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CONGRESS.

SENATE.

Friday, March 19.

Debate on the Amendment to the Constitution
(Continued.)

Mr. HAYNE rose, and commenced his observations by expressing his sincere regret that certain topics had been introduced, which were, unfortunately, but for well calculated to produce a painful excitement, but which, (having been discussed,) it would become his duty incidentally to notice. The question properly before the Senate would, however, first command his attention.

A motion has been made to postpone indefinitely two resolutions, to amend the constitution, in relation to the election of President and Vice-President of the United States. The first resolution is that reported by the committee of which the honorable gentleman from New-Jersey (Mr. Dickerson) was chairman. The second is the amendment offered by the honorable gentleman from Missouri, (Mr. Benton.) The former provides for the division of the United States into Districts for the choice of Electors, and directs that on the failure of the election, the Senate and House of Representatives shall elect the President by a joint ballot. The latter dispenses entirely with Electors, but retains the existing provisions of the constitution in respect to the election in the House of Representatives, by States.

Mr. Hayne declared that he was decidedly opposed to both of these propositions, and should vote for their indefinite postponement, unless he could be induced to believe that the Senate was prepared to act on the whole subject, during the present session, so as to enable the gentlemen who had submitted other propositions, to bring them forward, with the prospect of obtaining a favorable hearing and final decision.

Mr. Hayne, before he proceeded to make the few remarks he intended to offer, on the amendments, would take occasion to notice some statements which had been made by the honorable gentleman from New-York, (Mr. Van Buren,) and which he conceived to be erroneous. Amongst others, Mr. H. particularly noticed the remark of Mr. Van Buren that the proposed amendments had originated in the dissatisfaction of the small States. This, Mr. Hayne felt himself called upon to controvert. One of the propositions which had been offered to the Senate, came from that gentleman himself, a representative of the great State of New-York; another was submitted by an honorable gentleman from Massachusetts; and they all originated in the general belief which prevailed in Congress, and amongst the people, that the provision of the Constitution, in respect to the election of our Chief Magistrate, required some amendment, in order to guard against impending evils, and to preserve the harmony of the Union. Let us, said Mr. H. take higher ground, and be influenced by more magnanimous and liberal views than to look exclusively to the peculiar interests of particular States. Let us look to the great interests of the nation, and consider the propositions in their true character, as coming indiscriminately from large as well as small States, and having no other object than the welfare of the whole.

Mr. Hayne said, he was willing to admit that the spirit of mutual concession could alone lead to any desirable results on this subject. It was in that spirit that the Constitution had been framed, and by that alone could its harmonious operation be secured. He should certainly be one of the last to contend that the great principle of compromise on which the Constitution was founded, and on which the dearest rights, perhaps the existence, of the small States, depended, should ever be forgotten or disregarded. He contended only against jealousies and struggles for political power. Having thus presented the question in what he believed to be its true light, Mr. Hayne said he would proceed to consider the resolution reported by the committee. On that part of it which proposes to divide the United States into Districts for the choice of Electors, he would make but a single remark, which he certainly did not intend on the present motion to enter into a full discussion of the subject. The remark he would make, was, that whatever might be the advantages of the District system, (and he admitted them to be very great,) it certainly lessened the chances of effecting a choice, and indeed would, in some cases, lead to a failure of the election. It surely, said Mr. H. can require no argument to prove, that the United States, divided into 24 parts, each expressing but one opinion, will be less liable to a division of sentiments than when divided into 269 such parts. When a State acts as a State, whether the vote be given by the Legislature or by general ticket, there can exist but one opinion—the voice of the State; but the same State, divided into Districts, may have as many opinions as there are Districts. The merit of the District system, then, depends on the provision by which it may be accompanied, as to the course to be pursued in the event of the failure of the election. He was convinced that this failure would take place under the district system, in nine cases out of ten, and therefore, if it were proposed on such failure, to throw the election into the House of Representatives, or into Congress, the substance of the proposition would be, to provide for the election of the Chief Magistrate by Congress, and not by the people.

