

HOUSE.....

.....No. 10.

REPORT

ON THE

AMENDMENTS OF THE CONSTITUTION.

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, Jan. 8, 1840.

Ordered, That the several Amendments of the Constitution, adopted by the last Legislature, be taken from the files, and be referred to a Special Committee of the House, consisting of one from each county, namely :

Messrs. CUSHMAN, of Bernardston,
 GRAY, of Boston,
 DODGE, of Wenham,
 HUTCHINSON, of Pepperell,
 S. THURSTON, JR. of Lancaster,
 MATTOON, of Amherst,
 BISHOP, of Russell,
 COOPER, of Stockbridge,
 TUCKER, of Milton,
 REED, of Pawtucket,
 SHAW, of Bridgewater,
 BOURNE, of Sandwich,
 DAVIS, of Edgartown,
 BRADBURN, of Nantucket.

L. S. CUSHING, *Clerk.*

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, Jan. 23, 1840.

The Special Committee, to whom were referred, by an order of the 8th inst. the Amendments of the Constitution, adopted by the last Legislature, respectfully ask leave to

REPORT :

Two separate articles of Amendment of the Constitution were adopted by constitutional majorities of the last Legislature. The first in order is in the following words.

ARTICLE OF AMENDMENT.

The Constitution may be amended in the following manner :

“ In the year one thousand eight hundred and forty-three, and every tenth year thereafter, articles of amendment to the Constitution may be proposed in the General Court ; and if such articles of amendment shall be agreed to by a majority of the Senate and two-thirds of the House of Representatives, present and voting thereon, such proposed articles of amendment shall be entered on the journals of the two Houses, with the yeas and nays, taken

thereon, and referred to the General Court, then next to be chosen, and shall be published; and if in the General Court next chosen as aforesaid, such proposed articles of amendment shall be agreed to by a majority of the Senators and two-thirds of the members of the House of Representatives, present and voting thereon, the General Court shall submit such proposed articles of amendment to the people; and if they shall be ratified by a majority of the qualified voters, voting thereon at meetings legally warned and held for that purpose, they shall become part of the Constitution of this Commonwealth.

The ninth article of amendment of the Constitution, adopted by the people on the ninth day of April, in the year one thousand eight hundred and twenty-one, is hereby annulled.”

To this amendment a majority of your Committee cannot give their assent, and for the following reasons:

1st. Because the provisions of the 9th article of Amendment of the present Constitution, which, by the proposed amendment, is annulled, are better than the proposed substitute. That article provides, that an amendment of the Constitution may be proposed and discussed by any Legislature. After such discussion, if it shall be approved by two-thirds of the members of the House of Representatives and a majority of the Senate, present and voting thereon, it is then entered on the journals of the two Houses, and is published. It then goes out to the people, is read, discussed and scrutinized by them,—who, in reference to it, may choose their next Senators and Representatives. The next Legislature takes it up, and if passed by similar majorities as before, it is sent out to the people, and if ratified by a majority of their votes, it becomes a part of the Constitution of the State.

Now what greater guards against sudden changes of the Constitution can be desired? What greater obstacles to such changes as the improvements of the age and the varying wants of the people may suggest, should be thrown around our Constitution? “The Constitution and Laws of a country,” says an eminent writer, “should ever be made to vary according to the wants, the wishes and the circumstances of the people.” A Constitution, which, whatever may be its defects, or however desirable may be a change, like the laws of the Medes and Persians, is unchanged and unchangeable, will never suit the progressive and investigating spirit of the people of Massachusetts.

Hence the necessity of provisions by which our Constitution may be amended,—and hence also the alterations and improvements, which, from time to time, since the first adoption of our Constitution in 1780, have been made,—and probably will hereafter be made.

