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## MR. TRACT'S SPEECH

In the Senate of the United States,

FRIDAY, DECEMBER 2, 1803.

ON THE PASSAGE OF THE AMENDMENT TO THE CONSTITUTION:

CONCLUDED.

I have said, that the article fixing the mode of electing a chief magistrate was, from its nature attended with many difficulties. A more strict inquiry into the constitutional mode, and a comparison of it, in some other and more particular points, with the proposed alteration, will be useful in forming an opinion of their relative merits.

As the constitution stands each elector is to write the names of two persons on a piece of paper, called a ballot.— Either of the two persons thus voted for may be the President, and the elector cannot know which; this affords the most powerful inducement to vote for two, both of whom are qualified for the very important office. For it is not only uncertain upon whom the choice will fall at first, but the one remaining, will certainly be President, upon any contingency which shall remove or incapacitate the first. The convention seem to have selected a mode of proceeding the most simple, the least liable to accident, and the best calculated to insure the main object, that is, that both should be really worthy of the trust. If one candidate wishes to make interest with the electors, as each must vote for two, it will be impossible for bribery or intrigue to succeed; for, without corrupting the whole, or certainly many more than half, he may be defeated by the other candidate on the ballot. This is, perhaps, the most effectual bar to intrigue that was ever contrived; for unless all, or a great portion of the electors are corrupted, an extreme case of depravity not probable in any country, intrigue can have no assurance of success. The danger and difficulty, which must always attend such an important election, as that of chief magistrate of the United States, was meant to be avoided, by diminishing the chances of its frequent recurrence. So two persons are placed in a condition to act as President in succession, to prevent both the evils, of a vacancy, and of a recurrence of choice more frequently than once in four years. And it seems merely incidental to this second person, to be called Vice-President, and neither the first nor second description of electors can have any right to vote for him as such, indeed he can have no existence till the first character is designated and then seems to be discovered, not elected. The Senate, in case of an equal number of votes for two or more remaining persons, after the President is elected, are vested with authority to choose a Vice-President, for as such he is to preside over this body, and this body therefore seems to be the only constitutional organ to designate him. Both the other descriptions of electors have nothing to do with such a character or office; but are confined to act with a single reference to the character and office of President; and are trusted with no power to give any opinion of the character or qualifications of a Vice-President. And it is remarkable, that there are no appropriate qualifications made necessary by the constitution, for a Vice-President; but every qualification has reference to President.— There is another important feature in this part of the constitution.— It was known by the convention, that in this country, in common with all others, where there is freedom of opinion and of speech, there would be parties. They likewise knew, that the intolerance of the major, or ruling sect and political party, was frequently exercised upon the minor party; and that the rights of the minority ought to be protected to them.

As well then, to secure the rights of the minority, as to check the intolerance of the majority, they placed the majority in jeopardy, if they should attempt at grasping all the benefits of a President & Vice-President within themselves, to the total exclusion of the minority. The very case which happened at the last election was contemplated, in which the majority attempted totally to exclude the minority from any participation. The language of the constitution to such ma-

majorities is, "take care that you aim not at too much, for if you do, it is put in the power of the minority to check you, and by a judicious disposition of their few votes, determine the choice of President." To avoid this event the majority will probably be cautious in the exercise of power; and thus the rights the proper weight and influence of a minority are secured against the conduct of a majority, which is certainly liable to be intolerant and oppressive. In this respect the spirit of the constitution is, political moderation.— And it is clear to my mind, that the experience of the last election has taught a lesson to all majorities, which will in future completely secure them from again incurring a similar risk. I recollect well, that it was thought probable, when the electoral votes were given, that Mr. Burr would have a vote or two, in some of the eastern states. If he had received but one, he would have been by an electoral choice, the constitutional President. If the majority in future have the powers of recollection, they will undoubtedly avoid the evil, if it is one, which happened at the last election, with such unflinching certainty, that there will be no need of the remedy proposed by the amendment. But the majority say, if their votes are so scattered for one candidate as to avoid this danger, that another will be incurred; and that is, the minority will elect a Vice-President. The language of the constitution to them, is again, "that this was meant as a security for the minority against the majority." But the majority exclaim against both these provisions, as very unreasonable indeed: "what," say they, "are minorities to govern majorities?" The answer of the constitution is, "no, but then due weight and influence shall be secured to them, and the danger of your intolerance guarded against."