If, said Mr. Hayne, the district system was accompanied by a provision, that, in case of a failure of the election at the first ballot, it should be sent back to the electors to choose a President from the two highest candidates, then the system would be complete, and decided by the people would be secured, and the

necessity of any interference on the part of Congress would be taken away. A second ballot by the Electors was the principle, said Mr. H. on which his proposition was founded. It could be engrained on the District system, or on any other which did not dispense with electors. The details of such a system, he was satisfied, could be easily arranged, and he hoped, at some future day, to see it adopted.

But what, said Mr. H. is substantially the proposition now before us? What will be its practical effect? The people are to pass through the form of voting for a President, in their respective districts, but, if no candidate has a majority, (and no one ever will have a majority, except it be in a very extraordinary case,) then the election is to go into Congress—both branches of the Legislature voting by polls, and not by states. I consider, said Mr. H. the whole resolution to contain, substantially, nothing more than a proposition to change the voting in Congress by States to a joint ballot, with the further evil of carrying the election, in almost every instance, into Congress. It results then, in a proposition to elect the President hereafter, by the National Legislature. Now, sir, said Mr. H. I consider such a system as pregnant with dreadful evils. It is true, that it was proposed in the convention, but mature deliberation led to its abandonment.

Can it be necessary, said Mr. Hayne, to point out the evils of choosing a President by the National Legislature? He would state some of them. The first objection to the election of a President by the National Legislature, is found in its connecting the Executive with the Legislative department of the government. It is the theory of our government, that the several departments should be kept, as far as possible, separate and distinct. If the Legislature shall be authorized to choose the Executive, is it not obvious that they will be rendered mutually dependent on each other? Either the Executive will be rendered the humble tool, the obedient servant of the Legislature—or, what is most to be apprehended, the Legislature will become subservient to the views of the Executive. Judging from the experience of the world, I should say, that a President of the United States, uniformly chosen by the National Legislature, would acquire a most dangerous influence over all their deliberations. With an immense patronage, in his hands, a President might be able, feeding the hopes of greedy expectants, to secure his constant reelection. He would have the means of doing so, and to ensure his election would be the motive to exert them. With so great a prize at stake, promises, threats, intrigue, and corruption, would exhaust their resources, to influence and control the electoral college. But the higher, as well as the baser, motives of human action, would be enlisted in the service. Party spirit—personal and political attachments, would combine to influence the decision. Men, who would rise superior to naked bribery and corruption, would be hurried on by their passions, and even by honorable ambition, to second the views of their favorites.—At present, Congress is considered as a body who may (in an event not likely to happen) be called upon to elect a President. But, if that election was always to be made by Congress—if ambitious men were to be taught to look to that body, and not to the people, for promotion—who can be so blind as not to perceive that the hall of Congress would become the arena, where we would witness the most violent and convulsive struggles for power? The very nature of the contest would have a tendency to give to it peculiar energy and bitterness. Such is the character of man, that he is always as much, perhaps more, devoted to men, than to principles. We are accustomed to boast of our exclusive attachment to the latter, but principles and men cannot be separated. It is embodied wisdom that we admire.—It is virtue confessed in human shape, that we love. It is principle, speaking in the life and actions of men, that comes home to the "bosoms and business" of us all. It was this view of the subject, the apprehension of the dreadful excitement which would always prevail in electing a President in Congress—the intrigue it would introduce—the corruption to which it would give birth—the destructive influences to which it would subject the legislature of the country—which induced our fathers to place the power of electing a president in the hands of the people. They act, it is true, by their delegates, but the electors must be chosen a very short time before the day of election, and, having performed the single act confided to them, they return immediately to the body of the people—thus avoiding all the dangers which might arise from the employment of a *pro-creating body of men*, for the same purpose. Sir, said Mr. H. I cannot contemplate, without anxiety and alarm, the adoption of a principle in our constitution, which must, in practice, almost invariably give the choice of the President to Congress. I cannot but foresee that, on all future occasions, that great transaction is destined to convulse the country. We have this day before our eyes a solemn warning of the fact. When, at future periods, the number of candidates shall be multiplied—when parties shall be formed in every part of this great empire, each anxious for the triumph and zealous in the support of their favorite—when the worst passions of the human heart shall be roused into action—when our affections shall be estranged from our friends and our hearts embittered against each other—when the whole interval between the different elections shall be employed in dreadful "note of preparation" for the ensuing contest—can Congress (if they are to elect) be free from the contagion? Will the Senate and House of Representatives, amidst the tumult of the political elements, sit, like a Haley, on the waves, undisturbed spectators of a surrounding horror? It is greatly to be feared, sir, that their more appropriate emblem, on such an occasion, will be, the dreadful whirlpool of the North, which draws into its fatal vortex every thing that falls within the influence of its eddies by which it is surrounded.

