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

Upon re-assembling, next day, the Convention at once resolved itself into a Committee of the Whole to consider both the Virginia and the New Jersey plans. In the long and exhaustive debate which ensued, it can be said with truth that it would be difficult to imagine a phase of the question—the broad, general question—or a single point in connection with it, that was not brought out. A vote was not reached until June 19th; and several speeches longer than any yet delivered, were made in the intervening three days. It is worthy of remark, however, that but few members participated. Two new debaters appeared, one on each side—and both from New York: Hamilton and Lansing. Of course, the former favored the Virginia plan, the latter the New Jersey plan—*and only one other member—the proposer of the plan, Mr. Patterson, raised his voice in support of it.* On the other hand, Messrs. Madison, Wilson and Randolph—to whom we may fairly add Mr. Pinckney and Mr. King—were determinedly against it. Mr. Lansing opened the debate in much the same way as did Mr. Webster many years later—he "called for the reading of the resolutions" at the head of each plan—for the purpose of contrasting them. He then stated truly enough that they were radically different in principle: "That of Mr. Patterson sustains the sovereignty of the respective States, that of Mr. Randolph destroys it. . . . The plan of Mr. Randolph, in short, absorbs all power, except what may be exercised in the little local matters of the States which are not objects worthy of supreme cognizance." One would suppose that this strong contrasting of the two plans would be followed by an earnest advocacy of the one or the other on the ground of its intrinsic merit—nothing of the kind! He states his principal objections to the Virginia plan to be, first, the want of power in the Convention to propose it; and second, the improbability of its adoption! And Mr. Patterson, who followed him, said practically the same

thing: "Our object is not such a government as may be best in itself, but such a one as our constituents have authorized us to prepare, and as they will approve." It is true that he urged that the Virginia plan would be "enormously expensive"—and also that he based his contention to lack of power on the part of the Convention to propose it upon the lack of power in the *States themselves,* except by a unanimous vote, to do away with the Confederacy. The argument as to the lack of power in the Confederacy was well answered by Mr. Wilson in a few words—he "conceived himself authorized to *conclude nothing,* but to be at liberty to *propose anything.*" He contrasted the two plans point by point—the great contrast really being that representation of the people at large was the basis of the Virginia plan—"the State legislatures the pillars of the other."

He also called attention to the danger of "legislative despotism" from a *single* body—a legislature should be bicameral.

Mr. Randolph followed in a strong speech, setting forth the need for a National Government. The Confederate plan had been tried and found wanting; a resort to coercion, as suggested in the New Jersey plan, would be an impracticable and cruel expedient, and national legislation over individuals must therefore be resorted to—and much more to the same effect. Mr. Dickinson made a motion, which was carried, to postpone consideration of the first resolution in the New Jersey plan to take up a resolution to the effect that the alterations in the Articles of Confederation should be such as would "render the Government of the United States adequate to the exigencies, preservation and the prosperity of the Union." The debate, however—or rather the attacks upon the New Jersey plan—continued on general lines, and Mr. Hamilton took the floor for the first time, delivering what has been termed a "highly nationalistic speech"—and so it was; but while, perhaps, he goes somewhat further than any of his fellow-members, many of his arguments are most cogent. He strongly contended that any arrangement which made the *State* governments instead of the General Government the most impor-

tant in the eyes of the people, would, to use the words of President Buchanan, "contain the seeds of its own dissolution." I commend all the speeches in this debate to the careful attention of all students of the subject. Mr. Hamilton concluded by reading a sketch of a plan, expressly disclaiming any intention to lay it before the Committee *as such,* but submitting it as a general statement of his ideas. I propose to give this sketch in full, for several reasons: First, because it shows how strongly the need of a General Government was felt by one of the ablest men of the day; second, because it represents the high-water mark of nationalistic utterance in the Convention, and lastly, because it is more like—or rather, less unlike—the Constitution as finally adopted, than is the New Jersey plan:

I. The Supreme Legislative power of the United States to be vested in two different bodies of men: the one to be called the Assembly, the other the Senate; who together shall form the Legislature of the United States, with power to pass all laws whatsoever, subject to the negative hereafter mentioned.

II. The Assembly to consist of persons elected by the people to serve for three years.

III. The Senate to consist of persons elected to serve during good behavior; their election to be made by electors chosen for that purpose by the people. In order to do this, the States to be divided into Election Districts. On the death, removal or resignation of a Senator, his place to be filled out of the district from which he came.

