

A HUNDRED AND TEN YEARS OF THE CONSTITUTION—PART XI.

It will be noticed that the vote in the Virginia Convention was in the proportion of nine to eight in favor of ratification—a very even division. Whether this was the result of the arguments of Mr. Henry and others as to the necessity of a bill of rights and certain amendments as conditions precedent to ratification, or to an unwillingness to enter into a union of a radically different character from the Confederacy, it is not possible to say with certainty. But the strong probability is that the former was the controlling reason for the large negative vote. Of course, there was also the conservative spirit, which makes us often choose to bear the ills we have rather than fly to others that we know not of. The proposed new Government was admittedly an untried experiment. Mr. Madison had frankly told the Convention that it was *sui generis*—that there was not its like to be found in history; and men naturally hesitate to risk their all upon an unknown sea.

Second only to Virginia in importance was Massachusetts. The Convention in that State was held in January, 1788. It was a much larger body than the Virginia Convention, its members numbering about three hundred and fifty. The debates are not as fully or as accurately reported, but there is quite enough to give us a clear idea of the proceedings. There were fewer participants in debate, proportionately, than in Virginia, and there seems to have been less ability displayed. But there is much similarity between the debates in the two Conventions—much the same arguments were used for and against the Constitution. It was resolved at the outset—just as in Virginia—to debate the Constitution section by section; and this resolution, while not perhaps strictly adhered to, was yet much better enforced than in Virginia—possibly owing to the absence of any counter-

part of Patrick Henry, although Messrs. Thompson and Nason were not unlike him. Of course, it was contended by the extreme opponents of the Constitution that it was a scheme for consolidation, which, if adopted, would annihilate the State Governments. But its partly Federal, partly National character seems to have been more generally understood and appreciated than in Virginia. It was quite understood that it was a radical departure from the Articles of Confederation—and the chief and most weighty objection to it was that it might easily become a centralized government, putting the people out of control of their own immediate affairs; and local self-government was one thing which they could not then—and would not now—abandon. Realizing that the new government would act on individuals in many ways, and was intended to do so, they felt that the absence of a bill of rights, and of an express declaration that the new government's powers were to be those granted by the instruments, and *no more*, was for that very reason a serious defect. There was, happily, a strong realization that the interests of all the States were in many ways identical and bound up with each other. General Heath declared freely in the debates that he considered himself not as an inhabitant of Massachusetts, but as a citizen of the United States. The remark was made when the Convention was debating the powers for the biennial election of representatives. Some members considered that the elections should be annual, and Montesquieu was quoted to that effect. To this it was replied by Mr. Davis that the remark applied to "single governments and not to confederated ones," and it was again and again pointed out that as Congress and the other branches of the new government were given certain definitely stated powers and no others, the annihilation of the State Governments was impossible—and, indeed, that, as in many ways, the National Government was dependent upon the States. For example, in the Senate, and even in the House, as its members were to be chosen by those entitled to vote for the more numerous branch of the State Legislatures, the ruin of the State Governments would carry with it the ruin of the National Government, and this, although it was distinctly admitted that it was not a simple Confederacy

which they were framing. Mr. King said, "The introduction to his Constitution is in these words: '*We, the people.*' The language of the Confederation is, '*We, the States.*' The latter is a mere Federal Government of States. Those, therefore, that assemble under it have no power to make laws to apply to the individuals of the States confederated." And Mr. Stillman later quoted with approval the letter of Governor Randolph, in which he points out the impossibility of satisfactorily amending the Articles of Confederation, and the consequent necessity for throwing them aside.

