therein delegated should be reserved to the several States. Perhaps words which may define this more precisely than the whole of the instrument now does, may be considered as superfluous. I admit they may be deemed unnecessary: but there can be no harm in making such a declaration, if gentlemen will allow that the fact is as stated. I am sure I understand it so, and do therefore propose it.

These are the points on which I wish to see a revision of the Constitution take place. How far they will accord with the sense of this body, I cannot take upon me absolutely to determine; but I believe every gentleman will readily admit that nothing is in contemplation, so far as I have mentioned, that can endanger the beauty of the Government in any one important feature, even in the eyes of its most sanguine admirers. I have proposed nothing that does not appear to me as proper in itself, or eligible as patronized by a respectable number of our fellow-citizens; and if we can make the Constitution better in the opinion of those who are opposed to it, without weakening its frame, or abridging its usefulness, in the judgment of those who are attached to it, we act the part of wise and liberal men to make such alterations as shall produce that effect.

Having done what I conceived was my duty, in bringing before this House the subject of amendments, and also stated such as I wish for and approve, and offered the

reasons which occurred to me in their support, I shall content myself, for the present, with moving "that a committee be appointed to consider of and report such amendments as ought to be proposed by Congress to the Legislatures of the States, to become, if ratified by three-fourths thereof, part of the Constitution of the United States." By agreeing to this motion, the subject may be going on in the committee, while other important business is proceeding to a conclusion in the House. I should advocate greater despatch in the business of amendments, if I were not convinced of the absolute necessity there is of pursuing the organization of the Government; because I think we should obtain the confidence of our fellow-citizens, in proportion as we fortify the rights of the people against the encroachments of the Government.

Mr. Jackson.--The more I consider the subject of amendments, the more I am convinced it is improper. I revere the rights of my constituents as much as any gentleman in Congress, yet I am against inserting a declaration of rights in the Constitution, and that for some of the reasons referred to by the gentleman last up. If such an addition is not dangerous or improper, it is at least unnecessary: that is a sufficient reason for not entering into the subject at a time when there are urgent calls for our attention to important business. Let me ask gentlemen, what reason there is for the suspicions which are to be removed by this measure? Who are Congress, that such apprehensions should be entertained of them? Do we not belong to the mass of the people? Is there a single right that, if infringed, will not affect us and our connexions as much as any other person? Do we not return at the expiration of two years into private life? and is not this a security against encroachments? Are we not sent here to guard those rights which might be endangered, if the Government was an aristocracy or a despotism? View for a moment the situation of Rhode Island, and say whether the people's rights are more safe under State Legislatures than under a Government of limited powers? Their liberty is changed to licentiousness. But do gentlemen suppose bills of rights necessary to secure liberty? If they do, let them look at New York, New Jersey, Virginia, South Carolina, and Georgia. Those States have no bills of rights, and is the liberty of the citizens less safe in those States, than in the other of the United States? I believe it is not.

There is a maxim in law, and it will apply to bills of rights, that when you enumerate exceptions, the exceptions operate to the exclusion of all circumstances that are omitted; consequently, unless you except every right from the grant of power, those omitted are inferred to be resigned to the discretion of the Government.

The gentleman endeavors to secure the liberty of the press; pray how is this in danger? There is no power given to Congress to regulate this subject as they can commerce, or peace, or war. Has any transaction taken place to make us suppose such an amendment necessary? An honorable gentleman, a member of this House, has been attacked in the public newspapers on account of sentiments delivered on this floor.

Have Congress taken any notice of it? Have they ordered the writer before them, even for a breach of privilege, although the Constitution provides that a member shall not be questioned in any place for any speech or debate in the House? No, these things are offered to the public view, and held up to the inspection of the world. These are principles which will always prevail. I am not afraid, nor are other members I believe, our conduct should meet the severest scrutiny. Where, then, is the necessity of taking measures to secure what neither is nor can be in danger?

I hold, Mr. Speaker, that the present is not a proper time for considering of amendments. The States of Rhode Island and North Carolina are not in the Union. As to the latter, we have every presumption that she will come in. But in Rhode Island I think the anti-federal interest yet prevails. I am sorry for it, particularly on account of the firm friends of the Union, who are kept without the embrace of the Confederacy by their countrymen. These persons are worthy of our patronage; and I wish they would apply to us for protection; they should have my consent to be taken into the Union upon such application. I understand there are some important mercantile and manufacturing towns in that State, who ardently wish to live under the laws of the General Government; if they were to come forward and request us to take measures for this purpose, I would give my sanction to any which would be likely to bring about such an event.

But to return to my argument. It being the case that those States are not yet come into the Union, when they join us, we shall have another list of amendments to consider, and another bill of rights to frame. Now, in my judgment, it is better to make but one work of it whenever we set about the business.

But in what a situation shall we be with respect to those foreign Powers with whom we desire to be in treaty? They look upon us as a nation emerging into figure and importance. But what will be their opinion, if they see us unable to retain the national advantages we have just gained? They will smile at our infantine efforts to obtain consequence, and treat us with the contempt we have hitherto borne by reason of the imbecility of our Government. Can we expect to enter into a commercial competition with any of them, while our system is incomplete? And how long it will remain in such a situation, if we enter upon amendments, God only knows. Our instability will make us objects of scorn. We are not content with two revolutions in less than fourteen years; we must enter upon a third, without necessity or propriety. Our faith will be like the *punica fides* of Carthage; and we shall have none that will repose confidence in us. Why will gentlemen press us to propose amendments, while we are without experience? Can they assure themselves that the amendments, as they call them, will not want amendments, as soon as they are adopted? I will not tax gentlemen with a desire of amusing the people; I believe they venerate their country too much for this; but what more can amendments lead to? That part of the

Constitution which is proposed to be altered, may be the most valuable part of the whole; and perhaps those who now clamor for alterations may, ere long, discover that they have marred a good Government, and rendered their own liberties insecure. I again repeat it, this is not the time for bringing forward amendments; and, notwithstanding the honorable gentleman's ingenious arguments on that point, I am now more strongly persuaded it is wrong.

If we actually find the Constitution bad upon experience, or the rights and privileges of the people in danger, I here pledge myself to step forward among the first friends of liberty to prevent the evil; and if nothing else will avail, I will draw my sword in the defence of freedom, and cheerfully immolate at that shrine my property and my life. But how are we now proceeding? Why, on nothing more than the theoretical speculation pursuing a mere *ignis fatuus*, which may lead us into serious embarrassments. The imperfections of the Government are now unknown; let it have a fair trial, and I will be bound they show themselves; then we can tell where to apply the remedy, so as to secure the great object we are aiming at.