IV. The Supreme Executive authority of the United States to be vested in a Governor, to be elected to serve during good behavior; the election to be made by electors chosen by the people in the Election Districts aforesaid. The authorities and functions of the Executive to be as follows: To have a negative on all laws about to be passed; to have the direction of war when authorized or begun; to have, with the advice and approbation of the Senate, the power of making all treaties; to have the sole appointment of the heads or chief officers of the Departments of Finance, War and Foreign Affairs; to have the nomination of all other officers (ambassadors to foreign nations included), subject

to approbation or rejection of the Senate; to have the power of pardoning all offences except treason, which he shall not pardon without the approbation of the Senate.

V. On the death, resignation or removal of the Governor, his authorities to be exercised by the President of the Senate till a successor be appointed.

VI. The Senate to have the sole power of declaring war; the power of advising and approving all treaties; the power of approving or rejecting all appointments of officers, except the heads or chiefs of the Departments of Finance, War and Foreign Affairs.

VII. The supreme judicial authority to be vested in judges, to hold their offices during good behavior, with adequate and permanent salaries. This court to have original jurisdiction in all causes of capture, and appellative jurisdiction in all causes in which the revenues of the General Government, or the citizens of foreign nations, are concerned.

VIII. The Legislature of the United States to have power to institute courts in each State for the determination of all matters of general concern.

IX. The Governor, Senators, and all officers of the United States, to be liable to impeachment for mal- and corrupt conduct; and upon conviction, to be removed from office, and disqualified from holding any place of trust or profit; all impeachments to be tried by a court to consist of the Chief ———, or Judge of the Superior Court of Law of each State, provided such judge shall hold his place during good behavior and have a permanent salary.

X. All laws of the particular States contrary to the Constitution or laws of the United States to be utterly void; and the better to prevent such laws being passed, the Governor or President of each State shall be appointed by the General Government, and shall have a negative upon the laws about to be passed in the State of which he is Governor or President.

XI. No State to have any forces, land or naval; and the militia of all the States to be under the sole and exclusive direction of the United States, the officers of which to be appointed and commissioned by them.

It is amusing to picture to one's self the feelings which the reading of this "sketch" must have aroused in Yates, Lansing, Luther Martin, and others like them; horror, amazement and disgust must have filled their minds; it was an "abomination unto them." There is little resemblance between either the sketch or the New Jersey plan and the Constitution; but I have said that the sketch was less unlike it than the plan. Let us compare both with it, and see.

First. The sketch and the Constitution provide for a single Executive—the plan for a plural Executive—at least by strong implication.

Second. The sketch and the Constitution provide for a bi-cameral Legislature—the plan for a single house.

Third. The sketch and the Constitution provide for the election of the Executive by electors chosen by the people—the plan for an Executive chosen by "the United States in Congress."

Fourth. The sketch and the Constitution provide for the election of one branch of the General Legislature by the people—the plan does not provide for the direct participation of the people in the General Government at all.

Fifth. The sketch and the Constitution provide for the creation of inferior courts by Congress—the plan does not.

Sixth. The sketch and the Constitution provide for a successor—practically the same successor—to the Executive Officer upon his death, etc.—the plan does not.

Seventh. The sketch and the plan provide for the nomination of various officers to the Senate by the Executive—the plan has no such provision.

Eighth—and most important—Neither the sketch nor the Constitution profess to be amendments to or revisions of the Articles of Confederation; the plan is avowedly nothing else. I think I may say with entire confidence, that excepting the provision for a Supreme Court to be appointed by the Executive, and its jurisdiction, there is not a line in the plan in which a resemblance to the Constitution can be found.

Mr. Hamilton's sketch provoked no comment. His ideas were far in advance of what the Convention was prepared to do—for they meant the practical annihilation of the States even as local autonomies.

Next day the resolution of Mr. Dickinson was voted down, and the debate was closed by Mr. Madison in a long and able speech, in which he showed the inadequacy of a *Confederacy* to the needs of the country. He cited numerous examples of confederacies in past times—"the Amphictyonic and Achæan Confederacies among the ancients, and the Helvetic, Germanic and Belgic among the moderns"—in support of his argument. In all of them there had been a tendency by the members to encroach upon joint body. At the conclusion of his speech, a motion to postpone the first resolution of the New Jersey plan was carried by a vote of all the States except New York and New Jersey. And a motion by Mr. King, to the effect that the Committee rise and report the Virginia plan as before, was carried, New York, New Jersey and Delaware voting "no," and Maryland being divided.

