



AND NORTH-CAROLINA GAZETTE.

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GENERAL ASSEMBLY.

Debate on the Convention Question, CONCLUDED.

Mr. YANCY said, he agreed most heartily in the main proposition of the gentleman from Orange, submitting to the people of this State the propriety of calling a Convention, for the purpose of amending the Constitution. As it appeared to him, however, that the opinion of the committee of the whole would be more accurately ascertained on the main question of the proposition, he proposed to amend the resolutions, so as to enable them to express an opinion on the expediency of amending the Constitution, as regards the three great departments of the Government—the Legislative, Executive, and Judicial.

Before he proceeded to that view of the subject which he intended to take, he would submit to the committee the amendment; which was to strike out the first, third, fifth, sixth, seventh, eighth, ninth, tenth and eleventh Resolutions, & insert the following:

Resolved, That the said Constitution ought to be so amended that the representation of the people in the Senate and House of Commons shall be established upon the principle of free population and taxation, or according to free population, including three-fifths of all other persons.

So that the Resolutions, if the amendment should be adopted, will then read:

Resolved, That the Constitution of this State ought to be so amended, that the Governor or Chief Magistrate of the State shall be elected by the freemen qualified to vote for members of the House of Commons; and that he shall, at stated times, receive for his services, a compensation, which shall neither be increased or diminished during the time for which he is elected.

Resolved, That the said Constitution ought to be so amended, that the Judges of the Supreme Court, and of the Superior Courts of Law and Equity, shall be removed from office for inability to perform their duty, or other reasonable cause, on the address of both Houses of the General Assembly for that purpose.

Resolved, That the said constitution ought to be so amended that the Representation of the people in the Senate and House of Commons, shall be established upon the principle of free population and taxation, or according to free population, including three-fifths of all other persons.

Resolved, That it be, and hereby is recommended to the freemen of this State, that on the days appointed by law for the election of members to serve in the next General Assembly, that they signify their assent or dissent to calling a Convention of Delegates, to be elected by the freemen, for the purpose of revising and amending the Constitution of this State, by voting by ballot, "Convention, or no Convention."

Resolved, That it shall be the duty of every Sheriff or other returning officer, at the close of the polls in their respective Counties, to sum up, and certify to the Governor of this State, the whole number of votes for "a Convention," and "no Convention." The said sheriffs, or other returning officer, shall deliver a duplicate of such returns, to the Senators of their respective Counties, to be by them taken to the seat of Government at the next General Assembly.

Resolved, That at the next meeting of the General Assembly, a joint select committee of both Houses shall be appointed to receive, count and report the number of votes so returned for and against calling a Convention for the purposes aforesaid.

Mr. Y. said it was proper he should meet the objection, which he had heard with some surprise, that the General Assembly have not a right to submit the question contained in these resolutions to the people, and recommend to them the expediency of calling a Convention, to amend their form of Government.

Sir, it is laid down in that instrument, from which I have drawn many of my political tenets, that all men are born equally free; that they enjoy certain inalienable rights, bestowed by God and nature, and that of these, are life, liberty, and the pursuit of happiness. That Government is formed for the equal distribution of rights, the protection of life, liberty and property and the promotion of human happiness, and that whenever it fails to afford these, the people have a right to amend, to change or to abolish it.

These are not only provisions of the Declaration of Independence, but they are interwoven in every State Constitution of the union, and received as political truths in every country, where civil and political liberty have been established. The people of this State therefore, have a right to amend their Constitution, and the only proper enquiry is, are the great powers of government, as they now exist susceptible of amendment? The same right which authorises the people of this State to enquire into their grievances, & propose amendments to their form of government, to a certain extent, belongs to us as members of the community; & as a duty incumbent on us, as their representatives, if we believe their rights will be better secured, and public liberty better protected, to recommend to them an alteration.

In pursuing this course, we have an example set us, by those illustrious states-

men, many of whom assisted in achieving the independence of these States. The people of the United States, in forming a General Government, first agreed upon Articles of Confederation; and this form of Government not answering all the purposes for which it was intended, the people, through the legislative bodies of the States, recommended an alteration in that compact, and for the purpose of amending their government, and securing to the people those great objects for which all governments are instituted, they called a Convention, who framed the Constitution of the United States.

Those who assisted in this great work were then denounced as innovators; the charge against them, however, was not sustained, and they are now considered the benefactors of mankind, in having presented to the States, the most perfect model of government which the world ever saw: May the same spirit preside over those who may hereafter be called to amend our Constitution!