I come now, said Mr. Hayne, to that *re-pleasant topic* which has been unhappily introduced into the discussion—I mean a Congressional Caucus. The honorable gentleman from New-York, (Mr. King,) in the course of his remarks in favor of an indefinite postponement of the resolutions, took occasion to mention, incidentally, a "central power," which

had grown up at the seat of government, and which was destined, hereafter, to control the election of a President. The gentlemen on the other side have thought proper, in reply, to enter into a justification of a Congressional caucus for the nomination of a President. If their arguments could be confined to this Hall, and were not calculated to have an influence on public opinion, I would not, perhaps, find myself called upon to notice them. But, believing that the subject is one of vast importance, that it touches the vital interests of the country, and may, in its remote consequences, endanger liberty itself, I find myself constrained to attempt an answer to the arguments which have been advanced. I shall confine myself strictly to a defensive warfare—and shall enter no further into the discussion of the subject, than may be necessary to reply to the arguments which have been urged on this floor.

It is contended by the gentleman from New-Jersey, (Mr. Dickerson,) and the same argument has been urged by all the gentlemen who have spoken on the subject, that a Congressional caucus for the nomination of a President, is not liable to any of the objections which may be urged against the election of a President by Congress, because the Senators and Representatives, in attending a caucus, act only in their private capacities. This appears to me, said Mr. H. to be a fallacy so obvious, that he was at a loss to conceive how any one could be deceived by it. Sir, if 30 or 60 private individuals should meet in this city and nominate a President, what effect would be produced by it? Would it be an event looked to with anxiety from every part of the country? Would it divide the nation into parties, or challenge the praise or the censure of every freeman in the land? No, sir, it is because the gentlemen who compose such a meeting are Members of Congress—that it is the authority with which they are clothed, that give influence and effect to their proceedings. They meet in their characters of members of Congress, or they would not meet at all. It is true, they do not meet to perform a legislative duty, and the very objection to the proceeding is, that they step beyond the line of their peculiar and appropriate duties, and use the influence attached to their offices, for the promotion of an object not within their Congressional powers, and with which the spirit of the constitution forbids them to interfere. To show, conclusively, that it is the influence attached to the office of a member of Congress which is the foundation of a Congressional caucus, and that it is expressly in their character of members of Congress that gentlemen attend such a meeting, Mr. H. adverted to the fact, that none other are invited or suffered to attend. If gentlemen acted only in their private capacities, every American citizen—certainly every inhabitant of this District, would be at liberty to unite with them. Look, too, at the forms of proceeding in such cases: the Hall of legislation is appropriated to their use; the speaker's chair is occupied by their chairman—the officers of the House are stationed at the door to prevent the entrance of any but members of Congress, who are called upon by states to give their suffrages. After this, tell us not that gentlemen act in their private capacities, and that, as members of Congress, they have no concern in the transaction! Sir, (said Mr. Hayne,) I deny that a man can put off and put on, at pleasure, the official garb with which he is clothed. A man clothed with executive authority cannot, as a private citizen, perform legislative duties; neither can a member of Congress put off his character, and, as a private citizen, interfere with matters which the constitution has wisely prohibited him from meddling with. I have heard, sir, (said Mr. Hayne,) of a priest, who, walking to church in his robes of office, received an insult; he threw off his gown, exclaiming, "Lie there, divinity, until I punish that rascal!" and having in his private capacity, inflicted the chastisement, he resumed the character of a clergyman, and proceeded to preach up charity, and forgiveness of injuries, love to God, and good will towards man." If there be, said Mr. Hayne, any sound distinction, any safe rule by which the private and public acts of an individual can be ascertained, it must be this—that matters, altogether of a private nature belong to the one, while matters of a public nature belong to the other.

