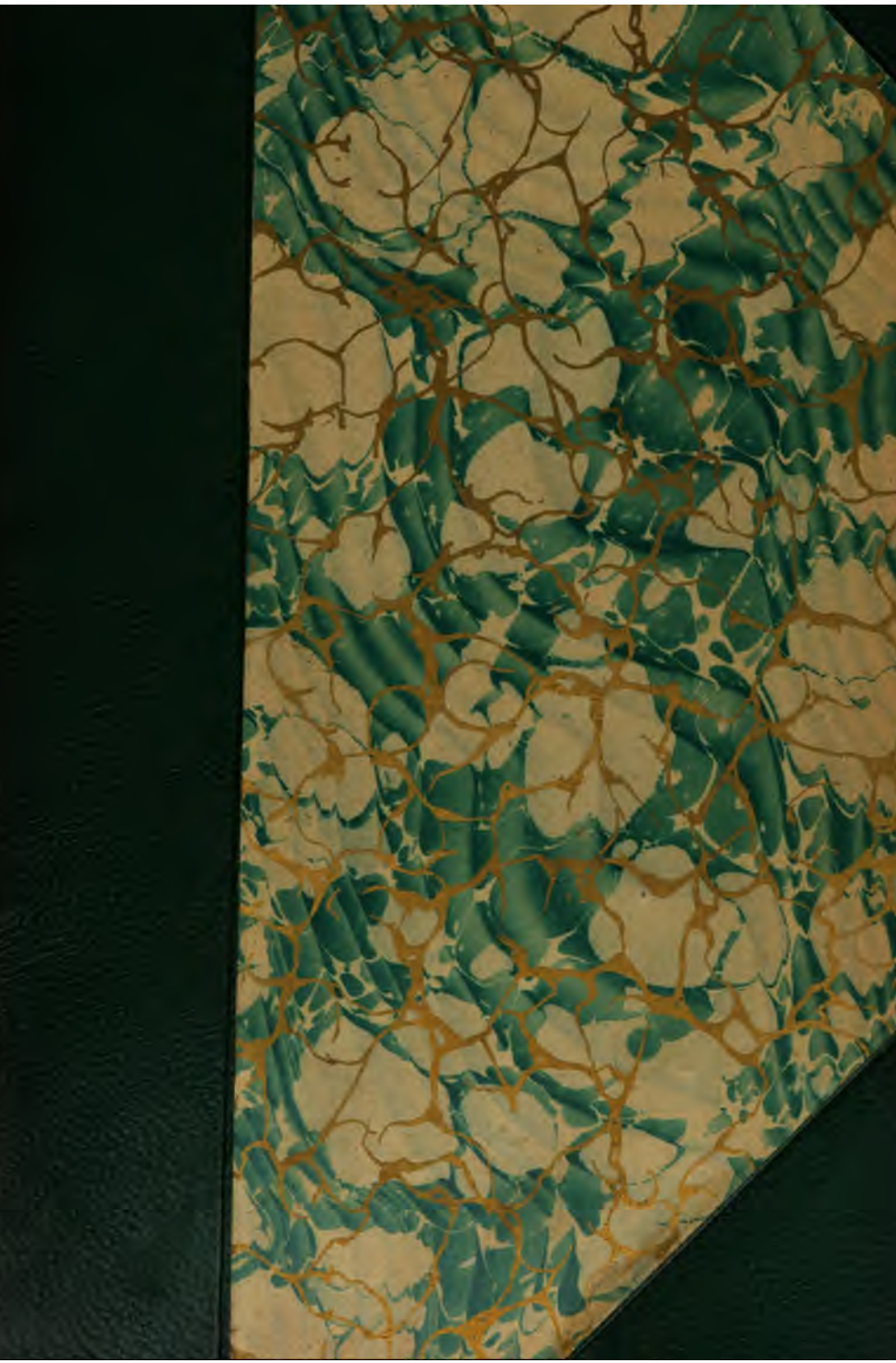

SPEECH

OF

HON. DANIEL CHIPMAN,

DELIVERED IN THE

CONVENTION HOLDEN AT MONTPELIER,

ON THE SIXTH OF JANUARY 1836.

WHILE IN COMMITTEE OF THE WHOLE ON THE PROPOSED ARTICLES OF AMENDMENT TO THE CONSTITUTION, CONSTITUTING A SENATE.

VERMONT— "*With all thy faults I love the still.*"—

MIDDLEBURY:
PRINTED BY E. R. JEWETT,

1837.