We have not only the example of the United States, but of several of the States whose Constitutions have been amended. Nine, out of the thirteen of the old U. S. have revised their constitutions; and he would ask gentlemen, to point out any injurious effects which have been experienced from such amendments? So far from having sustained an injury, great improvements have been made in every constitution which has been altered.

And why, sir, are the people of this State, not to be trusted in a Convention, as well as those of other States? Are they more corrupt, or do they know less how to appreciate the blessings of Republican Government?

The States, Mr. Y. observed, which had not amended their constitutions, were Rhode-Island, New-Jersey, Virginia and North-Carolina; and no doubt the same reason which has prevented this State from acting upon the subject, has also prevented the others. Virginia was settled much like this State, first on the Atlantic, and gradually to the westward; and the people to the east, having a majority of counties, not of population, have constantly refused to meet the reasonable wishes of those in the upper country. Possessing a majority in the legislature, they feel power and forget right.

We have then, said he, power to adopt the proposition which has been presented, & if we deem it proper to alter the Constitution, it is the bounden duty of this Legislature to send the question to the people, and let them decide upon it as they may judge expedient.

But it is said there does not exist sufficient necessity for this measure, because all the purposes of representation are at present answered; and the gentleman from Craven has submitted to the committee a statement, which said Mr. Y. I must admit was made with great ability, but with much more address. The argument which the gentleman drew from this statement was one deserving the character of that, which makes the worse appear the better cause. The gentleman will excuse me for saying, the argument of an advocate, rather than a statesman. He trusted he should be able to convince the committee, if not the gentleman himself, that the principle he had laid down as the basis of representation was founded in error.

The gentleman laid down as a correct principle of Representative Government, that representation should be formed on the mixed principle of population and wealth; and the better to establish his favorite theory, he commences the argument, by cautioning us against the principle of assuming a basis of representation founded on free population, as dangerous in the extreme.

I maintain, sir, said Mr. Y. that in most free governments, the rule of representation according to free population is correct; but the peculiar circumstances of a state may be such, that a mixed principle of population and taxation may be more correct; & perhaps our own State may be one of this description. But, said he, let us examine the doctrine laid down by the gentleman from Craven. He has drawn a line from Virginia on the north, thro' Granville, Wake and Bladen to the South-Carolina line, on the south, leaving these counties entirely out of his calculation. I had hoped, said he, that in this discussion, gentlemen would not have brought to their assistance, Eastern and Western interest; that the question would have been met, as all other great questions of reform in Government should be met, by argument and reason, rather than feeling and interest. But, sir, we know that questions which cannot be supported by argument, are too often carried by sounding the tocsin of alarm. Eastern & Western influence, has been the watchword of designing and intriguing politicians among us, for years past, from whom, however, said he, I owe it to candor to declare, should be excluded the gentleman from Craven.

If, said Mr. Y. we are however to draw lines of distinction between the east and the west, let us draw those that exist in point of fact, and not according to the wishes of Gentlemen, to answer their own views, & make more complete their calculation. Take, for example, as the most correct general rule, the line established

for the congressional districts, giving to the section of country east of this place, containing 35 counties, six members of Congress, and to the section of country west of this city, containing twenty-seven counties including Wake, (which trembling on account of the seat of government and the loaves and fishes, knows not to what party it belongs,) and the calculation will produce a very different result from the one presented by the gentleman from Craven. But, sir, his statement is wrong in principle and in calculation. It is wrong in principle, because, it would be highly aristocratic and dangerous to public liberty, that the several counties of the State should be represented according to the valuation of real and personal property, blended with free population. It would give to wealth an ascendancy unfavorable to civil liberty, and no where tolerated in a free government. The calculation of the gentleman, said he, is equally erroneous. It is well known that in the eastern part of the State, there are many more slaves than in the west. The numbers which the gentleman has made use of as exhibiting the population of the different parts of the State, were not founded on the free population alone, but include also, three-fifths of the black population; so that he has taken into his estimate, not only the value of the slaves as property, but he has added in numbers, three-fifths of them to the white population, & thereby has considered them in his calculation both as to numbers and property. This plan of representation, given us by the gentleman, and which of all others, in point of calculation, best suits the interest of the eastern section of the State, still gives to the west more representatives than they now have. But, sir, how has the gentleman disposed of the counties of Granville, Wake and Bladen. They enter not into the scope of his policy; they are left out of the calculation, though in point of fact, all of them are considered as belonging to the eastern interest: Bladen has heretofore been considered as decidedly eastern; Granville, wavering sometimes on one side, sometimes on the other, though I hope, sir, said he, that on this occasion, her worthy representative will be found supporting the cause of equal representation. In the calculation which I intend submitting, said he, Wake will be given to those who have never commanded her votes. She has never supported the west; but a large portion of the western people are resolved on this as the seat of their government.