There are, Mr. Speaker, a number of important bills on the table, which require despatch; but I am afraid, if we enter on this business, we shall not be able to attend to them for a long time. Look, sir, over the long list of amendments proposed by some of the adopting States, and say, when the House could get through the discussion; and I believe, sir, every one of those amendments will come before us. Gentlemen may feel themselves called by duty or inclination to oppose them. How are we then to extricate ourselves from this labyrinth of business? Certainly we shall lose much of our valuable time, without any advantage whatsoever. I hope, therefore, the gentleman will press us no further; he has done his duty, and acquitted himself of the obligation under which he lay. He may now accede to what I take to be the sense of the House, and let the business of amendments lie over until next Spring; that will be soon enough to take it up to any good purpose.

Mr. Gerry.--I do not rise to go into the merits or demerits of the subject of amendments; nor shall I make any other observations on the motion for going into a Committee of the Whole on the state of the Union, which is now withdrawn, than merely to say, that, referring the subject to that committee, is treating it with the dignity its importance requires. But I consider it improper to take up this business, when our attention is occupied by other important objects. We should despatch the subjects now on the table, and let this lie over until a period of more leisure for discussion and attention. The gentleman from Virginia says it is necessary to go into a consideration of this subject, in order to satisfy the people. For my part, I cannot be of his opinion. The people know we are employed in the organization of the Government, and cannot expect that we should forego this business for any other. But I would not have it understood, that I am against entering upon amendments when the

proper time arrives. I shall be glad to set about it as soon as possible, but I would not stay the operations of the Government on this account. I think with the gentleman from Delaware, (Mr. Vining,) that the great wheels of the political machine should first be set in motion; and with the gentleman from Georgia, (Mr. Jackson,) that the vessel ought to be got under way, lest she lie by the wharf till she beat off her rudder, and run herself a wreck on shore.

I say I wish as early a day as possible may be assigned for taking up this business, in order to prevent the necessity which the States may think themselves under of calling a new convention. For I am not, sir, one of those blind admirers of this system, who think it all perfection; nor am I so blind as not to see its beauties. The truth is, it partakes of humanity; in it is blended virtue and vice, errors and excellence. But I think, if it is referred to a new convention, we run the risk of losing some of its best properties; this is a case I never wish to see. Whatever might have been my sentiments of the ratification of the Constitution without amendments, my sense now is, that the salvation of America depends upon the establishment of this Government, whether amended or not. If the Constitution which is now ratified should not be supported, I despair of ever having a Government of these United States.

I wish the subject to be considered early for another reason. There are two States not in the Union; it would be a very desirable circumstance to gain them. I should therefore be in favor of such amendments as might tend to invite them and gain their confidence; good policy will dictate to us to expedite that event. Gentlemen say, that we shall not obtain the consent of two-thirds of both Houses to amendments. Are gentlemen willing then to throw Rhode Island and North Carolina into the situation of foreign nations? They have told you that they cannot accede to the Union, unless certain amendments are made to the Constitution; if you deny a compliance with their request in that particular, you refuse an accommodation to bring about that desirable event, and leave them detached from the Union.

I have another reason for going early into this business. It is necessary to establish an energetic Government. My idea of such a Government is, that due deliberation be had in making laws, and efficiency in the execution. I hope, in this country, the latter may obtain without the dread of despotism. I would wish to see the execution of good laws irresistible. But from the view which we have already had of the disposition of the Government, we seem really to be afraid to administer the powers with which we are invested, lest we give offence. We appear afraid to exercise the Constitutional powers of the Government, which the welfare of the State requires, lest a jealousy of our powers be the consequence. What is the reason of this timidity? Why, because we see a great body of our constituents opposed to the Constitution as it now stands, who are apprehensive of the enormous powers of Government. But if this business is taken up, and it is thought proper to make amendments, it will remove this difficulty. Let us

deal fairly and candidly with our constituents, and give the subject a full discussion; after that, I have no doubt but the decision will be such as, upon examination, we shall discover to be right. If it shall then appear proper and wise to reject the amendments, I dare to say the reasons for so doing will bring conviction to the people out of doors, as well as it will to the members of this House; and they will acquiesce in the decision, though they may regret the disappointment of their fondest hopes for the security of the liberties of themselves and their posterity. Thus, and thus only, the Government will have its due energy, and accomplish the end for which it was instituted.

I am against referring the subject to a select committee, because I conceive it would be disrespectful to those States which have proposed amendments. The conventions of the States consisted of the most wise and virtuous men of the community; they have ratified this Constitution, in full confidence that their objections would at least be considered; and shall we, sir, preclude them by the appointment of a special committee, to consider of a few propositions brought forward by an individual gentleman? Is it in contemplation that the committee should have the subject at large before them, or that they should report upon the particular amendments just mentioned, as they think proper? And are we to be precluded from the consideration of any other amendments but those the committee may report? A select committee must be considered improper, because it is putting their judgments against that of the conventions which have proposed amendments; but if the committee are to consider the matter at large, they will be liable to this objection, that their report will only be waste of time. For if they do not bring forward the whole of the amendments recommended, individual members will consider themselves bound to bring them forward for the decision of the House. I would therefore submit, if gentlemen are determined to proceed in the business at this time, whether it is not better that it should go, in the first instance, to a Committee of the Whole, as first proposed by the gentleman from Virginia?

Some gentlemen consider it necessary to do this to satisfy our constituents. I think referring the business to a special committee will be attempting to amuse them with trifles. Our fellow-citizens are possessed of too much discernment not to be able to discover the intention of Congress by such procedure. It will be the duty of their representatives to tell them, if they were not able to discover it of themselves, they require the subject to be fairly considered; and if it be found to be improper to comply with their reasonable expectations, to tell them so. I hope there is no analogy between federal and punic faith; but unless Congress shall candidly consider the amendments which have been proposed in confidence by the State conventions, federal faith will not be considered very different from the *punica fides* of Carthage. The ratification of the Constitution in several States would never have taken place, had they not been assured that the objections would have been duly attended to by Congress. And I

believe many members of these conventions would never have voted for it, if they had not been persuaded that Congress would notice them with that candor and attention which their importance requires. I will say nothing respecting the amendments themselves; they ought to stand or fall on their own merits. If any of them are eligible, they will be adopted; if not, they will be rejected.

Mr. Livermore was against this motion; not that he was against amendments at a proper time. It is enjoined on him to act a rational part in procuring certain amendments, and he meant to do so; but he could not say what amendments were requisite, until the Government was organized. He supposed the judiciary law would contain certain regulations that would remove the anxiety of the people respecting such amendments as related thereto; because he thought much of the minutiae respecting suits between citizens of different States, &c. might be provided for by law. He could not agree to make jury trials necessary on every occasion; they were not practised even at this time, and there were some cases in which a cause could be better decided without a jury than with one.

In addition to the judiciary business, there is that which relates to the revenue. Gentlemen had let an opportunity go through their hands of getting a considerable supply from the impost on the Spring importations. He reminded them of this; and would tell them now was the time to finish tht business; for if they did not sow in seed-time, they would be beggars in harvest. He was well satisfied in his own mind, that the people of America did not look for amendments at present; they never could imagine it to be the first work of Congress.