2d. We object further to the proposed amendment, because it virtually declares that our Constitution shall not be amended for the space of ten years after the year 1843: that however great and pressing may be the desire of the people for some alteration,—either small—or great and important, (except, of course, in the exercise of the natural and inherent right of the people, in cases of great emergency, by the call of a convention), still it must remain unchanged for 10 years! Free discussion, one of the first principles of a democratic government:—the investigation of Constitutional rights and the advancement of our Constitutional liberties in accordance with the increasing light and experience of the age, are thus in a great measure stopped by the proposed amendment.

Who is there that is willing to have his natural and Constitutional right of improving and bettering the Con-

stitution of his choice, disfranchised—tied up—prohibited for 10 years at a time? The idea, to a majority of your Committee, seems to be inconsistent with the first principles of our government and contrary to the well-being of the people. It may also be observed, that the 9th article of amendment of our present Constitution was adopted by the Convention of 1820, without scarcely a dissenting vote:—which Convention, for talents, wisdom, and eminent moral worth, was seldom if ever equalled.

3d. We object to the proposed amendment, because it is inconsistent with the rights and privileges, guaranteed in the Preamble and Bill of Rights of our Constitution. The first paragraph of that Preamble is as follows :

“The end of the institution, maintenance and administration of government, is to secure the existence of the body politic ; to protect it ; and to furnish the individuals who compose it, with the power of enjoying in safety and tranquillity their natural rights and the blessings of life ; and whenever these great objects are not obtained, the people *have a right to alter the government*, and to take measures necessary for their safety, prosperity, and happiness.”

The 7th article of the Declaration of Rights, provides that, “the people have an incontestable, unalienable and indefeasible right to institute government ; and to *reform, alter, or totally change the same*, when their protection, safety, prosperity and happiness require it.”

Now any amendment which shall, even for a limited time, prevent the people from altering, reforming, or totally changing the Constitution, is certainly inconsistent with the foregoing principles of the Bill of Rights.

4th. Another objection to the proposed amendment is,

that, if it should be adopted, *it will be the only way, in ordinary cases, in which the Constitution can be amended.* In the year 1833, when a proposition was made in the Legislature, to call a Convention to revise the Constitution, the following question was proposed to the Hon. Justices of the Supreme Court :

“ Can any specific and particular amendment or amendments to the Constitution be made, in any other manner than that prescribed in the 9th article of the amendments, adopted in 1820 ? ” In reply to which, the court said : “ The court do not understand that it was the intention of the House of Representatives to request their opinion upon the natural right of the people, in cases of great emergency, or upon the obvious failure of their existing Constitution to accomplish the objects for which it was designed, to provide for the amendment or alteration of their fundamental laws ; nor what would be the effect of any change and alteration of their Constitution, made under such circumstances, and sanctioned by the assent of the people. Such a view of the subject would involve the general question of natural rights, and the inherent and fundamental principles upon which civil society is founded rather than any question upon the nature, construction or operation of the existing Constitution of the Commonwealth, and the laws made under it. We presume, therefore, that the opinion requested applies to the existing Constitution and laws of the Commonwealth, and the rights and powers derived from and under them.

Considering the question in this light, we are of opinion that under, and pursuant to the existing Constitution, there is no authority given by any reasonable construction, or necessary implication, by which any specific or particular amendment or amendments of the Constitu-

tion can be made, in any other manner than that prescribed in the 9th Article of the Amendments, adopted in 1820. Considering that previous to 1820 no mode was provided by the Constitution for its own amendment, that no other power for that purpose than in the mode alluded to, is any where given in the Constitution, by implication or otherwise, and that the mode thereby provided appears manifestly to have been carefully considered, and the power of altering the Constitution thereby conferred to have been cautiously guarded and restrained, we think a strong implication arises against the existence of any other power under the Constitution for the same purposes.”

Such was the unanimous opinion of all the Judges of the Supreme Court.

If, therefore, the proposed amendments shall be adopted, the Constitution *cannot be amended*, except in the “great emergency” alluded to by the Supreme Court, *only in the year 1843, and every ten years afterwards*. Such an article of amendment can never receive the sanction of the democratic and intelligent freemen of our State.

The principal, and almost only argument in favor of that amendment, is this,—“that time and money are lost by the frequent discussion of proposed amendments of the Constitution by the Legislature.”