Having, as I trust, sir, said he, shewn to the Committee, that the theory of representation, assumed by the gentleman from Craven, is wrong both in principle and calculation, I now proceed to shew the great inequality of the present representation, supposing the basis of representation to be founded on taxation alone. By looking at the Report of the Comptroller of taxes paid into the Public Treasury for the year 1818, it will be found, that 35 Counties to the East of Raleigh, paid \$38,126, and that twenty-seven to the West, including Wake, paid \$31,180, (exclusive of the tax received from Clerks on account of Licences and Auctions,) making a difference of \$6,948.

The 35 Eastern Counties send to this Legislature 109 Members.

The 27 Western Counties send to this Legislature 84 Members.

This calculation including the Borough members, makes a difference of 25 Members. According to taxation alone, the 35 Eastern Counties would be entitled to about 18 members more than the 27 Counties to the West.

Giving to the West on the principle of taxation alone, 7 members more than they now have.

Let us next, sir, consider the representation of the State, according to numbers, not forgetting that the numbers made use of in calculation, are the free white population, including three-fifths of all other persons, a circumstance favorable in the calculation to the Eastern section of the State.

35 Counties to the East of Raleigh, contain 6 Congressional Districts, and have a federal population of 234,841

27 Counties to the West, containing 7 Congressional Districts, have a federal population of 265,174

Making a difference in favor of 27 Counties of 40,338

The average population of the Eastern Counties is about 6,424, and considering this number as sending 3 members to the Legislature, would give to the Western Counties about 20 members more than they now have; and it would therefore necessarily follow, that assuming as the correct basis of representation in this State, population and taxation, the power of the East would be greatly diminished, whilst that of the West would be increased in the Legislature.

and South, equally interested in amending the Constitution as regards the present representation.

In the first Congressional District composed of contiguous Counties, as are all the other Districts in the State;

Table with 3 columns: District Name, Population, and Difference. Rows include Pasquotank, Chowan, 2d District (Halifax, Martin), 3d District (Edgecomb, Washington), 4th District (Craven, Lenoir), 5th District (Granville, Nash), 6th District (New-Hanover, Columbus), 7th District (Cumberland, Moore), 8th District (Orange, Person), 9th District (Stokes, Rockingham), 10th District (Rowan, Randolph), 11th District (Rutherford, Haywood), 12th District (Lincoln, Cabarrus), 13th District (Iredell, Ashe).

The inequality in taxation in the several Counties of the State, is about in the same ratio of the population; for example, in the Western part of the State, the Counties of

Table with 2 columns: County Name and Tax Amount. Rows include Rowan paid in 1818 into the Treasury (\$3,415 3), Caswell paid in the same year (2,616 71), Ashe paid in the same year (278 97), Haywood paid in the same year (267 89).

In the Eastern part of the State, the following Counties paid for the same year the following amount of taxes:

Table with 2 columns: County Name and Tax Amount. Rows include Halifax paid (\$2,440 35), Granville paid (2,169 82), Carteret paid (399 4), Columbus paid (310 9).

Thus it will be seen, sir, that great inequality exists in every section of the State, both in the population & taxation of the several Counties, and yet, according to our Constitution, each County is entitled to three Members in the Legislature, though one contains a population of 20,041, and pays a tax into the Treasury of the State of \$3,415 3, whilst another has a population of 2,717 and pays into the Treasury \$267 89. No man, uninfluenced by party feeling, said he, after taking this view of the subject, can say that there is not a sufficient necessity for amending the Constitution.

Mr. Y. said, he would next consider the resolution, proposing that the Constitution should be so amended, that the Chief-Magistrate of the State, should be elected by the people. If we have established, that as regards the representation of the State, there exists a sufficient necessity for amending the Constitution, the friends of a Convention have done all that should be required of them for the success of their measure. Since a modification of the Constitution, however, as respects other great powers of government, has been brought into discussion, it becomes us, said he, to maintain the opinion which we have of them also; on principle, said he, the election of the Executive, should be by the people. The freedom and safety of every State, consists in a proper distribution of its Executive, Legislative and Judicial powers. One should not be dependant on the other, but co-ordinate, in their powers, and whenever you make the election of one depend upon the will of the other, you so far impair the freedom and safety of the State. The principle laid down by the gentleman from Orange is a correct one, that the Sovereign authority should rest with the people, and that public agents should be made responsible to them, by elections, at stated and convenient periods. Elect the Chief Magistrate of State by the Legislature, and you make him dependant on them for his re-appointment: He has nothing more to do to secure his election, than by a time-serving policy, or by intrigue and patronage, to secure a majority in the Legislature, and all will be well. Give to the people the election of Governor, and no man can be elected, except one, who from his talents and public services has shewn himself worthy of the public confidence. A popularity sufficient to command a majority of the suffrages of the people of the whole state, must be one founded upon public services, high character and sufficient talents to discharge with honor and usefulness, the duties of Chief-Magistrate of a great and respectable State. If the Governor were to be elected by the people, he would, no doubt, hold his appointment for a longer period than one year, and his administration, of