He wished the concurrence of the Senate upon entering on this business, because if they opposed the measure, all the House did would be mere waste of time; and there was some little difficulty on this point, because it required the consent of two-thirds of both Houses to agree to what was proper on this occasion. He said, moreover, it would be better to refer the subject generally, if referred to them at all, than to take up the propositions of individual members.

Mr. Sherman.--I do not suppose the Constitution to be perfect, nor do I imagine if Congress and all the Legislatures on the continent were to revise it, that their united labors would make it perfect. I do not expect any perfection on this side the grave in the works of man; but my opinion is, that we are not at present in circumstances to make it better. It is at wonder that there has been such unanimity in adopting it, considering the ordeal it had to undergo; and the unanimity which prevailed at its formation is equally astonishing; amidst all the members from the twelve States present at the Federal Convention, there were only three who did not sign the instrument to attest their opinion of its goodness. Of the eleven States who have received it, the majority have ratified it without proposing a single amendment. This

circumstance leads me to suppose that we shall not be able to propose any alterations that are likely to be adopted by nine States; and gentlemen know, before the alterations take effect, they must be agreed to by the Legislatures of three-fourths of the States in the Union. Those States which have not recommended alterations, will hardly adopt them, unless it is clear that they tend to make the Constitution better. Now how this can be made out to their satisfaction I am yet to learn; they know of no defect from experience. It seems to be the opinion of gentlemen generally, that this is not the time for entering upon the discussion of amendments: our only question therefore is, how to get rid of the subject. Now, for my own part, I would prefer to have it referred to a Committee of the Whole, rather than a special committee, and therefore shall not agree to the motion now before the House.

Mr. Gerry moved, that the business lie over until the 1st day of July next, and that it be the order for that day.

Mr. Sumter.--I consider the subject of amendments of such great importance to the Union, that I shall be glad to see it undertaken in any manner. I am not, Mr. Speaker, disposed to sacrifice substance to form; therefore, whether the business shall originate in a Committee of the Whole, or in the House, is a matter of indifference to me, so that it be put in train. Although I am seriously inclined to give this subject a full discussion, yet I do not wish it to be fully entered into at present, but am willing it should be postponed to a future day, when we shall have more leisure. With respect to referring to a select committee, I am rather against it; because I consider it as treating the applications of the State conventions rather slightly; and I presume it is the intention of the House to take those applications into consideration as well as any other. If it is not, I think it will give fresh cause for jealousy; it will rouse the alarm which is now suspended, and the people will become clamorous for amendments. They will decline any further application to Congress, and resort to the other alternative pointed out in the Constitution. I hope, therefore, this House, when they do go into the business, will receive those propositions generally. This I apprehend will tend to tranquillize the public mind, and promote that harmony which ought to be kept up between those in the exercise of the powers of Government, and those who have clothed them with the authority, or, in other words, between Congress and the people. Without a harmony and confidence subsist between them, the measures of Government will prove abortive, and we shall have still to lament that imbecility and weakness which have long marked our public councils.

Mr. Vining found himself in a delicate situation respecting the subject of amendments. He came from a small State, and therefore his sentiments would not be considered of so much weight as the sentiments of those gentlemen who spoke the sense of much larger States. Besides, his constituents had prejudged the question, by a unanimous adoption of the Constitution, without suggesting any amendments thereto. His sense

accorded with the declared sense of the State of Delaware, and he was doubly bound to object to amendments which were either improper or unnecessary. But he had good reasons for opposing the consideration of even proper alterations at this time. He would ask the gentleman who pressed them, whether he would be responsible for the risk the Government would run of being injured by an *interregnum*? Proposing amendments at this time, is suspending the operations of Government, and may be productive of its ruin.

He would not follow the gentleman in his arguments, though he supposed them all answerable, because he would not take up the time of the House; he contented himself with saying, that a bill of rights was unnecessary in a Government deriving all its powers from the people; and the Constitution enforced the principle in the strongest manner by the practical declaration prefixed to that instrument; he alluded to the words, "We the people do ordain and establish."

There were many things mentioned by some of the State Conventions which he would never agree to, on any conditions whatever; they changed the principles of the Government, and were therefore obnoxious to its friends. The honorable gentleman from Virginia had not touched upon any of them; he was glad of it, because he could by no means bear the idea of an alteration respecting them; he referred to the mode of obtaining direct taxes, judging of elections, &c.

He found he was not speaking to the question; he would therefore return to it, and declare he was against committing the subject to a select committee; if it was to be committed at all, he preferred a Committee of the Whole, but hoped the subject would be postponed.

Mr. Madison found himself unfortunate in not satisfying gentlemen with respect to the mode of introducing the business; he thought, from the dignity and peculiarity of the subject, that it ought to be referred to a Committee of the Whole. He accordingly made that motion first, but finding himself not likely to succeed in that way, he had changed his ground. Fearing again to be discomfited, he would change his mode, and move the propositions he had stated before, and the House might do what they thought proper with them. He accordingly moved the propositions by way of resolutions to be adopted by the House.

Mr. Livermore objected to these propositions, because they did not take up the amendments of the several States.

Mr. Page was much obliged to his colleague for bringing the subject forward in the manner he had done. He conceived it to be just and fair. What was to be done when

the House would not refer it to a committee of any sort, but bring the question at once before them? He hoped it would be the means of bringing about a decision.

Mr. Lawrence moved to refer Mr. Madison's motion to the Committee of the Whole on the state of the Union.

Mr. Lee thought it ought to be taken up in that committee; and hoped his colleague would bring the propositions before the committee, when on the state of the Union, as he had originally intended.

Mr. Boudinot wished the appointment of a select committee, but afterwards withdrew his motion.

At length Mr. Lawrence's motion was agreed to, and Mr. Madison's propositions were ordered to be referred to a Committee of the Whole. Adjourned.

[21 July]

Mr. Sherman.--The provision for amendments made in the fifth article of the Constitution, was intended to facilitate the adoption of those which experience should point out to be necessary. This Constitution has been adopted by eleven States, a majority of those eleven have received it without expressing a wish for amendments; now, is it probable that three-fourths of the eleven States will agree to amendments offered on mere speculative points, when the Constitution has had no kind of trial whatever? It is hardly to be expected that they will. Consequently we shall lose our labor, and had better decline having any thing further to do with it for the present.

But if the House are to go into a consideration, it had better be done in such a way as not to interfere much with the organization of the Government.

Mr. Page hoped the business would proceed as heretofore directed. He thought it would be very agreeable to the majority of the Union, he knew it would be to his constituents, to find that the Government meant to give every security to the rights and liberties of the people, and to examine carefully into the grounds of the apprehensions expressed by several of the State conventions; he thought they would be satisfied with the amendments brought forward by his colleague, when the subject was last before the House.

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Mr. Jackson was sorry to see the House was to be troubled any further on the subject; he looked upon it as a mere waste of time; but as he always chose the least of two evils, he acquiesced in the motion for referring it to a special committee.