If every hour spent by our Legislature in discussing amendments of the Constitution, which any portion of the people might think desirable, or necessary, is lost; if there is not a positive gain, in examining and reviewing the fundamental law of our land,—in endeavoring to find its defects, and remedying its errors, (for it cannot be contended by any one that our Constitution is *per-*

fect;)—if the representatives of the people, and of course the people themselves, are not better informed of the rights, principles and duties of our government, and are not better qualified to judge discreetly of the merits and demerits of our Constitution, by a full, free and frequent discussion of Constitutional questions, then most certainly prohibit at once and forever, the Legislature from having any thing to do with it. If the Legislature can be trusted to propose Amendments of the Constitution once in 10 years, then by a necessary consequence it may be so trusted every year.

Instead of limiting, restricting, or rendering more difficult, future Amendments of the Constitution, we prefer that the reverse of the case should exist,—and that, with greater ease and facility, the Constitution should be made to fit and adjust itself to the advancing and progressive views of successive generations.

Such being the views of a majority of your Committee, they cannot recommend the adoption of that Article of Amendment of the Constitution.

[*Note.*—In Committee, 9 were opposed to the foregoing Article of Amendment, and 5 were in favor of it.]

The other Article of Amendment of the Constitution, which passed the last Legislature, contains four distinct propositions, which will be considered separately;—but it may here be observed, that they must all be adopted or rejected together, by this Legislature.

The first proposition contained in said Article of Amendment, relates to the Senate, and, if adopted, will change the basis of the Senate, from a valuation or property basis, to one purely of population.

The 2d section of the 1st chapter of the Constitution of Massachusetts, provides that “the General Court, in assigning the numbers (of the Senate,) to be elected by the people by the respective districts, shall govern themselves *by the proportion of the public taxes paid by said districts.*”

The proposed amendment bases the Senate on population as follows:—“The Senate shall consist of forty members, and in the year 1840 and every ten years thereafter, the governor and council shall assign the number of senators to be chosen by each district, *according to the number of inhabitants in the same.*”

It will thus be seen, that a radical change in the manner in determining the number of senators in each district, is proposed. A large majority of your Committee believe the change to be one of correct principle, and highly desirable.

The first article of the Declaration of Rights in our Constitution, declares that “all men are born free and *equal.*” Our government is a government of men, not of property. Politically considered, one man has the same rights and privileges—the same political power, as another man. Such is the theory of our government. But the Constitution virtually denies, in relation to the Senate, what it asserts in the first article of the Declaration of Rights. In practical operation, therefore, it assumes a principle in one place but denies it in another.

The 9th article of the Bill of Rights provides that, “all the inhabitants of the Commonwealth, having such qualifications as they shall establish by their frame of government, *have an equal right to elect officers.*” But by a property basis for the Senate, a single very wealthy individual, may exercise in fact as great an electoral

power as many thousands of legal voters. An individual in Berkshire, Franklin, or Barnstable counties, where individual wealth is comparatively small, has not, on the present theory of the Senate basis, near as great political power as one living in the commercial or manufacturing portions of the Commonwealth where property is held in larger masses. As a striking example of this fact, we remark, that in Franklin county about 29,000 inhabitants are now entitled to one senator—while in Suffolk and in Dukes county and Nantucket, about 13,000 inhabitants have a senator. Each voter, therefore, in the last mentioned counties, has more than *double* the political power that a voter has in Franklin!

The inequality of the property basis for the Senate, would be vastly increased if it was fully carried out in practice. But that is limited by the provision which prohibits any district from having more than six senators. If the theory of the property basis of the Senate is correct, then most certainly it should be fully carried out in practical operation, in which case the county of Suffolk, containing only about one ninth of the population, would have now, probably almost *one half* of all the senators of the State!