Mr. Chairman:—

The momentous question before the committee has been so ably discussed, that I rise under unfeigned embarrassment, and I should not have asked the committee to listen to any remarks of mine, had I not witnessed, in the whole course of the debate, not only a patient, but an eager attention to every thing which has been said on both sides of the question. This argues well for a favorable result. There seems, indeed, to be something providential in this, and I will not undertake to account for it. We are all sensible how much the mind is biassed by previously formed opinions, and how impatiently we hear any thing said with a view to change such opinions, nor can we patiently listen to a protracted argument, in support of an opinion which we have previously formed—we feel that enough—too much has already been said.

When members of the house of representatives assemble, they do not even know what subjects will be presented for their decision; they therefore generally enter upon the discussion of subjects with minds wholly unbiassed—on the other hand we had for months before we assembled, the proposed amendments to the constitution in our possession, had examined them, and it must be supposed, that most of the members had, not only formed, but what is more, had expressed an opinion respecting them, and yet I must say that I never before witnessed any public assembly hear so patiently, or give such unremitted attention. This emboldens me to express my views on the subject, and to express them fully, even at the hazard of repeating some things which have been better said by others.

Mr. Chairman,—It is proposed to abolish those articles of the present Constitution which establish the executive and legislative departments of the government and define their powers, and to adopt the several articles proposed as substitutes.

The first subject of enquiry then is, what is our present constitution, and what has been its operation; or, to simplify the subject of enquiry, with what legislative powers were the council vested by the constitution, and have the powers with which they were vested, proved a sufficient check on the house of representatives, or have they proved insufficient; by reason of which the house have encroached on the powers of the council and assumed the exercise of powers not granted them by the constitution? When that shall have been satisfactorily ascertained, we shall be prepared to examine the articles proposed for adoption now under consideration.

The 2d Section of the constitution is in these words—"The supreme legislative power shall be vested in a house of representatives of the freemen of the Commonwealth or State of Vermont."

The 3d Section is in these words—"The supreme executive power shall be vested in a Governor, or, in his absence a Lieutenant Governor and Council." The 9th Section grants certain specified powers to the House of Representatives, styling them the General Assembly of the State of Vermont—among which is the power to prepare Bills and enact them into Laws. The 11th Section grants to the Governor and Council certain executive powers.

The 16th Section provides a check upon the House of Representatives by granting certain powers in legislation to the Governor and Council in the following words—"To the end that laws, before they are enacted, may be more maturely considered, and the inconvenience of hasty determinations, as much as possible prevented, all bills which originate in the Assembly, shall be laid before the Governor and Council, for their revision and concurrence or proposals of amendment, who shall return the same to the Assembly with their proposals of amendment, if any, in writing; and if the same are not agreed to by the Assembly, it shall be in the power of the Governor and Council, to suspend the *passage* of such bills until the next session of the legislature."

So in the Constitution of the United States, the first section provides that all legislative power, therein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. The 7th Section restricts that power, by giving the President a qualified negative upon all bills which pass the two Houses of Congress. And is there any thing incongruous in this? to grant supreme power in legislation to the Assembly in the one case, and afterwards in a subsequeut section, limiting and restricting that power, by granting certain specified powers to the Governor and Council; or as in the other case, in granting to Congress *all* legislative powers, and afterwards in a subsequent section, restricting that power, by giving to the President a qualified negative?

Great stress has been laid upon the power specifically given to the assembly to prepare bills and enact them into laws, but this power was clearly given to Congress by the second section, above recited. And if any one make a distinction between *all* legislative power and *supreme* legislative power, it is as unfounded as it is blasphemous. That the framers of the constitution, considered the Governor and Council a constit-

uent part of the legislature, is manifest from the 27th section which is in these words—"The Treasurer of the State shall, before the *Governor and Council*, give sufficient security to the Secretary of State, in behalf of the *General Assembly*, and each High Sheriff before the first Judge of the County Court to the Treasurer of their respective counties, previous to their respectively entering upon the execution of their offices, in such manner and in such sums, as shall be directed by the *Legislature*." This will be more perfectly apparent by and by when we shall show, that the Governor and Council were, by the Constitution, authorized to originate bills; but it is already too manifest to admit of any further expense of time on the subject, that the 16th section confers on the Governor and Council certain legilsative powers, as a check on the Assembly; and the only question is, what is the extent of those powers? This is to be ascertained by recurring to the section to find what is the most natural and obvious meaning of the words—and if the meaning be at all doubtful, we must resort to the contemporary construction given it, by the framers of the constitution. There is only this clause in the section which it is necessary to notice—"It shall be in the power of the Governor and Council to suspend the *passage* of such bills until the next session of the legislature." Now is not this the most natural and obvious meaning of the clause, that as the passage of such bill has been suspended, it remains before the house in the same state as any other bill which has not passed and become a law—and that to pass the bill at the next session, it must go through all the forms pointed out by the constitution for the passage of other bills? If not, if such bills can be passed by the House and become laws without being sent to the Governor and Council, we virtually add to the clause of the section above recited the following: and if such bill again pass the Assembly it shall become a law. But this cannot be the true reading of the section. The framers of the constitution having, from experience, during the first septenary, become deeply sensible of the evils arising from the crude and hasty decisions of the Assembly, and of the necessity of providing a check upon them in the passing of laws, introduced the 16th section as a remedy. Now it is a rule in such cases, and every man of plain common sense will apply it, even though he never heard of the rule—that if the words of a remedial clause render the meaning doubtful, it is to be so construed as to suppress the mischief, in this case, the crude and hasty decisions of the Assembly—and to advance the remedy that is to allow the Council that power which is necessary to attain the