Mr. Gerry asked, whether the House had cognizance of the amendments proposed by the State conventions? If they had not, he would make a motion to bring them forward.

Mr. Page replied, that such motion would be out of order, until the present question was determined.

A desultory conversation ensued, and it was questioned whether the subject generally was to be before the Committee of the Whole, or those specific propositions only which had already been introduced.

Mr. Gerry said, that it was a matter of indifference how this question was understood, because no gentleman could pretend to deny another the privilege of bringing forward propositions conformably to his sentiments. If gentlemen, then, might bring forward resolutions to be added, or motions of amendment, there would be no time saved by referring the subject to a special committee. But such procedure might tend to prejudice the House against an amendment neglected by the committee, and thereby induce them not to show that attention to the State which proposed it that would be delicate and proper.

He wished gentlemen to consider the situation of the States; seven out of thirteen had thought the Constitution very defective, yet five of them have adopted it with a perfect reliance on Congress for its improvement. Now, what will these States feel if the subject is discussed in a select committee, and their recommendations totally neglected? The indelicacy of treating the application of five States in a manner different from other important subjects, will give no small occasion for disgust, which is a circumstance that this Government ought carefully to avoid. If, then, the House could gain nothing by this manner of proceeding, he hoped they would not hesitate to adhere to their former vote for going into a Committee of the Whole. That they would gain nothing was pretty certain, for gentlemen must necessarily come forward with their amendments to the report when it was brought in. The members from Massachusetts were particularly instructed to press the amendments recommended by the convention of that State at all times, until they had been maturely considered by Congress; the same duties were made incumbent on the members from some other States; consequently, any attempt to smother the business, or prevent a full investigation, must be nugatory, while the House paid a proper deference to their own rules and orders. He did not contend for going into a Committee of the whole at the

present moment; he would prefer a time of greater leisure than the present, from the business of organizing the Government.

Mr. Ames declared to the House, that he was no enemy to the consideration of amendments; but he had moved to rescind their former vote, in order to save time, which he was confident would be the consequence of referring it to a select committee.

He was sorry to hear an intention avowed by his colleague, of considering every part of the frame of this Constitution. It was the same as forming themselves into a convention of the United States. He did not stand for words, the thing would be the same in fact. He could not but express a degree of anxiety at seeing the system of Government encounter another ordeal, when it ought to be extending itself to furnish security to others. He apprehended, if the zeal of some gentlemen broke out on this occasion, that there would be no limits to the time necessary to discuss the subject; he was certain the session would not be long enough; perhaps they might be bounded by the period of their appointment, but he questioned it.

When gentlemen suppose themselves called upon to vent their ardor in some favorite pursuit, in securing to themselves and their posterity the inestimable rights and liberties they have just snatched from the hand of despotism, they are apt to carry their exertions to an extreme; but he hoped the subject itself would be limited; not that he objected to the consideration of the amendments proposed, indeed he should move himself for the consideration, by the committee, of those recommended by Massachusetts, if his colleagues omitted to do it; but he hoped gentlemen would not think of bringing in new amendments, such as were not recommended, but went to tear the frame of Government into pieces.

He had considered a select committee much better calculated to consider and arrange a complex business, than a Committee of the Whole; he thought they were like the senses to the soul, and on an occasion like the present, could be made equally useful.

If he recollected rightly the decision made by the House on the 8th of June, it was that certain specific amendments be referred to the Committee of the Whole; not that the subject generally be referred, and that amendments be made in the committee that were not contemplated, before. This public discussion would be like a dissection of the Constitution, it would be defacing its symmetry, laying bare its sinews and tendons, ripping up the whole form, and tearing out its vitals; but is it presumable that such conduct would be attended with success? Two thirds of both Houses must agree in all these operations, before they can have effect. His opposition to going into a Committee of the Whole, did not arise from any fear that the Constitution would suffer by a fair discussion in this, or any other House; but while such business was

going on, the Government was laid prostrate, and every artery ceased to beat. The unfair advantages that might be taken in such a situation, were easier apprehended than resisted. Wherefore, he wished to avoid the danger, by a more prudent line of conduct.

Mr. Tucker would not say whether the discussion alluded to by the gentleman last up would do good or harm, but he was certain it ought to take place no where but in a Committee of the Whole; the subject is of too much importance for a select committee. Now, suppose such a committee to be appointed, and that the amendments proposed by the several States, together with those brought forward by the gentleman from Virginia, are referred to them: after some consideration they report, but not one of the amendments proposed by either State; what is the inference? They have considered them, and as they were better capable than the House of considering them, the House ought to reject every proposition coming from the State conventions. Will this give satisfaction to the States who have required amendments? Very far from it. They will expect that their propositions would be fully brought before the House, and regularly and fully considered; if indeed then they are rejected, it may be some satisfaction to them, to know that their applications have been treated with respect.

What I have said with respect to the propositions of the several States, may apply in some degree to the propositions brought forward by the gentleman (Mr. Madison) from Virginia; the select committee may single out one or two, and reject the remainder, notwithstanding the vote of the House for considering them. The gentleman would have a right to complain, and every State would be justly disgusted.

Will it tend to reconcile the Government to that great body of the people who are dissatisfied, who think themselves and all they hold most dear, unsafe under it, without certain amendments are made? Will it answer any one good purpose to slur over this business, and reject the propositions without giving them a fair chance of a full discussion? I think not, Mr. Speaker. Both the Senate and this House ought to treat the present subject with delicacy and impartiality.

The select committee will have it in their power so to keep this business back, that it may never again come before the House; this is an imprudent step for us to take; not that I would insinuate it is an event likely to take place, or which any gentleman has in contemplation. I give every gentleman credit for his declaration, and believe the honorable mover means to save time by this arrangement; but do not let us differ on this point. I would rather the business should lie over for a month, nay, for a whole session, than have it put into other hands, and passed over without investigation.

Mr. Gerry inquired of his colleague, how it was possible that the House could be a federal convention without the Senate, and when two-thirds of both Houses are to

agree to the amendments? He would also be glad to find out how a committee was the same to the House as the senses to the soul? What, said he, can we neither see, hear, smell, or feel, without we employ a committee for the purpose? My colleague further tells us, that if we proceed in this way, we shall lay bare the sinews and tendons of the constitution; that we shall butcher it, and put it to death. Now, what does this argument tend to prove? Why, sir, to my mind, nothing more nor less than this, that we ought to adopt the report of the committee, whatever the report may be; for we are to judge by the knowledge derived through our senses, and not to proceed on to commit murder. If these are the arguments to induce the House to refer the subject to a select committee, they are arguments to engage to go further, and give into the hands of select committees the whole legislative power. But what was said respecting a public discussion? Are gentlemen afraid to meet the public ear on this topic? Do they wish to shut the gallery doors? Perhaps nothing would be attended with more dangerous consequences. No, sir, let us not be afraid of full and public investigation. Let our means, like our conclusions, be justified; let our constituents see, hear, and judge for themselves.