For the security of small states and minorities, there is, in the constitution a mixture of the federative with the popular principles. And as it is well known that, when popular majorities alone prevail, and exercise power uncontrolled by constitutional checks, the minorities who generally possess their proportion of integrity and virtue, are overwhelmed, and liberty itself, by the same means destroyed; so it is in kindness to both parties to the country, and to humanity, that these wholesome checks are continually provided. Had the majority, or the great states been willing, fairly to have submitted to the constitutional checks in the last election, no evil could have happened. And it is remarkable that the constitution completely protects them, as long as they obey its precepts, in the creation of which they had an agency, and to which they have solemnly agreed. To prove that I am correct in these ideas, I not only refer to the constitution but to the secretary of state (Mr Madison). In the Virginia debate, vol. 1. page 96, he says, "But on a candid examination of history, we shall find that turbulence, violence and abuse of power, by the majority trampling on the rights of the minority, have produced factions and commotions which, in republics, have more frequently than any other cause produced despotism. If we go over the whole history of ancient and modern republics, we shall find their destruction to have generally resulted from those causes. If we consider the peculiar situation of the United States, and what are the resources of that diversity of sentiments which pervades its inhabitants, we shall find great danger that the same causes may terminate here, in the same fatal effects which they produced in those republics.— This danger ought to be wisely guarded against: Perhaps, in the progress of this discussion it will appear, that the only possible remedy for those evils, and means of preserving and protecting the principles of republicanism, will be found in that very system, which is now exclaimed against as the parent of oppression."

Mr. President, it has often been said by the discerning and judicious of this and other countries, that our constitution, for its brevity, its comprehensiveness, its perspicuity, and the political skill contained in it, was the best state paper extant. I believe all this, and even more is a tribute justly due to its merits; and I am persuaded that the ar-

ticle which fixes a mode for the choice of a chief magistrate, stands most prominent among its excellencies.

Let us now, sir, examine & compare the merits of the amendment with a special reference to this last view we have taken of the constitutional provision.

The amendment authorizes the electors to vote for a President, and for a Vice-President by specific designation. Is ambition in your country? Here is a direct and inviting object for its operations.

Is the integrity of your electors assailable? You place it here in the most encouraging attitude for an assault. A tear of detection, and a sense of shame, upon the exposure of an improper action, has been, perhaps, a better security against political errors or crimes, than all the moral virtues united, when the temptation has been attended with an impossibility of detection. An intrigue with an elector can be carried on without much danger of detection; but when your election is carried into the house of representatives, besides the ordinary weight of character in favour of the members of that house, a detection of an intrigue with a candidate is almost certain. It will be recollected, that at the last election, two or three members held the choice perfectly in their own hands. If I mistake not, three gentlemen, that is, a member from New Jersey, a member from Vermont, and one from either Maryland, Delaware, or Tennessee, could have given a President to the U. States. The particular gentlemen mentioned were above suspicion of bribery; but in addition to this circumstance, if they had in the contest gone over from improper motives, or under the influence of bribery, a detection was certain.

This will remain forever, the criterion, as it respects the relative danger of intrigue and bribery, in the two modes of choice. And the amendment is avowedly intended to secure a choice by electors, and to prevent a resort to the house: because says the gentleman from Virginia, (Mr. Taylor,) "if you permit the election to go into the house, there, are small states, and minorities, and all the evils of a quiet election;" meaning that corruption must be the consequence. But he says, "let there be a divided election, by the electors, meeting by states separately, and you lessen the tendency to corruption." This may look plausible in theory, but I think practice will show its fallacy.

It may be better for the electors to meet by states, than for all to be together, but this can never prove that they are less liable to corruption than the house of representatives; which is the only point in question.