end which the framers of the constitution had in view, and which they so emphatically expressed. Instead of pursuing this course, the Assembly have virtually added a clause to the section to advance the mischief.

Mr. Chairman,—The construction which I have given to the 16th section may to some appear so plain and satisfactory, that they will not patiently hear any thing further on the subject; if there be any such, I beg them to reflect that there may be others, who are not yet satisfied with the construction which has been given. Permit me then to take another view of the subject, which, it is believed. will remove all doubts from the mind of every one. But before I proceed farther, it seems necessary to state, that whenever I speak of our present constitution, I refer to the constitution as amended, and adopted in the year 1786, for, in the statute book, it appears to have been adopted in the year 1793. This may be explained in few words.

The first constitution was adopted in the year 1777 and the Government was organized under it in 1778. By that constitution it was provided that all bills of a public nature, should be sent to the Council for amendment, and then be published for the consideration of the people, before they should be enacted into laws by the Assembly.

At the end of the first septenary, in the year 1786, the constitution was amended by inserting the 16th section, and in short, by placing it precisely on its present footing, as it respects the executive and legislative departments. At the end of the second septenary, in the year 1793, a convention was again called to amend the constitution. The council of censors proposed amendments, making an entire new frame of government. They proposed to divide the legislature into two co-ordinate branches, by constituting a Senate as is provided by the articles now under consideration, but the amendments were rejected by the convention except some of minor importance—the 17, 18, 19 and 30th sections were added, and the 26 amended, and the constitution thus amended was adopted anew. This is sufficient to show that we are to commence with the year 1786 to ascertain what was the contemporaneous construction of our present constitution, as it respects the legislative departments. And here sir, it may be well to advert to the great change which has taken place since that period in the management of our political concerns. At that time every freeman felt a deep interest in all elections. The independence of the State had not then been acknowledged, either by

Congress, or any of the States, and New York still asssserted her claim, not only to jurisdiction, but to the farms on which we lived. And each one knew that if his neighbor lost his farm, his own must go with it; hence individual and public interest were identified. Each one felt that a perfect union of councils and efforts were indispensible to their safety. Of course there could be no political parties, but all were united at elections in selecting the most wise and talented men to fill the various offices. And as rotation in office, one of the modern political humbugs, had not then been conjured up, and as in their own private concerns, they never dismissed a man merely because he had served them, for a long time faithfully, but were sure to retain him, even at the expense of higher wages. So they were sure to continue in office, all those who had proved both capable and faithful. Add to this that our numbers were then small compared with our present numbers, and the fact is readily accounted for, that a great number of our most able and influential men were, on all occasions, called into the public service. Numbers of the same men who framed our present constitution were members of the convention who adopted it, and constantly members of the Legislature for years afterwards. By this time those who have not had the means of knowing, are anxious to learn what construction these men put upon the constitution—how did the framers of that instrument interpret it? Well, then, from the year 1786 to the year 1826, a period of forty years, no bill ever became a law without the concurrence of the Governor and Council. Whenever a suspended bill again passed the House of Representatives, it was again sent to the Governor and Council as other bills.

The correctness of this course was indeed occasionally questioned by some individual members of the House, who found in the constitution, supreme legislative power conferred upon them, and had inhaled too great a portion of it. But this never pervaded any considerable portion of the members until the memorable year 1826, when, for the first time, the House of Representatives passed a suspended bill, and declared it to be a law without sending it to the Governor and Council.