The question on discharging the Committee of the Whole on the state of the Union from proceeding on the subject of amendments, as referred to them, was put, and carried in the affirmative--the House divided, 34 for it, and 15 against it.

It was then ordered that Mr. Madison's motion, stating certain specific amendments, proper to be proposed by Congress to the Legislatures of the States, to become, if ratified by three-fourths thereof, part of the Constitution of the United States, together with the amendments to the said Constitution, as proposed by the several States, be referred to a committee, to consist of a member from each State, with instruction to take the subject of amendments to the Constitution of the United States generally into their consideration, and to report thereupon to the House.

[13 August]

The House then resolved itself into a Committee of the Whole, Mr. Boudinot in the chair, and took the amendments under consideration. The first article ran thus: "In the introductory paragraph of the Constitution, before the words 'We the people,' add 'Government being intended for the benefit of the people, and the rightful establishment thereof being derived from their authority alone.'"

Mr. Sherman.--I believe, Mr. Chairman, this is not the proper mode of amending the Constitution. We ought not to interweave our propositions into the work itself, because it will be destructive of the whole fabric. We might as well endeavor to mix brass, iron, and clay, as to incorporate such heterogeneous articles; the one contradictory to the other. Its absurdity will be discovered by comparing it with a law.

Would any Legislature endeavor to introduce into a former act a subsequent amendment, and let them stand so connected? When an alteration is made in an act, it is done by way of supplement; the latter act always repealing the former in every specified case of difference.

Besides this, sir, it is questionable whether we have the right to propose amendments in this way. The Constitution is the act of the people, and ought to remain entire. But the amendments will be the act of the State Governments. Again, all the authority we possess is derived from that instrument; if we mean to destroy the whole, and establish a new Constitution, we remove the basis on which we mean to build. For these reasons, I will move to strike out that paragraph and substitute another.

The paragraph proposed was to the following effect:

Resolved by the Senate and House of Representatives of the United States in Congress assembled, That the following articles be proposed as amendments to the Constitution, and when ratified by three-fourths of the State Legislatures shall become valid to all intents and purposes, as part of the same.

Under this title, the amendments might come in nearly as stated in the report, only varying the phraseology so as to accommodate them to a supplementary form.

Mr. Madison.--Form, sir, is always of less importance than the substance; but on this occasion, I admit that form is of some consequence, and it will be well for the House to pursue that which, upon reflection, shall appear to be the most eligible. Now it appears to me, that there is a neatness and propriety in incorporating the amendments into the Constitution itself; in that case the system will remain uniform and entire; it will certainly be more simple, when the amendments are interwoven into those parts to which they naturally belong, than it will if they consist of separate and distinct parts. We shall then be able to determine its meaning without references or comparison; whereas, if they are supplementary, its meaning can only be ascertained by a comparison of the two instruments, which will be a very considerable embarrassment. It will be difficult to ascertain to what parts of the instrument the amendments particularly refer; they will create unfavorable comparisons; whereas, if they are placed upon the footing here proposed, they will stand upon as good foundation as the original work.

Nor is it so uncommon a thing as gentlemen suppose; systematic men frequently take up the whole law, and, with its amendments and alterations, reduce it into one act. I am not, however, very solicitous about the form, provided the business is but well completed.

Mr. Smith did not think the amendment proposed by the honorable gentlemen from Connecticut was compatible with the Constitution, which declared, that the amendments recommended by Congress, and ratified by the Legislatures of three-fourths of the several States, should be part of this Constitution; in which case it would form one complete system; but according to the idea of the amendment, the instrument is to have five or six suits of improvements. Such a mode seems more calculated to embarrass the people than any thing else, while nothing in his opinion was a juster cause of complaint than the difficulties of knowing the law, arising from Legislative obscurities that might easily be avoided. He said, that it had certainly been the custom in several of the State Governments, to amend their laws by way of supplement. But South Carolina had been an instance of the contrary practice, in revising the old code; instead of making acts in addition to acts, which is always attended with perplexity, she has incorporated them, and brought them forward as a complete system, repealing the old. This is what he understood was intended to be done by the committee; the present copy of the Constitution was to be done away, and a new one substituted in its stead.

Mr. Tucker wished to know whether the deliberations of the committee were intended to be confined to the propositions on the table. If they were not, he should beg leave to bring before them the amendments proposed by South Carolina. He considered himself as instructed to bring them forward, and he meant to perform his duty by an early and prompt obedience. He wished to have the sense of the House on this point, whether he was in order to bring them forward.

Mr. Livermore was clearly of opinion, that whatever amendments were made to the constitution, they ought to stand separate from the original instrument. We have no right, said he, to alter a clause, any otherwise than by a new proposition. We have well-established precedents for such a mode of procedure in the practice of the British Parliament and the State Legislatures throughout America. I do not mean, however, to assert that there has been no instance of a repeal of the whole law on enacting another; but this has generally taken place on account of the complexity of the original, with its supplements. Were we a mere Legislative body, no doubt it might be warrantable in us to pursue a similar method; but it is questionable whether it is possible for us, consistent with the oath we have taken, to attempt a repeal of the Constitution of the United States, by making a new one to substitute in its place; the reason of this is grounded on a very simple consideration. It is by virtue of the present Constitution, I presume, that we attempt to make another; now, if we proceed to the repeal of this, I cannot see upon what authority we shall erect another; if we destroy the base, the superstructure falls of course. At some future day it may be asked upon what authority we proceeded to raise and appropriate public moneys. We suppose we do it in virtue of the present Constitution; but it may be doubted whether we have a right to exercise

any of its authorities while it is suspended, as it will certainly be from the time that two-thirds of both Houses have agreed to submit it to the State Legislatures; so that, unless we mean to destroy the whole Constitution, we ought to be careful how we attempt to amend it in the way proposed by the committee. From hence, I presume it will be more prudent to adopt the mode proposed by the gentleman from Connecticut, than it will be to risk the destruction of the whole by proposing amendments in the manner recommended by the committee.

Mr. Vining disliked a supplementary form, and said it was a bad reason to urge the practice of former ages, when there was a more convenient method of doing the business at hand. He had seen an act entitled an act to amend a supplement to an act entitled an act for altering part of an act entitled an act for certain purposes therein mentioned. If gentlemen were disposed to run into such jargon in amending and altering the Constitution, he could not help it; but he trusted they would adopt a plainness and simplicity of style on this and every other occasion, which should be easily understood. If the mode proposed by the gentleman from Connecticut was adopted, the system would be distorted, and, like a careless written letter, have more attached to it in a postscript than was contained in the original composition.

The Constitution being a great and important work, ought all to be brought into one view, and made as intelligible as possible.

Mr. Clymer was of opinion with the gentleman from Connecticut, that the amendments ought not to be incorporated in the body of the work, which he hoped would remain a monument to justify those who made it; by a comparison, the world would discover the perfection of the original, and the superfluity of the amendments. He made this distinction, because he did not conceive any of the amendments essential, but as they were solicited by his fellow-citizens, and for that reason they were acquiesced in by others; he therefore wished the motion for throwing them into a supplementary form might be carried.