Bring a congressional caucus to the test. The choice of the President is a public matter; it is a business, provided for by the constitution; the manner in which it is to be done is prescribed; the Members of Congress are prohibited from being Electors, and the senators can, in no possible event, have any thing to do with it. I will proceed, said Mr. H. to give one or two illustrations, which I think will remove any doubts which may still rest upon the subject. Suppose the President and Heads of Departments were to meet together in their private capacities, were to nominate their successors, and were to proclaim such a nomination to the American people. The country would ring with denunciations of the act, the charges of usurpation, tyranny, and corruption, would rise up in every corner of the land, and they would meet the just vengeance of an injured people. And yet, have not the President and heads of departments as much a right to act, and to speak in their private capacities, as any other members of the government? They are no more prohibited from nominating a President than are the Members of Congress; and more dangerous is to be apprehended from the influence of the latter than the former. Suppose the Judges of the Supreme Court were to step from the bench, put off their robes, and after public notice, were to proceed, in their private capacities, to nominate a President, and publish that nomination to the world. How would such a proceeding be received? And yet, the Executive and Judiciary have certainly an equal right with the Legislature to proceed to such a nomination, in their private capacities. Again, suppose the Governors of the several States were to consult and vote on the subject, and announce the result to the world, in order to produce union among the people. What would we think of such a proceeding? But I will put, said Mr. Hayne, a still stronger case—one perfectly analogous to that under consideration—the case of a Jury appointed to try a cause, civil or criminal, (and by some of the States a particularly in previously selected to try all the causes

before the court.) The law prescribes the place, the time, and manner, in which the question is to be officially investigated, and decided. But these Jurors think proper to meet together *separata* in the trial, in their private capacities, to investigate the merits of the case. They come to a decision, and publish the result! Would it be any excuse for such a proceeding to allege, that they did not act as Jurors, but in their private capacities? And with what color of reason could such an excuse be made, if it were shown that they were accustomed to the meeting as Jurors, examine that none other were admitted, that they appointed a Foreman, passed through all the forms of a trial, and in the same and character of Jurors, proclaimed the result. Now, said Mr. Hayne, there is a more striking analogy between that case and the proceeding now under consideration, than gentlemen will be disposed to admit. The House of Representatives may, in one event, be called upon to choose the President. The constitution has prescribed the time and place, and all the formalities of that proceeding; but, before the session opens, the members of that House meet together in their private capacities, associate the Senate with them, examine the claims of the candidates, and, without the light which farther time and a more deliberate examination might afford, make a choice, and publish the result. It is true, that the proceeding in both cases, is without legal authority, but is calculated to produce a dangerous influence, and is, therefore, wholly indefensible. To illustrate the truth that legislators cannot, consistently with the spirit of the constitution, act in their private capacities on matters which may come before them officially, it may be asked, whether it would be justifiable for a majority of this Senate, as a party, to meet together habitually, in their private capacities, and determine, by a majority, what measures they should support, or oppose?—By such an arrangement, all the guards by which pure and enlightened legislation is secured, would be destroyed, and a small minority might sway the Senate. A Congressional caucus is open to the same objection.