In the year 1813, there were two bills before the House which had been suspended the session preceding. Mr. Edmund called up one of these bills and moved to pass it. The Speaker turned to the 16th section of the constitution, and observed to Mr. Edmund, that his motion was not in order, that the motion in order was to pass the bill and send it to the Governor and Council—that such

had been the uniform course with such bills, and it appeared to be the only course warranted by the 16th section. But observed to Mr. Edmund that he might appeal to the House and the question could then be be more deliberately examined. He declined doing so, but moved that the bill pass and be sent to the Governor and Council; and I afterwards understood that Mr. Edmund was satisfied with the decision of the chair. Thus we find, sir, a contemporaneous construction of the 16th section of the constitution continued and acquiesced in for a period of forty years, and that as we have already seen, the only fair construction of the section which the words will bear. If this had not settled the construction of that section, how could it ever be settled?

Seldom is an act of the legislature or a written constitution so framed that it will not admit of different interpretations. Now if there be no means by which the interpretation can be permanently fixed, we must ever suffer from a change of the law by every change of Judges—and a change in the constitution by every change of the public Functionaries. For evils so intolerable, a remedy has been provided. When the highest Judicial tribunal has decided what is the true interpretation of a statute, the construction is settled and every one knows for a certainty what the law is. In this way, and in this way only, can a statute continue to be the same uniform law. Otherwise it must have the same effect as various and contradictory laws on the same subject. The effects are the same, nay worse, if the construction of a written constitution must forever remain unsettled.

Fortunately it is not so, but it has been settled by the highest authority, by the Supreme Court of the United States, that a contemporaneous construction of a written constitution, continued and acquiesced in for a period of years, settles the construction, and the interpretation is no longer questionable. For obvious reasons, a practical construction of a written constitution, becomes more binding and is not so readily set aside as a Judicial interpretation of a statute.

There is always a degree of safety in following a practical construction; it leaves things as they are, no disappointment, no violation of rights follows. But by setting aside such practical construction, acts of the legislature may be set aside, which have been in force for years.

This accounts for the strong language made use of by the Supreme Court of the United States in delivering their opinion in the case of Stuart *vs.* Laird 1 Cranch, 299. This case was decided in

the year 1803—14 years after the adoption of the constitution of the United States. The court in delivering their opinion say—"another reason for the reversal of the judgment of the Circuit Court, is, that the Judges of the Supreme Court, have no right to sit as circuit judges, not being appointed as such, or, in other words, that they ought to have distinct commissions for that purpose. To this objection, which is of recent date, it is sufficient to observe, that a practice and acquiescence under it for a period of several years, commencing with the organization of the judicial system, affords an irresistable answer, and has, indeed, fixed the constructions. It is a contemporaneous interpretation of the most forcible nature. This practical exposition is too strong and obstinate to be shaken or contradicted. Of course the question is at rest, and ought not now to be disturbed."

Sir, I will waste no more time on this subject; I have shown that by the most natural and literal construction of the constitution no bill could become a law, without the concurrence of the Governor and Council. I have shown this to be the contemporaneous, and practical construction of the constitution, continued and acquiesced in for a period of forty years, and I have shown from the highest authority that this contemperaneous construction has settled the interpretation and rendered it unquestionable. The conclusion is irresistable—that our present constitution is defective, that the check upon the House of Representatives, provided by the 16th section, has proved wholly ineffectual. The House of Representatives have completely nullified the powers of the Governor and Council. Thus we see, sir, that nullification is not confined to the South, but has penetrated the extreme North. It will I presume be recollected by all, that an absolute and concurring majority held a conspicuous place in Mr. Calhoun's system of nullification—if indeed, system that can be termed which seems at war with all system—and notwithstanding all the light which the luminous mind of the author through on the subject, every one was puzzled with his absolute and concurring majority. Sometimes I thought I had fairly grasped the subject. Still it would elude my grasp. Sometimes it appeared to me that the author had in view a sort of organized anarchy—yet I could obtain no definite idea of such a Government. Sometimes it appeared that he had reference to a state of things somewhere between a city mob and a country mob. Still it seemed probabable that the highminded author had reference to something of a higher grade than that, and I presumed he intended a national mob, composed of sovereign states instead

of individuals. The only remaining difficulty was, how could there be two majorities while, in our Legislature we are not able to make out even one.

But the difficulty at first seemed to be removed, by recurring to the Indians meslin, a little more than half wheat and a little more than half rye, yet I thought and still think that this was descending quite too low for an allustration of that mighty scheme, which was to bring the Government of the United States to a dead stand, and at last was satisfied that the language was oracular, and that the interpretation was designedly hid from the present generation. But after all it happened in this case as in a thousand others, that we had looked over and beyond the subject, and the moment we began to look about us and survey our own condition, an absolute and concurring majority became as obvious as light. The House of Representatives pass a bill by a majority of that body, and it finally becomes a law without the concurrence of any other body on earth; now is not this an absolate majority? But for form sake they send the bill to the Governor and Council, and graciously allow them a clear undisputed constitutional power to concur with the House in passing the bill, but they allow them no other eficient power whatever. Now is not here a concurring majority, and nothing but a concurring majority? Here then is unfolded the great mystery of nullification. If any one say I have trifled with a grave subject, I deny it. I have presented the Legislature under our newfangled constitution, without any cover, or false colouring, nakedly as it is; and if it has become so organized, or rather disorganized, as to be in itself ridiculous, it is no fault of mine, I have had no hand in the matter.