Mr. Stone.--It is not a matter of much consequence, with respect to the preservation of the original instrument, whether the amendments are incorporated or made distinct; because the records will always show the original form in which it stood. But in my opinion, we ought to mark its progress with truth in every step we take. If the amendments are incorporated in the body of the work, it will appear, unless we refer to the archives of Congress, that George Washington, and the other worthy characters who composed the convention, signed an instrument which they never had in contemplation. The one to which he affixed his signature purports to be adopted by the unanimous consent of the delegates from every State there assembled. Now if we incorporate these amendments, we must undoubtedly go further, and say that the Constitution so formed was defective, and had need of alteration; we therefore

purpose to repeal the old and substitute a new one in its place. From this consideration alone, I think we ought not to pursue the line of conduct drawn for us by the committee. This perhaps is not the last amendment the Constitution may receive; we ought therefore to be careful how we set a precedent which, in dangerous and turbulent times, may unhinge the whole.

With respect to the observations of the gentleman from South Carolina, I shall just remark, that we have no authority to repeal the whole Constitution. The words referred to in that instrument only authorize us to propose amendments to it, which, when properly ratified, are to become valid as a part of the same; but these can never be construed to empower us to make a new Constitution.

For these reasons, I would wish our expressions might be so guarded, as to purport nothing but what we really have in view.

Mr. Livermore.--The mode adopted by the committee might be very proper, provided Congress had the forming of a Constitution in contemplation; then they, or an individual member, might propose to strike out a clause and insert another, as is done with respect to article 3, section 2. But certainly no gentleman acquainted with legislative business would pretend to alter and amend, in this manner, a law already passed. He was convinced it could not be done properly in any other way than by the one proposed by the gentleman from Connecticut.

Mr. Gerry asked, if the mode could make any possible difference, provided the sanction was the same; or whether it would operate differently in any one instance? If it will not, we are disputing about form, and the question will turn on the expediency. Now one gentleman tells you, that he is so attached to this instrument, that he is unwilling to lose any part of it; therefore, to gratify him, we may throw it into a supplementary form. But let me ask, will not this as effectually destroy some parts, as if the correction had been made by way of incorporation? or will posterity have a more favorable opinion of the original, because it has been amended by distinct acts? For my part, I cannot see what advantage can accrue from adopting the motion of the honorable gentleman from Connecticut, unless it be to give every one the trouble of erasing out of his copy of the Constitution certain words and sentences, and inserting others. But, perhaps, in our great veneration for the original composition, we may go further, and pass an act to prohibit these interpolations, as it may injure the text.

All this, sir, I take to be trifling about matters of little consequence. The Constitution has undoubtedly provided that the amendments shall be incorporated if I understand the import of the words, "and shall be valid to all intents and purposes, as part of the Constitution." If it had said that the present form should be preserved, then it would be proper to propose the alterations by way of a supplement. One gentleman has said we

shall lose the names that are now annexed to the instrument. They are names, sir, I admit, of high respect; but I would ask that gentleman, if they would give validity to the Constitution if it were not ratified by the several States? or if their names were struck out, whether it would be of less force than it is at present? If he answers these questions in the negative, I shall consider it of no consequence whether the names are appended to it or not. But it will be time enough to discuss this point, when a motion is made for striking them out.

If we proceed in the way proposed by the honorable gentleman from Connecticut, I presume the title of our first amendment will be, a supplement to the Constitution of the United States; the next a supplement to the supplement, and so on, until we have supplements annexed five times in five years, wrapping up the Constitution in a maze of perplexity; and as great an adept as that honorable gentleman is at finding out the truth, it will take him, I apprehend, a week or a fortnight's study to ascertain the true meaning of the Constitution.

It is said, if the amendments are incorporated, it will be a virtual repeal of the Constitution. I say the effect will be the same in a supplementary way; consequently the objection goes for nothing, or it goes against making any amendments whatever.

It is said that the present form of the amendments is contrary to the 5th article. I will not undertake to define the extent of the word amendment, as it stands in the fifth article; but I suppose if we proposed to change the division of the powers given to the three branches of the Government, and that proposition is accepted and ratified by three-fourths of the State Legislatures, it will become as valid, to all intents and purposes, as any part of the Constitution; but if it is the opinion of gentlemen that the original is to be kept sacred, amendments will be of no use, and had better be omitted; whereas, on the other hand, if they are to be received as equal in authority, we shall have five or six constitutions, perhaps differing in material points from each other, but all equally valid; so that they may require a man of science to determine what is or is not the Constitution. This will certainly be attended with great inconvenience, as the several States are bound not to make laws contradictory thereto, and all officers are sworn to support it, without knowing precisely what it is.

Mr. Stone asked the gentleman last up, how he meant to have the amendments incorporated? Was it intended to have the Constitution republished, and the alterations inserted in their proper places? He did not see how it was practicable to propose amendments, without making out a new Constitution, in the manner brought forward by the committee.

Mr. Lawrence could not conceive how gentlemen meant to engraft the amendments into the Constitution. The original one, executed by the convention at Philadelphia,

was lodged in the archives of the late Congress, it was impossible for this House to take, and correct, and interpolate that without making it speak a different language: this would be supposing several things which never were contemplated. But what would become of the acts of Congress? They will certainly be vitiated, unless they are provided for by an additional clause in the Constitution.

What shall we say with respect to the ratifications of the several States? They adopted the original Constitution, but they have not thereby enabled us to change the one form of Government for another. It is true, amendments were proposed by some of them; but it does not follow, of necessity, that we should alter the form of the original which they have ratified. Amendments in this way are only proper in legislative business, while the bill is on its passage, as was justly observed before.

Mr. Benson said, that this question had been agitated in the select committee, and determined in favor of the form in which it was reported; he believed this decision was founded in a great degree upon the recommendation of the State conventions, which had proposed amendments in this very form. This pointed out the mode most agreeable to the people of America, and therefore the one most eligible for Congress to pursue; it will likewise be the most convenient way. Suppose the amendments ratified by the several States; Congress may order a number of copies to be printed, into which the alterations will be inserted, and the work stand perfect and entire.

I believe it never was contemplated by any gentleman to alter the original constitution deposited in the archives of the Union, that will remain there with the names of those who formed it, while the Government has a being. But certainly there is convenience and propriety in completing the work in a way provided for in itself. The records of Congress and the several States will mark the progress of the business, and nothing will appear to be done but what is actually performed.

Mr. Madison.--The gentleman last up has left me but one remark to add, and that is, if we adopt the amendment, we shall so far unhinge the business, as to occasion alterations in every article and clause of the report.