But the matter was far from settled. The whole question was discussed again in Convention, and a few new ideas were brought out, although much that had been said before was said over again, as is usual in such cases. The immediate question before the house was the first resolution of the Committee's report, to the effect that a National Government ought to be established. Mr. Wilson took occasion to say that he did not favor the abolition or practical annihilation of the State Governments—quite the contrary; and the same thing was said by Mr. Mason a little later. It is quite instructive to note the varied opinions with regard to the actual status of the States. Mr. King, for example, asserted that the States were not really "sovereign"—that if they retained some portion of their sovereignty, they had certainly divested themselves of essential portions of it; while Mr. Martin declared that the separation from Great Britain placed the thirteen States in a "state of nature toward each other"—and that but for the Confederation they would be so still. This was utterly denied by Mr. Wilson and Mr. Hamilton, Mr. Wilson saying that they had been declared free and independent as *"United Colonies."*

I do not propose to discuss this question over again. In a former article I have tried to show briefly that Mr. Martin

was right. I merely notice these utterances, as evidence that the ideas of "divided sovereignty" and of our being "one people" from the beginning had very respectable supporters at the time.. Mr. Ellsworth now moved to strike out the word "National" in the resolution, so that it would run, "The Government of the United States ought to consist," etc. The advocates of a General Government cared little what it was called; and as this change would probably soothe the feelings of many whose feelings would have to be soothed, no objection was made to it; and of course the corresponding change was made in all subsequent resolutions. Considerable importance is attached to this by later writers, as tending to prove that the idea of a truly "national" Government was explicitly abandoned. Nothing could be more misleading. The term "National" was supposed by some to savor of undue centralism, of the total demolition of Statehood, which was never seriously thought of by any appreciable number of delegates. The real opponents of the Virginia plan were just as determinedly so as ever, for when the second resolution providing for a bi-cameral Legislature came before the House, Mr. Lansing once more stated that the real question was whether the Convention proposed to adhere to the "foundation of the present Confederacy," again urging the lack of power on the part of the Convention to do anything else than adhere to that foundation, and the impossibility of inducing the people to approve of anything different. He attacked with some force the provision giving the General Legislature a negative upon State enactments. He moved, as a substitute for the second resolution, "That the powers of legislation be vested in the United States in Congress." This motion was lost by the usual vote. Dr. Johnson, of Connecticut, said that if the advocates of the Virginia plan could show that the individuality of the States would not be endangered by the plan, many of their objections would be removed. He was ably answered by Mr. Wilson and Mr. Madison. The remarks of the latter were so very clear and comprehensive that I will try to give the substance of them. He contended that there was less of danger of encroachments by than upon the General Government, and that en-

croachments by it were lesser evils than encroachments upon it; that the history of confederacies the world over had shown that the tendency was rather toward anarchy than toward despotism—of which the existing Confederacy was a shining example. In answer to the objection that under the proposed General Government the tendency would be the other way, he said that even supposing that indefinite power were to be given to the General Legislature, there was no reason to fear that it would take from the States any branch of their power whose operation was beneficial, instancing the existence undisturbed of townships, etc., within the States, whose local authority no legislature had interfered with. The great objection to a General Government was the impracticability of its extending "its care to all minute objects which fall under the cognizance of local jurisdictions." If such care were practicable, "the people would not be less free as the members of one great Republic than as members of thirteen small ones."

"Taking the reverse as the supposition, that a tendency should be left in the State Governments toward an independence on the General Government, and the gloomy consequences need not be pointed out." Were ever words more prophetic? And mark what follows immediately: "The imagination of them must have suggested to the States the experiment we are now making, to prevent the calamity, and must have formed the chief motive with those present to undertake the arduous task." The second resolution was passed, Connecticut this time voting with the majority. Mr. Madison's arguments must have satisfied Dr. Johnson!