But, Sir, the House have still further encroached on the powers of the Governor and Council. They have denied them the power of originating bills; a power clearly vested in them by the constitution. Time will not permit to enlarge on this subject, nor do I think it necessary.

At the time the first constitution was framed, in the year 1777, it was considered that when a Legislature was constituted, their power was unlimited. No idea was entertained, that the law maing power, could be limited. And all restrictions upon the Legislature, contained in the constitution, were considered merely directory. The idea that the Judiciary, by all considered a subordinate department of the Government, could adjudge an act of the legislature void, as being repugnant to the constitution, never entered the mind of any one. So difficult was it to separate absolute sov-

ereignty, from the law-making power, as they had ever been connected since time began, until separated by the American constitutions. It is unnecessary to pursue this subject farther—enough has been said to evince that men enlertaining these views of the powers of a legislature, would not be very particular in specifying, in the constitution, all the powers which they intended the legislature should exercise. Nor would they be more particular in specifying the manner in which they should be exercised. Accordingly we find that no provision was made in the constitution for a Supreme Court. Nor were the legislature authorized to establish such court? Yet the legislature established a Supreme Court, and their power to do so was never questioned. Nor was any specific power vested in the Governor and Council to originate bills. Yet as many of the leading members, who framed the constitution, had been members of the legislature in Connecticut, and the other colonies, where bills originated as well in the upper, as lower Houses, as they were then termed, they considered it a matter of course, that bills would originate as well in the Council, as in the Assembly. Accordingly we find, that at the first session of the Legislature under the constitution, as many bills originated in the Council, as in the Assembly. And this contemporeneous construction of the constitution, was continued and acquiesced in, for more than half a century.

In the year 1784 a law was passed directing the mode of passing laws, which originated in Council, which was revised in 1797, and still continues in force, or rather unrepealed, for the Assembly have abrogated it by refusing to receive such bills from the Council. At the end of the first septenary in the year 1786, the 16th section of the present constitution was adopted, directing the mode of passing bills originating in the Assembly but no express provision was made for bills orininating in the Council—that was settled by practice, and the law then in force. And this practice the framers of the constitution recognize and adopt, when they say, All bills originating in the Assembly—(implying that they might originate also in the council) as clearly as though they had made express provisions for it in a separate section. Here then sir, is another striking instance of encroachment on the powers of the Council, by the House of Representatives, proving that no sufficient check upon that House is provided in the constitution. And will any one say that the fault has been in the people and not in the constitution? That the people, as is too often the case, have been wanting to themselves, that they should have elected better men for their Representatives? Not so, it is because they were obliged to elect

men and nothing but men, partaking of the common nature of man, and you must either amend the nature of man or amend your constitution.

Man is so constituted, that it is neither safe for himself nor for the community, that he be freed from all restraint. Place him in so high a station, (say that of an absolute monarch) that he has no regard for character, no regard for public opinion, and ten to one, he is a bloody tyrant. On the other hand, reduce him so low that he has no regard for character, and he is at once a brute. Men of the latter class we often observe among the victims of intemperance. It will be said, that men of this description have never been members of the House of Representatives—true, and we must go a step farther for an application of the principle to the members of that House.

It has been observed ever since men associated and acted together in public assemblies, that responsibility is lessened in proportion to the increase of numbers; by responsibility I mean, regard for character—a regard for public opinion. The want of responsibility which is ever witnessed in numerous Assemblies arises in part from the fact, that the greater the number, the greater the chance that the part acted by any one, will not be discovered, still more from the fact, that if one alone bear the blame of a transaction, he feels it to be a heavy burden; if another share the blame with him, it eases him of a great part of it; if that other be a person of higher standing than himself, he is eased of more than half his burden. It follows, that when more than two hundred are acting together in the House of Representatives responsibility is so devided, that it sometimes seems utterly lost. So much so that a regard for character, a fear of blame is wholly powerless, to check any passion that may be excited. I have witnessed many striking instances of this in the House of Representatives, one of which affords so striking an illustration of the principle which has been advanced, that I will take the liberty to give a concise relation of it. It can be done in few words. At the session of the Legislature in the year 1798, when I was first a member of the House, a petition was preferred by a man by the name of Strong, stating that he had some years before purchased of the State the township of Salem, as a six-mile-township and paid a certain price per acre for it, and that a part of said township, say one third, had been cut off by the prior grant of Derby and praying the Legislature to pay him a proportional part of the purchase money, with the interest. The petition was referred and I happened to be on the committee. The following facts in support