Mr. Hartley hoped the committee would not agree to the alteration, because it would perplex the business. He wished the propositions to be simple and entire, that the State Legislatures might decide without hesitation, and every man know what was the ground on which he rested his political welfare. Besides, the consequent changes which the motion would induce, were such as, he feared, would take up some days, if not weeks; and the time of the House was too precious to be squandered away in discussing mere matter of form.

Mr. Page was sorry to find the gentlemen stop at the preamble; he hoped they would proceed as soon as the obstruction was removed, and that would be when the motion was negatived.

He thought the best way to view this subject, was to look at the Constitution as a bill on its passage through the House, and to consider and amend its defects, article by article; for which reason he was for entering at once upon the main business. After that was gone through, it would be time enough to arrange the materials with which the House intended to form the preamble.

Mr. Livermore insisted, that neither this Legislature, nor all the Legislatures in America, were authorized to repeal a Constitution; and that must be an inevitable consequence of an attempt to amend it in a way proposed by the committee. He then submitted to gentlemen the propriety of the alteration.

As to the difficulty which had been supposed in understanding supplemental laws, he thought but little of it; he imagined there were things in the Constitution more difficult to comprehend than any thing he had yet seen in the amendments.

Mr. Jackson.--I do not like to differ with gentlemen about form; but as so much has been said, I wish to give my opinion; it is this: that the original Constitution ought to remain inviolate, and not be patched up, from time to time, with various stuffs resembling Joseph's coat of many colors.

Some gentlemen talk of repealing the present Constitution, and adopting an improved one. If we have this power, we may go on from year to year, making new ones; and in this way, we shall render the basis of the superstructure the most fluctuating thing imaginable, and the people will never know what the Constitution is. As for the alteration proposed by the committee to prefix before "We the people," certain dogmas, I cannot agree to it; the words, as they now stand, speak as much as it is possible to speak; it is a practical recognition of the right of the people to ordain and establish Governments, and is more expressive than any other mere paper declaration.

But why will gentlemen contend for incorporating amendments into the Constitution? They say, that it is necessary for the people to have the whole before them in one view. Have they precedent for this assertion? Look at the Constitution of Great Britain; is that all contained in one instrument? It is well known, that *magna charta* was extorted by the barons from King John some centuries ago. Has that been altered since by the incorporation of amendments? Or does it speak the same language now, as it did at the time it was obtained? Sir, it is not altered a tittle from its original form. Yet there have been many amendments and improvements in the Constitution of Great Britain since that period. In the subsequent reign of his son, the great charters

were confirmed with some supplemental acts. Is the *habeas corpus* act, or the statute *De Tollagio non concedendo* incorporated in *magna charta*? And yet there is not an Englishman but would spill the last drop of his blood in their defence; it is these, with some other acts of Parliament and *magna charta*, that form the basis of English liberty. We have seen amendments to their Constitution during the present reign, by establishing the independence of the judges, who are hereafter to be appointed during good behavior; formerly they were at the pleasure of the Crown. But was this done by striking out and inserting other words in the great charter? No, sir, the Constitution is composed of many distinct acts; but an Englishman would be ashamed to own that, on this account, he could not ascertain his own privileges or the authority of the Government.

The Constitution of the Union has been ratified and established by the people; let their act remain inviolable; if any thing we can do has a tendency to improve it, let it be done, but without mutilating and defacing the original.

Mr. Sherman.--If I had looked upon this question as mere matter of form, I should not have brought it forward or troubled the committee with such a lengthy discussion. But, sir, I contend that amendments made in the way proposed by the committee are void. No gentleman ever knew an addition and alteration introduced into an existing law, and that any part of such law was left in force; but if it was improved or altered by a supplemental act, the original retained all its validity and importance, in every case where the two were not incompatible. But if these observations alone should be thought insufficient to support my motion, I would desire gentlemen to consider the authorities upon which the two Constitutions are to stand. The original was established by the people at large, by conventions chosen by them for the express purpose. The preamble to the Constitution declares the act: but will it be a truth in ratifying the next Constitution, which is to be done perhaps by the State Legislatures, and not conventions chosen for the purpose? Will gentlemen say it is "We the people" in this case? Certainly they cannot; for, by the present Constitution, we, nor all the Legislatures in the Union together, do not possess the power of repealing it. All that is granted us by the 5th article is, that whenever we shall think it necessary, we may propose amendments to the Constitution; not that we may propose to repeal the old, and substitute a new one.

Gentlemen say, it would be convenient to have it in one instrument, that people might see the whole at once; for my part, I view no difficulty on this point. The amendments reported are a declaration of rights; the people are secure in them, whether we declare them or not; the last amendment but one provides that the three branches of Government shall each exercise its own rights. This is well secured already; and, in short, I do not see that they lessen the force of any article in the Constitution; if so,

there can be little more difficulty in comprehending them whether they are combined in these or stand distinct instruments.

Mr. Smith read extracts from the amendments proposed by several of the State conventions at the time they ratified the Constitution, from which, he said, it appeared that they were generally of opinion that the phraseology of the Constitution ought to be altered; nor would this mode of proceeding repeal any part of the Constitution but such as it touched, the remainder will be in force during the time of considering it and ever after.

As to the observations made by the honorable gentleman from Georgia, respecting the amendments made to the Constitution of Great Britain, they did not apply; the cases were nothing like similar, and consequently, could not be drawn into precedent. The Constitution of Britain is neither the *magna charta* of John, nor the *habeas corpus* act, nor all the charters put together; it is what the Parliament wills. It is true, there are rights granted to the subject that cannot be resumed; but the Constitution, or form of Government, may be altered by the authority of Parliament, whose power is absolute without control.

Mr. Seney was afraid the House would consume more time than was at first apprehended in discussing the subject of amendments, if he was to infer any thing from what had now taken place. He hoped the question would soon be put and decided.

Mr. Vining was an enemy to unnecessary debate, but he conceived the question to be an important one, and was not displeased with the discussion that had taken place; he should, however, vote in favor of the most simple mode.

Mr. Gerry.--The honorable gentleman from Connecticut, if I understand him right, says that the words "We the people" cannot be retained, if Congress should propose amendments, and they be ratified by the State Legislatures. Now, if this is a fact, we ought most undoubtedly to adopt his motion; because if we do not, we cannot obtain any amendment whatever. But upon what ground does the gentleman's opinion stand? The Constitution of the United States was proposed by a convention met at Philadelphia; but, with all its importance, it did not possess as high authority as the President, Senate, and House of Representatives of the Union. For that convention was not convened in consequence of any express will of the people, but an implied one, through their members in the State Legislatures. The Constitution derived no authority from the first convention; it was concurred in by conventions of the people, and that concurrence armed it with power and invested it with dignity. Now the Congress of the United States are expressly authorized by the sovereign and uncontrollable voice of the people, to propose amendments whenever two-thirds of

both Houses shall think fit. Now, if this is the fact, the propositions of amendment will be found to originate with a higher authority than the original system. The conventions of the States, respectively, have agreed for the people, that the State Legislatures shall be authorized to decide upon these amendments in the manner of a convention. If these acts of the State Legislatures are not good, because they are not specifically instructed by their constituents, neither were the acts calling the first and subsequent conventions.