I confess, sir, said Mr. H. I have serious fears that, should the caucus system be firmly established in this country, it will eventually lead to the total destruction of the rights of the small states, and that the clause in the constitution, which secures their just weight in the choice of a President, will be virtually repealed. Once recognize the distinction between a man's public and private capacity, in relation to public matters, and what is to restrain a few of the large states from instructing their Members of Congress, to meet in caucus, and determine, by a majority of votes, how these states shall act, and whom they shall support? I shall add nothing further, said Mr. H. in answer to the honorable gentleman, on this point.

The next argument is, that a Congressional caucus is free from objection, because it does not profess to elect, but only to nominate a President. Now, I would ask whether the design of this nomination is not to procure the election of some individual who would not be elected without it? If such be not the object, and if such were not the results hoped for, no nomination would be made.—But, if a nomination is to have the effect of promoting a man to the Presidency, who would not otherwise be promoted, it virtually amounts to an election, and is it any answer to this argument to say, that it is produced altogether by the authority and influence of members of Congress? Or is not that the most objectionable means by which an election can be effected? But, sir, said Mr. H. let us bring this question to the test of principle, and see if the practice I am controverting will not directly deprive the people of the right of choosing among the several candidates for the Presidency? If a Congressional caucus be right in principle, it follows that the friends of all the candidates ought to attend, and that, the strength of each being ascertained, the strongest should be supported by all, and the others should be withdrawn. Thus, the people will be deprived of the right of choosing, and must, of necessity, take the man recommended to them.—Take the case of two candidates only—such a case has occurred. A caucus selects one, the other is bound to withdraw; he can no longer be a candidate; his friends cannot support him; and, though nine-tenths of the people should prefer him, he cannot, as a man of principle, even consent to serve. Take another case—Suppose there should be five candidates—the five most prominent and popular men in the country. Apply the caucus principle, and it results in presenting but one candidate to the people, and they must take him, or look out at the eleventh hour for a new man, which, under such circumstances, would be impossible. The principle of a Congressional caucus, therefore, leads inevitably to the destruction of the right of the people to elect the President, and if it does not, in practice produce that result, it is only because so many of us are such political heretics as to refuse to recognize it, and because the candidates and their friends will not consent to abide by it. But, let the principles of the gentleman prevail, and the President will, hereafter, be virtually elected by a caucus in Washington, and not by the people.

Now, said Mr. Hayne, there is not an objection which applies to the election of a President by the National Legislature, which does not apply much more strongly to a virtual election by a Congressional caucus. Does the former disturb legislation, tinging every legislative act with party views and feelings, so, in a greater degree, does the latter. The letter and spirit of the Constitution is opposed to every species of interference by the members of Congress, in the election of a President, except in the particular case of a failure by the people to elect. Then, and not till then, are Congress permitted to interfere, and the mode in which they are then to proceed is minutely described. The House of Representatives only are to have any concern in the transaction, and they must vote by states. They are not permitted to elect any candidate according to their own views, feelings, or opinions; but they are compelled to choose one of three candidates previously selected and presented to them by the people. But a Congressional caucus is composed of Senators as well as members of the House of Representatives,

when the former are wisely excluded, by the Constitution, from voting on such a subject. They proceed to nominate the President, before the people have proceeded to the election; they choose him, not from candidates presented to them by the people, but according to their own pleasure; and lastly, they make such a nomination, not in the extraordinary case (which may not occur once in a century) provided for by the Constitution, but at every election—once in every four years. Now, when to all this we add, that from the very nature of things, a caucus never will be composed of (the whole) the members of Congress, so that the vote of an individual will be of such consequence as to justify extraordinary efforts to obtain it; when it is considered that in a caucus the states never will be fairly and equally represented, when it is recollected that a caucus nomination, every four years, will keep the matter constantly before Congress, and any man, who reflects on the subject, can see that the triumph of the caucus system must not only supersede and control the Constitution, but involve the introduction, into the Hall of Congress, of excitement, intrigue, and corruption; at the bare contemplation of which the heart of the patriot must sicken, and his anticipations of the future glory of his country, be converted into the most gloomy foreboding.