The following table, showing the valuation of each county in 1830—the population in 1837—the number of senators to which each county is now entitled—the number to which they would be entitled on a purely valuation basis—and the number they would be entitled to on a population basis, will assist the House in forming a correct opinion on this subject :

COUNTY.	Valuation, 1830.	Population in 1837.	Present Num- ber Senators.	Senators by Valuation.*	Senators by Population.
Suffolk, . . .	80,244,000	81,984	6	16	5
Essex, . . .	24,335,000	93,689	6	5	5
Middlesex, . .	21,182,000	98,565	5	4	5
Worcester, .	21,166,000	96,551	6	4	5
Hampshire, .	5,600,000	30,413	2	1	2
Hampden, . .	6,548,000	33,627	2	1	2
Franklin, . .	5,452,000	28,655	1	1	2
Berkshire, . .	6,744,000	29,101	2	1	2
Norfolk, . .	10,229,000	50,399	3	2	3
Plymouth, . .	11,346,000	46,253	2	2	3
Bristol, . . .	7,576,000	58,152	3	1	3
Barnstable, .	3,500,000	31,109	1	1	2
Dukes County,	534,000	3,785	1 } }	1	1
Nantucket, .	3,895,000	9,048			
Total, . . .	\$ 208,360,000	701,331	40	40	40

* By the valuation of 1840, the number of Senators in Suffolk, would, on a purely valuation basis, be about 20, and the number from some of the other counties proportionably diminished.

The next proposition contained in the amendment now under consideration, relates to the House of Representatives, and is not entirely free from difficulties. That the present number of the House of Representatives is *too large*, is a fact that few will presume to deny. But how shall it be reduced?

The proposed plan gives to each town, having 1200 inhabitants, one representative every year, and towns having 3600, two representatives, and so on:—2400 being the mean increasing number for an additional representative. Towns having less than 1200 inhabitants are to be represented as often in ten years as 160 is contained in the number of inhabitants in such town; and also a representative the year in which the State valuation is taken.

By this scheme of representation, the average number of representatives, which by the census of 1840, can be elected, will be about 360—and the probable average number that will be elected annually about 340; so that the general attendance in the House, will be not far from 300 members,—a number not too large for the convenient and prompt despatch of business,—and still not so small as to render the chance of bribery and corruption in any way probable. Those states which have small numbers in the popular branch of their Legislatures, have experienced evils, which Massachusetts, even with her very numerous House of Representatives, has escaped. A number less than from 300 to 350 for the House of Representatives, your Committee cannot recommend.

The great objection to this plan of representation is, that it has not purely a population basis. But when it is considered that, for more than 200 years, the people of this State have had a town representation,—and that they regard these little municipalities with a degree of veneration

tion and respect hardly equalled ;—when we consider that the united influence of the talents, wealth, and numbers of the larger towns, overbalances the slightly increased number of the country delegation ;—and when it is remembered, that repeated attempts to introduce a district system of representation, has always failed (and we most devoutly hope it ever will) ; and further, when we reflect that a plan of representation, in most respects, similar to that now proposed, received the sanction of the Convention of 1820, after mature deliberation ;—considering all these circumstances, your Committee are of the opinion, that the plan here proposed will be as nearly equal and satisfactory to the people as any that can be devised.

Another circumstance, much in favor of the proposed amendment, relating to the House of Representatives, is, that it provides, that as the population of the State shall increase, the number of inhabitants which shall entitle towns to send one or more representatives, is also increased ;—and thus the House of Representatives will be continued nearly of the same number.*

The other parts of this Article of Amendment, relate to a choice of Counsellors direct from the people,—thus omitting the farce, which, agreeable to our present Constitution, is yearly performed, of choosing for Councillors a set of men, first from the Senate, who are not expected or desired to serve in that capacity. It also abolishes the provisions of the Constitution which require the possession of a certain amount of property necessary to hold the office of Governor, Senator or Representative. To both

* Since the foregoing part of this Report was prepared, the Committee have had the pleasure to learn, that the sentiments contained in His Excellency, the Governor's Address to the Legislature, upon the subject of the Amendments of the Constitution, agree most entirely with the principles and recommendations contained in this Report.

of the last mentioned amendments, the Committee give their unqualified assent.