of the petition were clearly proved, and indeed did not appear to be questioned by any one. In the time of the revolutionary war, the State was destitute of ammunition; and having no money at command, except the Vermont paper money, which was worth nothing abroad, they sent Thomas Tolman, (who was a witness before the committee) to make sale of a township of land, who sold to the petitioner the township of Salem, as a six-mile-township, at an agreed price per acre, received the purchase money, purchased the ammunitions and returned. That a part of the township of Salem was cut off by Derby and lost to the petitioner, was proved by the charters, and survey of the two townships. And the committee unanimously agreed in a report that the prayer of the petitioner ought to be granted. When I returned to my quarters, Gen. Chamberlain, who had been many years a member of the Legislature, enquired whether the committee had made a report on Strong's petition; I replied, that the committee had reported in favor of the claim, that it was a very clear case, the committee had no doubt about it. He smiled and observed that the House would have so many doubts abont it, that they would reject the report, and dismiss the petition. That the petition had been presented every year, for ten years; that the committee had, at every session, reported in favour of the claim, and the House had in every instance rejected it. I then observed that I would get the petition and report, from the Chairman, and report the facts; and then the House could not refuse to pay the man his money. I did so, and being young, and somewhat ardent, I had no doubt that I should be able to sustain the report. And when it was called up, I rose to make my maiden speech in support of it; I calculated to be very concise, as it had not then become fashionable to estimate a speech by running measure. When I took my seat, the House was in a perfect bustle; many rose at once, and each seemed anxious to give the report the first blow. When they had exhausted themselves, I undertook to answer their objections and sustain the report, and did it very much to my own satisfaction; but that was of little consequence, as it wholly failed of satisfying a majority of the House. When the question was put I looked with intense anxiety about the House, as hand-voting was then in vogue, and to my utter astonishment, there was only here and there a hand cautiously raised about as high as the shoulder; but when the negative was called for, the House fairly bristled with hands raised to the highest extent in the most determined manner; saying most distinctly, that we can guard the Treasury against the claim and we will do it. I

then perceived that hand-voting is a far better index of the temper of the voter, than your ayes and noes. So the petition was dismissed, and the treasury protected. But the petitioner being one of those men who always rise with fresh vigor after a defeat, preferred his petition again the next session, and obtained the amount of his just claim. And it was well ascertained, that during the eleven years that the claim had been before the Legislature, nearly half the members of the existing House had been on the committee to whom the petition had been referred, who had to a man decided in favor of the claim. Those members then, who with a great number of others in the House, voted against the claim, did not feel that they had given their individual opinion against it. Of course when afterwards on the committee, had not to retract an opinion before given, but without any difficulty, decided according to the justice of the case, in favor of the claim. But when any one as a member of the committee decided in favour of the claim, he felt it to be his individual opinion, and would not afterwards retract it, in the House.

Now in my view, this is worth a volume of reasoning on the subject; it shows to a demonstration, that responsibility is weakened by an increase of numbers, and that when so divided as in our numerous House of Representatives, it seems utterly lost.

There is still another view which may be taken of this subject, showing the danger of committing legislative powers, to the most numerous branch of the Legislature, without an efficient check upon them. Experience has shown, that the representatives of the people in a Legislature, with unlimited powers, form a body dangerous to liberty.

They consider themselves as the people collected in a body, and are disposed to exercise all that power which such a body would in fact possess. Besides it is the business of a legislator, not to enquire what the law is to seek after a rule by which his conduct is to be governed, but to decide what the law shall be; and he naturally imbibes a habit, and temper of mind, impatient of all control, or limitation of power.

From what has before been said, it is obvious that our Legislature would be greatly improved by reducing the number of members in the House of Representatives. Indeed this should be the first step were it practicable. For I presume every one will admit that the number is too large, by more than one half; and were there nothing in the way of doing it, we should one and all, agree to reduce the number as low as one hundred. The first

council of censors, men, who in their address to the people, left an imperishable monument of their enlarged, and statesman-like views, proposed two remedies for the fickleness and instability of the Legislature. One was, the conferring of certain powers in legislation upon the Governor and Council, as provided in the 16th section. The other was a reduction of the number of members in the House of Representatives to fifty, but the last provision was rejected. We therefore do those men great injustice, if we say they were unwise in considering that the provision in the 16th section would prove an efficient check upon the House—for probably if the number of members in the House had been reduced to fifty, agreebly to their recommendation, that House would never have encroached on the powers of the Council.