Does he mean to put amendments on this ground, that after they have been ratified by the State Legislatures, they are not to have the same authority as the original instrument? If this is his meaning, let him avow it; and if it is well founded, we may save ourselves the trouble of proceeding in the business. But, for my part, I have no doubt but a ratification of the amendments, in any form, would be as valid as any part of the Constitution. The Legislatures are elected by the people. I know no difference between them and conventions, unless it be that the former will generally be composed of men of higher characters than may be expected in conventions; and in this case, the ratification by the Legislatures would have the preference.

Now, if it is clear that the effect will be the same in either mode, will gentlemen hesitate to approve the most simple and clear? It will undoubtedly be more agreeable to have it all brought into one instrument, than have to refer to five or six different acts.

Mr. Sherman.--The gentlemen who oppose the motion say we contend for matter of form; they think it nothing more. Now we say we contend for substance, and therefore cannot agree to amendments in this way. If they are so desirous of having the business completed, they had better sacrifice what they consider but a matter of indifference to gentlemen, to go more unanimously along with them in altering the Constitution.

The question on Mr. Sherman's motion was now put and lost.

Mr. Livermore wished to know whether it was necessary, in order to carry a motion in committee, that two-thirds should agree.

Mr. Hartley mentioned, that in Pennsylvania, they had a council of censors who were authorized to call a convention to amend the Constitution when it was thought necessary, but two-thirds were required for that purpose. He had been a member of that body, when they had examined the business in a committee of council; the majority made a report, which was lost for want of two-thirds to carry it through the council.

Some desultory conversation took place on this subject, when it was decided by the chairman of the committee that a majority of the committee were sufficient to form a report.

An appeal being made from the opinion of the Chair, it was, after some observations, confirmed by the committee. After which the committee rose and reported progress.

Adjourned.

[18 Aug.]

Mr. Gerry moved,

"That such of the amendments to the Constitution proposed by the several States, as are not in substance comprised in the report of the select committee appointed to consider amendments, be referred to a Committee of the whole House; and that all amendments which shall be agreed to by the committee last mentioned be included in one report."

Mr. Tucker remarked, that many citizens expected that the amendments proposed by the conventions would be attended to by the House, and that several members conceived it to be their duty to bring them forward. If the House should decline taking them into consideration, it might tend to destroy that harmony which had hitherto existed, and which did great honor to their proceedings; it might affect all their future measures, and promote such feuds as might embarrass the Government exceedingly. The States who had proposed these amendments would feel some degree of chagrin at having misplaced their confidence in the General Government. Five important States have pretty plainly expressed their apprehensions of the danger to which the rights of their citizens are exposed. Finding these cannot be secured in the mode they had wished, they will naturally recur to the alternative, and endeavor to obtain a Federal Convention; the consequence of this may be disagreeable to the Union; party spirit may be revived, and animosities rekindled destructive of tranquillity. States that exert themselves to obtain a federal convention, and those that oppose the measure, may feel so strongly the spirit of discord, as to sever the Union asunder.

If in this conflict the advocates for a federal convention should prove successful, the consequences may be alarming; we may lose many of the valuable principles now established in the present Constitution. If, on the other hand, a convention should not be obtained, the consequences resulting are equally to be dreaded; it would render the administration of this system of government weak, if not impracticable; for no Government can be administered with energy, however energetic its system, unless it

obtains the confidence and support of the people. Which of the two evils is the greatest would be difficult to ascertain.

It is essential to our deliberations that the harmony of the House be preserved; by it alone we shall be enabled to perfect the organization of the Government--a Government but in embryo, or at best but in its infancy.

My idea relative to this Constitution, whilst it was dependent upon the assent of the several States, was, that it required amendment, and that the proper time for amendment was previous to the ratification. My reasons were, that I conceived it difficult, if not impossible, to obtain essential amendments by the way pointed out in the Constitution; nor have I been mistaken in this suspicion. It will be found, I fear, still more difficult than I apprehended; for perhaps these amendments, should they be agreed to by two-thirds of both Houses of Congress, will be submitted for ratification to the Legislatures of the several States, instead of State conventions, in which case the chance is still worse. The Legislatures of almost all the States consist of two independent, distinct bodies; the amendments must be adopted by three-fourths of such Legislatures; that is to say, they must meet the approbation of the majority of each of eighteen deliberative assemblies. But, notwithstanding all these objections to obtaining amendments after the ratification of the Constitution, it will tend to give a great degree of satisfaction to those who are desirous of them, if this House shall take them up, and consider them with that degree of candor and attention they have hitherto displayed on the subjects that have come before them; consider the amendments separately, and, after fair deliberation, either approve or disapprove of them. By such conduct, we answer in some degree the expectations of those citizens in the several States who have shown so great a tenacity to the preservation of those rights and liberties they secured to themselves by an arduous, persevering, and successful conflict.

I have hopes that the States will be reconciled to this disappointment, in consequence of such procedure.

A great variety of arguments might be urged in favor of the motion; but I shall rest it here, and not trespass any further upon the patience of the House.

Mr. Madison was just going to move to refer these amendments, in order that they might be considered in the fullest manner; but it would be very inconvenient to have them made up into one report, or all of them discussed at the present time.

Mr. Vining had no objection to the bringing them forward in the fullest point of view; but his objection arose from the informality attending the introduction of the business.

The order of the House was to refer the report of the Committee of Eleven to a Committee of the Whole, and therefore it was improper to propose any thing additional.

A desultory conversation arose on this motion, when Mr. Vining moved the previous question, in which, being supported by five members, it was put, and the question was, Shall the main question, to agree to the motion, be now put? The yeas and nays being demanded by one-fifth of the members present, on this last motion, they were taken as follows:

Yeas.--Messrs. Burke, Coles, Floyd, Gerry, Griffin, Grout, Hathorn, Livermore, Page, Parker, Van Rensselaer, Sherman, Stone, Sturgis, Sumter, and Tucker.--16.

Nays.--Messrs. Ames, Baldwin, Benson, Boudinot, Brown, Cadwalader, Carroll, Clymer, Fitzsimons, Foster, Gilman, Goodhue, Hartley, Heister, Huntington, Lawrence, Lee, Madison, Moore, Muhlenburg, Partridge, Schureman, Scott, Sedgwick, Seney, Sylvester, Sinnickson, Smith, of Maryland, Smith, of South Carolina, Thatcher, Trumbull, Vining, Wadsworth, and Wynkoop.--34.

[19 Aug.]

The House then took into consideration the amendments to the Constitution, as reported by the Committee of the Whole.

Mr. Sherman renewed his motion for adding the amendments to the Constitution by way of supplement.

Hereupon ensued a debate similar to what took place in the Committee of the Whole. . . ; but, on the question, Mr. Sherman's motion was carried by two-thirds of the House; in consequence it was agreed to.