The gentleman from Indiana, (Mr. Noble,) in his zeal to defend a caucus, had introduced the word *ant-caucus*. That gentleman, it is true, said Mr. Hayne, had not attempted to censure any one, but, by his language he intended to insinuate that a general meeting had been held and an agreement entered into for the purpose of opposing—a putting down a caucus, he was greatly mistaken. He believed the true character of the proceeding alluded to, was a simple declaration of the important fact, (clearly ascertained by friends and informal inquiries,) that a very large majority of the members of Congress was opposed to a caucus—a fact, which it was important that the members themselves, as well as the people, should know. The mere publication of such a fact, without combining on or compact of any kind, was a proceeding differing essentially from the nomination of candidates for office, that Mr. H. was established that any gentleman could confound them. The gentleman from Indiana was certainly correct, however, in the opinion, that the proceedings to which he had alluded, was entirely free from censure, or objection. In that opinion, Mr. Hayne fully concurred; and, indeed, he could not conceive of any transaction more unostentatious, or more obviously proper. It required no defence.

The honorable gentleman from Maine, (Mr. Holmes,) in the course of his observations, had said something about "secret combinations and compact to divide." Mr. Hayne presumed that gentlemen could not mean to apply those expressions to any transaction in which Mr. Hayne or his friends had been concerned, (Mr. Holmes here intimated, that he had no such allusion,) and Mr. H. proceeded. Then, Sir, I can only say, that if the gentleman has any knowledge of such proceedings, they are wholly unknown to me.

It has been urged, said Mr. Hayne, that a Congressional caucus was necessary to produce *moderation*. Without entering into the question, how far such a caucus could, under any circumstances, be justified, Mr. Hayne was disposed to admit, that where two great parties are eagerly contending for supremacy in the state, a caucus might be so used as to concentrate the strength of each party, by reducing the contest to one candidate on each side. A caucus, even as a party measure, could only be defended, therefore, where the contest was between candidates of different parties. But to use such a machine where all the candidates were of the same party, would be an obvious departure from all the principles on which such proceedings had been supposed to rest. A caucus, as a party measure, must always present two candidates, at least, to the people. But a caucus to select one candidate from many, (when all are of the same party), must result in presenting only one candidate to the public, and should such a measure promote union, it could only be by controlling the will, and stifling the voice, of the people. So far from being calculated to produce harmony, such a caucus must necessarily sow the seeds of dissension, and seemed to preclude the possibility of union. The degree of support to be yielded, or of opposition to be offered to, such a nomination, will always be a fruitful source of endless contest and animosities. If a Congressional caucus, founded on such a principle, is to be resorted to at every Presidential election—and Congress is, by a preliminary vote, in joint ballot, to select the individual to be supported as President, it is manifest, that the election will, in all cases hereafter, be virtually made by Congress, voting by polls, and not by states, the people will be effectually deprived of the power of choosing the President, and the wise provisions of the constitution will be practically repealed.

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COMMUNICATION.

FOR THE STAR.
GEN. JACKSON.
No. 11.

The purest treasure mortal times afford,
Is spotless reputation; that away,
Men are but gilded loam or painted clay.

It is agreeable to a contemplative character, and particularly to one who is actuated by the unbiased principles of the most rigid justice, to notice the inconsistent, inconsistent, and miserable artifices, which "our human nature" employs in propagating and promoting those desires and hopes which it is natural for man to indulge. Under the influence of these impressions we are led to a comparison of the different characters among us; and while, on the one hand, we are ready to cast our vote into his scale who appears to proceed according to the rules prescribed by truth and candour on the other, our indignation and contempt are excited when we witness the systematic effusions of those, who suffer local prejudices and personal considerations to exercise unwieldy and abusive sway over their corrupted minds. Such as the last mentioned, are not to be the feelings
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