The next question was on the third resolution—and the first discussion was as to the way in which the members of the first branch of the General Legislature should be elected. The resolution said "by the people of the several States." General Pinckney moved to substitute that they should be elected "in such manner as the Legislature of each State should direct." This was not avowedly intended to give the election to the States as such, but it was so interpreted by Mr. Martin and Mr. Hamilton, the former instantly seconding the motion, the latter opposing it because

it "would essentially vitiate the plan. It would increase that State influence which could not be too watchfully guarded against." Election by the people was strenuously advocated by Mr. Mason, Mr. Wilson and Mr. King. Mr. Rutledge denied that there was any solid distinction between a "mediate and immediate election by the people," and thought a better class of men would be sent to the General Legislature by the State Legislatures than by the people. The three gentlemen just mentioned thought the distinction most vital; they urged that the direct participation by the people in the new government was "the foundation of the fabric"—elections by Legislatures would not be actuated by the sentiments of the people; indeed, there was an official legislative sentiment opposed to the General Government, and, moreover, the Legislatures would choose men subservient to their own views. We seem to have had examples of the converse of this proposition in these latter days! General Pinckney's motion was lost, Connecticut again in the minority this time. The resolution was then passed as reported, New Jersey alone dissenting. Maryland, as usual, divided. One cannot fail to observe the constant but abortive attempts of the "State rights" men to engraft upon the plan something clearly recognizing those "rights," or more properly, those *powers*, which would stamp the States as distinct and complete sovereignties. And it is also not to be forgotten, that it was not only the large States—repeatedly stated to be only three—which were opposed to these attempts.

The debates continued on various points and questions, without anything of importance with regard to the inquiry in which we are now engaged, until June 27, when the resolutions as to suffrage in the two branches of the General Legislature came before the House. The seventh resolution provided that representation in the first branch ought to be in proportion to the number of white and other free inhabitants, etc.

Mr. Luther Martin immediately took the floor, and in a speech of some length, and "which was delivered with much diffuseness, and considerable vehemence," proceeded to lay down the whole anti-national position, contending that the

new Government should be organized for *States,* not for *people,* and that the proposed plan would leave the small States wholly at the mercy of the large ones—taking for granted that it was at least probable, if not certain, that the representatives from the large States would always be found voting on the same side. At the conclusion of Mr. Martin's speech, Mr. Lansing, seconded by Mr. Dayton, moved in substance that the right of suffrage be the same as under the Confederation. Mr. Williamson observed that if the States were equally sovereign now, they would retain that equality when each one had parted with equal portions of it. Mr. Madison said that the fallacy in the reasoning of the other side was in confounding a mere treaty between sovereign States with a compact by which an authority was created paramount to the parties, and making laws for the government of them. He likened the States in the proposed plan to counties—and contended that the true interest of the small States was to make that resemblance as strong as possible: "In a word, the two extremes before us are, a perfect separation, and a perfect incorporation of the thirteen States. In the first case, they would be independent nations, subject to no law but the law of nations. In the last, they would be mere counties of one entire republic, subject to one common law. In the first case, the smaller States would have everything to fear from the larger. In the last, they would have nothing to fear," etc., etc. Dr. Johnson said, truly enough, that the controversy was likely to be endless where the starting point of the contestants was not the same—same regarding the States as *States* and others as merly parts of a State. (I do not quote him *verbatim.*) His conclusion was that these two ideas might be and should be combined—by giving the people as such representation in one branch and the States representation as such in the other—a view which, as we know, finally prevailed, though with an important qualification, as will be noticed later on. The great advantage in point of security to the smaller States by uniting with the large ones under one government was well pointed out by Mr. Gorham. The plan was not sufficiently "National"—that is, centralized—to suit Mr. Read.

But Mr. Madison and Mr. Gerry (who, by the way, asserted that the States never were independent), and others, while urging consolidation, and picturing the dissolution of the Union as a dire calamity, were sensible of the unwisdom of entirely abolishing or ignoring the States. By a vote of six to four, and one divided—as usual—the clause in the seventh resolution, that the representation ought not to be according to that established by the Articles of Confederation, was passed. Every argument that could be imagined was brought forward—and most of them were unanswered and unanswerable—to show the advantage of all concerned, and the abstract justice of the rule of proportionate representation; but apparently without avail. The vote was just as it would probably have been if not a word had been uttered on either side. Once more, however, let it not be forgotten that only four States were against proportionate representation, three of the smaller ones joining with the larger ones on this and other kindred questions. The present vote, however, only decided that the old rule of representation should not obtain as to the first branch. It was now moved to postpone the rest of the seventh resolution, to take up the eighth, which provided for the same rule of representation in the second branch as in the first. This, of course, occasioned a long and warm debate; it was the rock upon which the Convention was nearly wrecked. It would not be profitable to follow it in detail. It was in the main, of course, the old fight between the nationalists and anti-nationalists. But here and there some things of interest and importance are to be found. Mr. Wilson called attention to the fact that the vote last taken if the delegates were to be considered as representing the *people* of the States, had shown that the people favored a change in the rule of representation in the proportion of ninety to twenty-two, and asked whether the government about to be formed was "for *men,* or for the imaginary beings called *States?*" He was, of course, for proportionate representation in both branches, believing that any other rule placed the majority in the hands of the minority. Mr. Ellsworth denied this, and said that it simply gave the minority a salutary check upon the