Very strong expressions as to the vital necessity for Union are frequent, and those who did not like the Constitution in many ways voted for it in the end rather than risk disunion. It is doubtful, however, whether the Constitution would have been ratified had it not been for the introduction of certain suggested amendments by Mr. Hancock, the President. I think that if these amendments had been made *conditions precedent* to Massachusetts's adoption of the Constitution, it would have been adopted by a very large majority. The amendments were discussed at length, many of them, and all affirmed. One of the amendments was to the effect that all powers not expressly delegated to Congress are reserved to the States. This Mr. Adams pronounced to be a summary of a bill of rights, and consistent with the second article of the Confederation, as to the retention by each State of its sovereignty, independence, etc. But Mr. Mason was not yet satisfied. He adverted to the preamble of the Constitution, and said if it did not go to the annihilation of the State Governments, and to a perfect consolidation of the whole Union, he did not know what did. He said further: "We are under oath; we have sworn that Massachusetts is a sovereign and independent State. How, then, can we vote for this Constitution, that destroys that sovereignty?"

Colonel Varnum begged to remind him that that very oath provided an exception of the power to be granted to Congress.

The form of ratification which was submitted to the Convention was as follows:

COMMONWEALTH OF MASSACHUSETTS.

IN CONVENTION OF THE DELEGATES OF THE COMMONWEALTH OF MASSACHUSETTS, 1788.

The Convention having impartially discussed and fully considered the Constitution for the United States of America, reported to Congress by the Convention of Delegates from the United States of America, and submitted to us by a resolution of the General Court of the said Commonwealth, passed the twenty-fifth day of October last past; and acknowledging with grateful hearts the goodness of the Supreme Ruler of the Universe in affording the people of the United States, in the course of His providence, an opportunity, deliberately and peaceably, without fraud or surprise, of entering into a solemn compact with each other, by assenting and ratifying a new Constitution, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity, DO, in the name and in behalf of the people of the Commonwealth of Massachusetts, assent to and ratify the said Constitution for the United States of America. And, as it is the opinion of this Convention, that certain amendments and alterations in the said Constitution would remove the fears and quiet the apprehensions of many of the good people of the Commonwealth, and more effectually guard against an undue administration of the Federal Government, the Convention do therefore recommend that the following alterations and provisions be introduced into the said Constitution," etc. Then follow nine amendments, only a few of which we need notice. 1. "That it be explicitly declared, that all powers not expressly delegated by the aforesaid Constitution are reserved to the several States to be by them exercised." 3. "That Congress do not exercise the powers vested in them by the fourth section of the first article [to regulate elections], but in cases where a State shall neglect or refuse to make the regulations therein mentioned, or shall make regulations subversive of the rights of the people to a free and equal representation in Congress,

agreeably to the Constitution." 4. The fourth suggested amendment limits the power of Congress to levy direct taxes, except where requisitions have not been complied with. After setting out the amendments, the form of ratification goes on to urge upon the representatives in Congress to use all reasonable and legal methods to secure their adoption. The vote on the question of ratification was, Ayes 187, Noes 168. It is quite an interesting fact that there is a strong local tinge to the vote—the counties of Suffolk and Essex voting almost unanimously "Aye," the county of Worcester voting almost unanimously "No."

It is noticeable here—as in Virginia—that there was no discussion practically as to the bestowal upon the General Government the exclusive exercise of all the highly sovereign powers. The whole people, if their representatives in the Convention were really representative, was, on the one side, absolutely convinced of the necessity of a firm and indissoluble Union, and equally, on the other, of the necessity of a determined stand against centralization.

We have been in the South and in New England; let us go now to the Middle States. The New York Convention assembled at Poughkeepsie in June, 1788. It was a much smaller body than either the Virginia or the Massachusetts Convention, having only about sixty members. Yates, Lansing and Hamilton attended, as did Jay, Chancellor Livingston and several other distinguished and able men. The debates as they come down to us are somewhat fragmentary; but they are very interesting, and show, it seems to me, much more ability than those in Massachusetts. The general question was very fully discussed, and many highly significant things were said. The extreme difficulty of the question—the novel and unprecedented nature of the new Government—appears very clearly, and much cogent argument was forthcoming on both sides. Indeed, after the Convention had been sitting about a week, Mr. Hamilton remarked that it was extremely easy, on each side, to say a number of plausible things, and then laid down with characteristic clearness the following general proposition: "There are two objects in forming systems of government—*safety* for the people, and *energy* in the administration. When these ob-

jects are limited, the certain tendency of the system will be to the public welfare. If the latter object be neglected, the people's security will be as certainly sacrificed as by disregarding the former. Good Constitutions are formed upon a comparison of the liberty of the individual with the strength of governments: if the tone of either be too high, the other will be weakened too much."