But for reasons which are obvious to all, and which have been fully stated in the course of the debate, the town representation must be continued; and although grossly unequal, it cannot be equalized by allowing additional members to the large towns without having a Massachusetts House of some seven hundred members. What, then, shall be done ? The great inequality in the representation, is a violation of all just principles of representative government. The large towns fail to be so, and there is no doubt that this inequality will increase, instead of being diminished and some remedy must and will at some future day be provided.

Living as I do in one of the small towns, I have examined the subject with great care, and I hope impartially.

The whole power of legislation is now vested in the House of Representitives, where this inequality is found. This is an advantage which some say the small towns ought not to give up willingly.

But it will be found in this case as in most others, where an unjust advantage is obtained, either by accident or design, that by holding on to it, we turn it into a disadvantage. This is emphatically true, in relation to the government under which we live. Deny to any portion of the people equal privileges with the others, and you at once destroy that harmony, that perfect union of councils, and efforts which are so indispensible to the healthful, and beneficial action of the government, and every one should reflect, that all the evils resulting from this, must be shared alike by all; as well by those who live in the small, as in the large towns.

It is well known, that laws are frequently passed by our legislature, against the will of a minority of members, who represent a great majority of the people of the state. When complaint is made of this, every member from the small towns, must feel em-

barrassed, and shrink somewhat within himself! and how would he be relieved, by being able to say, in answer to this complaint, by the members of the large towns, "We may have done you injustice, if we have, it will all be set right in the Senate where you are fully represented."

Again, when we speak of the inequality of representation as injurious to the large towns, we go on the ground, that the large and small towns have different interests, which may be differently affected by the same legislation. Now, suppose the people be represented in both branches of the Legislature, according to their numbers, might not the interest of the large towns, at some future day, lead to a course of legislation, injurious to the small towns? It seems to me it might be so.

But how will it be if we have a senate as proposed? The interests of the small towns, will greatly pervail in the House, and those of the large towns in the Senate. Thus the interest of all will be protected against legislation, a protection which has heretofore been considered by many, more valuable, than any which the government has afforded. If this be a correct view of the subject, and I believe it is, it is not to be regretted, that each town is entitled to a representative, without regard to numbers.

The gentlemen from the large towns may not feel satisfied with this. They may still insist that it is wrong in theory, to have the representation so unequal in either branch of the Legislature. It is so; and so are many other things wrong in theory, which nevertheless work well in practice.

Having examined those articles of the constitution by which the Legislature was organized, and having shown that the check upon the Assembly, which they provided, has proved wholly useless, as the Assembly have assumed upon themselves the whole power of legislation, and having shown also, that the constitution of a Senate, as proposed, will not only remove all valid objections against the unequal representation in the House—but will provide a salutary check upon our numerous House of Representatives, it remains then only to enquire somewhat more particularly, why it is, that in a republican government it has ever been found necessary to divide the Legislature into two co-ordinate, branches, with equal powers in legislation. To ascertain this, let us first enquire, why it is, that every form of government appears imperfect when put in operation? To say it is because it is the work of imperfect men, is rather an excuse for not answering the question, than the answer which we are seeking, for it still remains to be ascertained,

whether it arise from a want of ingenuity and skill in framing the constitution—or is it because the government, however constituted, must be administered by frail and imperfect man. Is it because there is a want of ingenuity and skill, to construct the machine so nicely proportioned, and so accurately adjusted in all its parts, as to perform, with regularity and uniformity, all the required movements, applying to it a moderate and uniform propelling power, or is it because the only propelling power at command is so irregular, and at times so violent, as to tear the machine to pieces? The latter is the great difficulty.

In a representative government, one branch of the legislature must of necessity be somewhat numerous, as it is necessary, that not only the various interests of the people be represented, but their passions and prejudices also. For how can it be told whether the operation of a law will be salutary, or otherwise, unless the passions and prejudices of the people, be known and understood?

The members of such a numerous body, will bring with them, when they assemble, and will be actuated by all those passions and prejudices; and when met, they will be still further excited and influenced by sympathy, imitation and example. We have before seen why it is that such bodies are exposed to be governed by their passions, without restraint. How irregular then, and at times, how violent must be the movements of such an Assembly, and yet this must be the only propelling power in a republican government. How obviously necessary then, is a ballance wheel in such a machine, to moderate and equalize the movements.