majority. As a possible instance of combination among the larger States, he said that if in pursuance of some commercial arrangement, "two or three free ports and no more were to be established," Boston, Philadelphia, and some port on the Chesapeake (in Virginia) might be chosen. The important point was brought out by Mr. Madison that it was not the size of the States, but their circumstances, which gave them different interests, and that the real difference was between the free North and the slave-holding South. Another difficulty suggested—and one which undoubtedly existed—was the inconveniently large number of Senators resulting from proportionate representation. Dr. Franklin suggested that on certain questions the States should have an equal vote in the Senate, and Mr. King expressed surprise that "if we were convinced that every *man* in America was secured in all his rights, we should be ready to sacrifice this substantial good to the phantom of *State* sovereignty," etc. Mr. Ellsworth said that while under a National Government, he should participate in *national security,* he wanted *domestic happiness,* dependent on local matters to which a National Government could not attend, and for which he looked to the State Government. Mr. King was for preserving the State governments to the extent necessary for those purposes. The vote resulted in a tie—under ordinary circumstances it would have resulted in the adoption of the resolution by a majority of one, Georgia and Maryland being divided. But Mr. Martin's colleague, Mr. Jennifer, was absent, and he alone cast the vote of the State. Strictly speaking, the vote was upon a motion of Mr. Ellsworth's, providing for one vote by each State in the Senate. In spite of the fact—for unfortunately it was a fact—brought out by Mr. Madison as to the real difference between the North and South, there had been no such grouping of States thus far. Another apparently remarkable feature of the debates is, that it seems to have been assumed that the votes of the representatives from any State, even under proportionate representation, would be unanimous upon all questions; that they would be like so many delegates to political conventions as we know them to-day. We must remember, however, that this was before the day

of political parties. Still, one would suppose that as this form of representation was designedly proposed to give the people, as such, a voice, it might readily have been seen that the views and interests of people in different parts of the same State are not always identical.

Expressions of some heat had been indulged in, and a deadlock was imminent, when General Pinckney suggested the appointment of a committee to "devise and report some compromise," which drew forth from Mr. Martin the remark that he had no objection, but that the smaller States would never consent to any diminution of their equal sovereignty. However, after some little discussion, a committee was appointed, consisting of one member from each State—Mr. Gerry, Mr. Ellsworth, Mr. Yates, Mr. Patterson, Dr. Franklin, Mr. Bedford, Mr. Martin, Mr. Mason, Mr. Rutledge, Mr. Baldwin. This committee reported two propositions, both, or neither, to be adopted. The first to the effect that each State should be allowed in the first branch one representative for every forty thousand inhabitants "of the description reported in the seventh resolution." States not containing that number (there is still one State which contains but little more) to be allowed one vote. "That all bills for raising or appropriating money, and for fixing the salaries of the officers of the Government of the United States, shall originate in the first branch of the Legislature, and shall not be altered or amended in the second branch; and that no money shall be drawn from the public treasury but in pursuance of appropriations to be originated in the first branch." The second, "that in the second branch each State should have an equal vote." Like most efforts at compromise, the report found but little favor with any one. It was most unsatisfactory to Nationalists, who could not see that there had been any substantial concession on the part of the small States—the provision as to originating money bills did not strike them as being such a concession—and they felt that the abandonment of proportionate representation in the Senate was a grievous error. Mr. Gouverneur Morris said flatly that State attachments and State importance had been the bane of the country. But others, while not liking the propo-

sitions, felt that even a compromise was better than nothing —and so they began to discuss the propositions somewhat in detail, and committed the clause fixing the representation in the first branch to a new committee. The clause relating to money bills was then postponed in order to take up the question of representation in the second branch.

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