After the preliminary work of organization, the Convention resolved itself into a committee of the whole, and Chancellor Livingston took the floor in explanation of the general nature and purpose of the new Constitution and in advocacy of it. He maintained that the Confederation was defective in principle, as it operated upon States in their political capacity, and not upon individuals; that "it carried with it the seeds of domestic violence, and tended ultimately to its dissolution." Also, that a federal republic, as the steward of a league among independent States, had always disappointed its advocates. He was followed next day by Mr. Lansing, one of the opponents of the Constitution in the General Convention, in an able, conservative speech, in which he said that he still was apprehensive that a consolidated government, partaking in a great degree of republican principles, in so extensive a territory, could not alone preserve the essential rights of the people; and that he proposed introducing amendments looking to the preservation of those rights; and all through the debates, this idea was, as elsewhere, the leading principle upon which the opponents of the Constitution relied—they feared centralization. Throughout there is on all sides a realization of the necessity for Union. Throughout there is perfect understanding that the new Constitution differed vitally from the old. Mr. Melancthon Smith, a leading opponent of the Constitution as it came from the General Convention, said that an increase in representation in the House would be a great improvement; it would make that body more truly representative. He said that there were here, as elsewhere, "natural aristocrats"—that is, men whose superior ability and attainments differentiated them from the mass of their fellow-men, and that it would not be well that all the representatives should favor this class. To avoid this, he suggested that the repre-

sentation should be one for twenty thousand instead of one for thirty thousand—a most remarkable proposition, in view of its object. The change would have entitled New York to three additional representatives. Is it possible that the stock of “natural aristocrats” in New York could have been so exhausted by sending six to Congress that she could not furnish three more? Mr. Hamilton, whose voice was not often heard in the General Convention, displayed very signal ability in this, reaffirming the arguments of Chancellor Livingston as to the necessity for a Government acting upon individuals, and declaring over and over again that the principle of the Confederation must be totally eradicated and discarded before an efficient Government could be expected. This was not very seriously dissented from, although it was said that all the ills the country had suffered from could not fairly be laid at the door of the Articles of Confederation. Mr. Williams, of the opposition, said that the Constitution should be so framed as not to swallow up the State Governments: “The General Government ought to be confined to certain National objects; and the States should retain such powers as concern their own internal policy”—a principle so sound that the most ardent Nationalist gladly assented to it. Mr. Hamilton said that the balance between the National and State Governments was of the utmost importance; and the same thing was said by others on both sides. Very little declamation was indulged in, but Mr. G. Livingston created some amusement by representing the Federal District as likely to be surrounded by “a wall of gold—of adamant, which will flow in from all parts of the Continent.” He did not hear the last of his flowing wall for many days. In speaking of the Senate, in advocating a proposition to give the various Legislatures the right to recall Senators, Mr. Lansing said the Senate was intended to represent the sovereignty of the States. “Now, if it was the design of the plan to make the Senate a kind of bulwark to the independence of the States and a check to the encroachments of the General Government, certainly the members of this body ought to be peculiarly under the control, and in strict subordination to the State who delegated them.” Mr. Livingston (R. R.) replied that it was true the Senate was intended to