The manner of electing the Vice-President, as proposed by the amendment, not only invites ambition to an unchecked operation; but exposes us to the selection of a less important, and more unfit person, than the constitutional provision. In addition to his importance in the government arising from his incidental succession to the chief magistracy, the Vice-President is ex-officio, President of the Senate, and gives a direct influence to the state from which he is chosen, of a third vote in this body, in all cases of equal division, which are usually the cases of most importance. Besides, his influence as presiding officer is, perhaps, more than equal to the right of a vote.— It becomes therefore peculiarly important to the small states, and to minorities, whose security rests in this body, not only that their influence in the election of Vice-President should not be diminished; but that no measure be adopted which may tend to bellow the office upon an unworthy character. By the proposed amendment, this character must necessarily become a sort of makeshift, and stepping stone for the Presidency.— As in recruiting for an army, a man, active, and of a particular cast of character, but not very proper for a commander in chief, is employed to obtain recruits, and upon condition that he obtains a given number, is to be rewarded with a lieutenant's warrant; so in this case, the man who can procure a given number of votes for president, will be encouraged to hope for the Vice-Presidency; and where will such characters be sought after? In Delaware or Rhode-

Island? No sir, but in the great states; there the recruiting talents will be put in operation, because the number of recruits, or votes, will be sufficient to test his active and recruiting merits. And thus the office of Vice-President will be sent to market, with hardly a possible chance to meet an honest purchaser.

I have already remarked upon the alteration made by the Senate, in the resolution passed by the house of representatives, changing the number five to three. But one addition made this morning deserves attention; I mean that which authorizes the Vice-President to administer the government, in case neither the first nor the second constitutional electors effect a choice of President.

This is a new principle, and its operation is more uncertain, than that of any other part of the proposed amendment. Viewing it in one point of light, it may be thought to confer a new power upon the Senate; that of giving a President to the union.— And it is said, that this part will recompense the small states, who have the ascendancy in the Senate, for the injury inflicted by the other parts of the amendment. If it be true, that the last part restores all which the former parts have taken away from us, it is conceivable, why any man can wish to pass a resolution, the parts of which thus mutually destroy each other.— It is possible, that by the force of intrigue & faction, the electors may be induced to scatter their votes for both President and Vice-President, in such manner, as to present several candidates to the house for President, and two or more to the Senate for vice-president. In which case the Senate might immediately choose or select a vice-president. In this state of things, there is an opportunity afforded for an intrigue, of a very extensive and alarming nature. The Senate, I mean a majority of them, might wish that the man whom they had elected vice-president should administer the government; and if the house could be prevented from agreeing, their wishes would be gratified. The facility of preventing over that of producing a choice is very obvious.

A bold address may be made to any member of the house, without wounding his pride, or offending his morality, to adhere to his candidate, and not change his vote so as to effect a choice. He can be told that there is no danger of leaving the United States without a President, as there is one already chosen to his hand, by the Senate; and this person may be more the object of his wishes, than any of the other candidates, his favourite excepted. In this process the Senate may give a President to the United States.— But if the probability of such a process & such an event is increased by the amendment of this morning, it certainly cannot greatly recommend it. For myself, I wish for no alteration in the constitution, not even if its operation were directly in favour of the small states, more especially, if such a favour is to be derived through a sort of double conspiracy of intrigue, in the first place to operate on the electors, and then on the house of representatives. It seems to me, that the small states had better be contented to enjoy the rights now secured to them by the constitution, which they can lawfully do, rather than submit to a deprivation of their rights, for the sake of dishonestly obtaining a restoration of them. We may charitably & safely conclude that the majority do not intend, by this part of the amendment, to expose the country to such a scene of iniquity. And the uncertainty of its operations, alone, is, in my mind, a sufficient ground for rejection. However the operation of this part of the amendment may appear in theory, as to other points, it seems to me, that in one point all must agree, and that is, when the house of representatives know that the United States will be left without an executive magistrate, in case they do not agree; this awful responsibility, will speak in a voice too loud for the hardness of party entirely to disregard. And may I not suggest, without giving offence, that the operation of this very responsibility, has been proved, at least in some degree, in the proceedings of the last Presidential election?

If this last mentioned security be worth preserving, it follows of course, that the