Taking, therefore, all the alterations proposed in this Article of Amendment of the Constitution, herewith reported;—considering that some of them are highly important, and all of them, as your Committee believe, conducive to the best interests of the people, they therefore respectfully recommend its adoption.

By order of the Committee,

HENRY W. CUSHMAN, *Chairman.*

Note. In Committee, twelve were in favor of this article of amendment, and two opposed to it.

ARTICLE OF AMENDMENT.

A census of the inhabitants of each city and town, on the first day of May, shall be taken, and returned into the Secretary's office, on or before the last day of June, of the year one thousand eight hundred and forty, and of every tenth year thereafter, which census shall determine the apportionment of Senators and Representatives for the term of ten years.

The several Senatorial Districts now existing, shall be permanent. The Senate shall consist of forty members: and in the year one thousand eight hundred and forty, and every tenth year thereafter, the Governor and Council shall assign the number of Senators to be chosen in each district, according to the number of inhabitants in the same. But, in all cases, at least one Senator shall be assigned to each district.

The members of the House of Representatives shall be apportioned in the following manner: Every town or city containing twelve hundred inhabitants, may elect one Representative; and two thousand four hundred inhabitants shall be the mean increasing number which shall entitle it to an additional Representative.

Every town containing less than twelve hundred inhabitants, shall be entitled to elect a Representative as many times, within ten years, as the number one hundred and sixty is contained in the number of the inhabitants of said town.

“Such towns may also elect one Representative for the year in which the valuation of estates within the Commonwealth, shall be settled.”

Any two or more of the several towns may, by consent of a majority of the legal voters present at a legal meeting, in each of said towns respectively, called for that purpose, and held before the first day of August, in the year one thousand eight hundred and forty, and every tenth year thereafter, form themselves into a Representative District, to continue for the term of ten years; and such district shall have all the rights, in regard to representation, which would belong to a town containing the same number of inhabitants.

The number of inhabitants which shall entitle a town to elect one Representative, and the mean increasing number, which shall entitle a town or city to elect more than one, and also the number by which the population of towns, not entitled to a Representative every year, is to be divided, shall be increased respectively, by one-tenth of the numbers above-mentioned whenever the population of the Commonwealth shall have increased to seven hundred and seventy thousand, and for every additional increase of seventy thousand inhabitants, the same addition of one-tenth shall be made respectively to the said numbers above-mentioned.

In the year of each decennial census the Governor and Council shall, before the first day of September, apportion the number of Representatives which each city, town, and Representative District is entitled to elect, and ascertain how many years within ten years, any town may elect a Representative, which is not entitled to elect one every year; and the Governor shall cause the same to be published forthwith.

Nine counsellors shall be annually chosen from among the people at large, on the first Wednesday of January, or as soon thereafter as may be, by the joint ballot of the

Senators and Representatives assembled, in one room, who shall, as soon as may be, in like manner, fill up any vacancies that may happen in the Council, by death, resignation or otherwise. No person shall be elected a counsellor, who has not been an inhabitant of this Commonwealth, for the term of five years immediately preceding his election; and not more than one counsellor shall be chosen from any one Senatorial District in the Commonwealth.

No possession of a freehold or of any other estate shall be required as a qualification for holding a seat in either branch of the General Court, or in the Executive Council.

TABLE—*shewing the number of Representatives to which each County would be entitled by the proposed Amendment, and also according to the Population of Counties, assuming 340 to be the total number of the House.*

COUNTY.	No. of Representatives by proposed Amendment.	No. of Representatives according to the Population of the County.
Suffolk,	34	40
Essex,	42	46
Middlesex,	49	48
Worcester,	53	47
Hampshire,	16	15
Franklin,	17	14
Hampden,	17	16
Berkshire,	20	18
Norfolk,	23	25
Plymouth,	21	22
Bristol,	28	28
Barnstable,	14	15
Dukes County,	2	2
Nantucket,	4	4
	340	340