represent the State Governments; "but they are also the representatives of the United States, and are not to consult the interests of any one State alone, but that of the Union." And Mr. Hamilton said that the design of the Senate was to give stability and energy to the Government. The difference between the propositions of Mr. Lansing and Chancellor Livingston bring out most clearly, it seems to me, the two schools of thought. If Mr. Lansing's premises are correct—if the Senators are merely so many ambassadors, so to speak, then, *of course*, the States should be at liberty to recall them. Not so if Mr. Livingston's view be the true one; and the utter impracticability of such a system as Mr. Lansing desired was so patent that it found few supporters. Mr. Hamilton said that the sacrifice of the States by the Senate, in the General Government, was unimaginable. The States are an essential part of the general system, and as long as Congress realized this they must "even upon principles purely National," have as firm an attachment to the State Governments as to the General Government. In commenting upon the further remark that the aggregate representation in the State Governments and their aggregate energy was greater than that of the National Government, Mr. Lansing said, "Are the States arrayed in all the powers of sovereignty? Can they maintain armies? Have they the unlimited power of taxation? There is no comparison between the powers of the two Governments." There is so much of interest that was said, that it is extremely difficult to avoid very frequent use of paste and scissors. I must not be supposed to have directed attention to every well-put argument on either side, but only to have given samples, as it were, of the general views which prevailed, and which were so well brought out. The "general welfare" clause was animadverted upon by Mr. Williams, and so far as reported in the debates, no one seems to have explained to him or to the Convention that this only empowered Congress to *raise money* for the general welfare—not to pass any and all laws promotive of it. And so he went on most vigorously demolishing a man of straw. When the question of *direct taxation* by Congress was under discussion—a leading point here as elsewhere—Mr. Jay asked, "Would it be right or politic that

the sovereign power of a nation should depend for support on the mere will of the several members of that nation? That the interests of a part should take [the] place of that of the whole, or that the partial views of one of the members should interfere with and defeat the views of all?"

Addressing himself to the danger of the annihilation of the State Governments, which he greatly feared, Mr. Tredwell, in the course of an able speech, declared that the cardinal error, in the arguments of the supporters of the Constitution, was, that whatever powers were not granted by the Constitution were reserved. He maintained that every State Constitution was a recognition of the contrary principle, for all contained express reservations in favor of the people. He continued: "We are told this is a Federal Government. I think, sir, there is as much propriety in the name as in that which its advocates assume, and no more; it is, in my idea, as complete a consolidation as the government of this State, in which legislative powers, to a certain extent, are exercised by the several towns and corporations. The sole difference between a State Government under this Constitution and a corporation under a State Government is, that a State being more extensive than a town, its powers are likewise proportionately extended; but neither of them enjoys the least share of sovereignty; for, let me ask, what is a State Government? What sovereignty, what power is left to it, when the control of every source of revenue, and the total command of the militia are given to the General Government? That power which can command both the property and the persons of the community is the sovereign, and the sole sovereign. The idea of two distinct sovereignties in the same country, separately *possessed* (italics in the original) of sovereign and supreme power, in the same matters at the same time, is as supreme an absurdity as that two distinct separate circles can be bounded by the same circumference." Of course, Mr. Tredwell was wrong in saying that the States were reduced to mere corporations by the Constitution, even admitting that the Constitution conferred all powers on Congress *not prohibited*. It still remained to the States to pass *laws*—not mere municipal regulations—laws for the punishment of crime, for descent and inheritance, etc. But he

was clearly right in the absurdity of "dual sovereignty" in any true sense. And this brings us to note the absence here, as in Virginia and Massachusetts, of any objection to vesting the highly sovereign powers in Congress. I can but repeat, that centralization, and the consequent deprivation of the people of the immediate control of their own affairs, was the great evil against which the opponents of the Constitution were fighting. It is quite noteworthy, too, that, so far as reported, there was no discussion of account upon the words, "We, the people." Numerous amendments, analogous to those brought forward by Virginia and Massachusetts were proposed and suggested to Congress and to the other States in a circular letter. The original form of ratification was "*upon condition,*" etc. This was changed to "in full confidence," and a motion by Mr. Lansing to reserve to New York a right to withdraw *from the Union* under certain circumstances was voted down. The Constitution was then ratified by the very narrow majority of three—thirty to twenty-seven.

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