course, be more systematic and regular. But the gentleman from Craven had objected to this mode of electing the Governor, because it was probable, if adopted, the Members of Assembly would influence the election by Caucus, in the same way as Members of Congress influence the election of the President of the United States. Sir, said he, it will be found, in practice, that this object has no weight, no matter what consequence in theory, gentlemen may give it. He had himself been in a Congressional Caucus, and if he should ever again be in Congress, at a time when it became necessary, he should not only consider it a right, but a duty, whenever a President was to be recommended, to bring before the people a man calculated for that exalted office, from his political standing, talents and public character. It is not because the members of Congress recommend a man, that he is chosen to that office, but because his eminent services and talents entitle him to the station, and this is the means by which public opinion is concentrated on one individual, when there are many who have pretensions to it.

But the gentleman from Hertford objected to this mode, because it would give to the people of the Western part of the State, the power to elect a Governor. This, with that gentleman may constitute a sufficient objection. He must, however, know that it is not a good objection with us, and that it is equally insufficient in point of reason.

Sir, said he, establish the departments of your government upon just and reasonable principles; and this State will no longer be governed by local parties; but as every other should be, by great political parties.

The mode of electing the Chief-Magistrate of a State, by the people, is no innovation upon our system of government. Many of the States, which compose this Union have tried it from the establishment of their government, and with the two new States about to be admitted into the Union, there will be seventeen which elect their Governor by the people, and no one of them, after having adopted this method, has thought proper to change it. In my opinion, said Mr. Y. if you wish to bring to this department of the Government the first talents and virtue of the country, give to it more patronage, assign to it more duties, and make it the gift of a free and enlightened people.

Mr. Y. said, that the proposition of submitting to the people, the question whether they would call a Convention, did not necessarily involve a discussion of a proper organization of the Judiciary. But, since it has been brought into discussion, and relied upon as one of the most powerful arguments against the measure, it is proper that the objection should be met. I have, said he, no attachment for one branch of the Government more than another, but am equally, I hope, attached to all. If, however, there be a difference, perhaps from habit and profession, it is in favor of the Judiciary. I should wish, said he, to consider them all necessary parts of the whole, formed for the protection of life, liberty and property. I am friendly to a proper Independence of the Judiciary. I admire the public officer, of man, who will give his opinion frankly & firmly, & who will meet every question officially submitted to him, with manly independence. Sir, the people of this State, admire such virtue and firmness, though they might differ in opinion with him. But, sir, does it follow, that because men are selected for this department of the government, that they become infallible? That they can do no wrong, for which, as public officers, they should be amenable; except it be by crime, for which they are impeachable. Is such a tenure of office necessary, to the proper exercise of that Independence of the Judiciary, required by the public good? I apprehend not, sir, and the experience of many of our sister States confirms me in this opinion.

In the establishment of this department of the Government, like every other, all you have to guard against, for the proper exercise of the functions assigned to it, is arbitrary power on the one hand, and capricious faction on the other. If this shall be done, the independence of the Judiciary will be maintained. Upon this subject, sir, permit me, said he, to quote from the constitution of Louisiana, the following provision, as one of the most safe and accurate character I have ever seen in any constitution. "The Judges both of the Supreme and Inferior Courts shall hold their offices during good behavior; but for any reasonable cause, which shall not be sufficient ground for impeachment, the Governor shall remove any of them, on the address of three-fourths of each house of the General Assembly; Provided, however, that the cause or causes for which such removal may be required, shall be stated at length in the address and inserted on the journal in each house." With such a provision in your constitution, the Judiciary will be independent as the public good shall require, and you will guard at the same time against the feeling and passion of the moment. The majority which is required, and the cause of removal, which is to be stated, will be a sufficient guarantee for a fair trial and impartial judgment.