A Senate, having equal powers with the House, and composed of a smaller number, has, with uniform success, been applied as the ballance wheel. It has been applied in every State in the Union except this. Mr. Chairman, not being well able to proceed further at this time, I propose to conclude my remarks to-morrow, if the Committee will grant the indulgence.

[On Saturday afternoon, Mr. Chipman proceeded as follows:]

Mr. Chairman, I will now undertake to answer the question which has been so repeatedly asked—Why have we not long since amended our Constitution, if it be indeed so defective? The first answer which will occur to every one, is, that the constitution did not appear so grossly defective, until the year 1826, when the House of Representatives, broke over all constitutional restraint, and assumed to themselves the whole power of legislation. And we have had no opportunity to amend it, since that fact was gen-

erally known. For the next year when the last Convention met, but a small portion of the people had any knowledge of it. But to give a full and satisfactory answer to this question, it becomes necessary to recur to the history of the Constitution. By the constitution of 1777, no legislative power was vested in the Governor and Council. All bills were to be sent them once, for amendment only. At the end of the first septenary great complaints were made of the fickleness, and instability of the legislature, and fluctuation of the laws. And as the people had not then become attached to the constitution by a blind habit, and feeling themselves fully capable of self government, they entertained not a doubt that they were as capable of improving their constitution of government, as they were of improving their condition in any other respect. And they did very essentially improve it. Since which the constitution has remained unaltered by the people, as it respects the legislative department.

At the end of the second septenary in the year 1793 the Council of Censors proposed an entire new frame of government. They proposed to constitute a Senate in place of the Governor and Council, as is proposed by the amendment now under consideration of the committee. Those amendments were rejected by the convention, not because the people had in the seven years preceding become attached to the constitution by habit, but because the amended constitution provided, that no town should be entitled to a representative, unless it contained forty families, and because the Senate was apportioned to the different counties according to their population.

At that early time, in the year 1793, a great portion of the towns north of the counties of Rutland and Windsor, contained less than forty families, and as we had even in those days, some genuine demagogues, they undertook to render themselves popular, by telling the people in that region, that if the proposed amendments to the constitution should be adopted they would loose their whole night in both branches of the legislature. And so successful were they, that every member of the convention from that section of the State except two, voted against the amendments. Judge White of Georgia, who had been one of the Council of Censors, and Judge Law of Colchester only voted in favour of them. Yet so unanimous were the four southern counties in favor of the proposed amendments, that after a session of a week or ten days, there was but a small majority of the convention against them. I happened to be a member of this convention, and I well

recollect the grounds on which the adoption of the articles, constituting a Senate, in place of the Council, were urged. It was said that experience had shown, that in dividing a Legislature, each branch ought to be vested with equal powers; that the Senate should have a direct negative upon all bills which passed the House, instead of the indirect negative vested in the Council. That there should be a more full representation of the people in a body possessing such powers in legislation—and that the members should be so elected as to be directly responsible to the people—that the Senators would be thus responsible to the people of their respective counties by whom they were elected—that the Council being only twelve in number, and being elected by a general ticket, naturally considered that their re-election would depend on the members of the most numerous body, the House of Representatives; as they would return among the people, and by their influence the Council would be elected. So that in fact the Council were responsible to the House of Representatives, and not to the people, and that therefore they had not and would not exercise any power with which they might be vested, as a check upon the House of Representatives. Who that has witnessed the proceedings of the Council, from that day to this has not seen this fully verified. In that convention, the objections against amending the constitution because we have been doing well under it, and that if we once begin to amend it, we shall amend it all away, were made by no one. It was long after this period, in the year 1814, when the next convention was called, and when we had lived under our present constitution for twenty eight years, that we first heard it said and repeated, that as we have been doing well under our present Constitution, it is unwise to amend it—and that if we once begin to amend it, we shall soon amend it all away. These objections have been so long and so often repeated, that they are received as proverbs; and as they utterly preclude all sober and rational examination of the constitution, and of the course of legislation under it, it is really amusing to observe what a variety of other unfounded, and inconsistent objections are conjured up.

Some gentlemen admit that one great difficulty in a republican government, is, that there is always too much legislation—and are as loud as any others in their complaints of a constant change and fluctuation of our laws; they say "we have all along, had too much legislation," and yet oppose a Senate. Now will any gentleman rise in his place, and say that he believes as many bills will pass both the House and Senate, as would pass the House alone?

If so, if all the bills which pass the House, will also pass the Senate, where is the aristocracy, which strikes other gentlemen with so much terror?

It is said by one gentleman, as an objection to the proposed amendments, that we do not wish to be shackled by too much regulation. So we say that too much regulation by the legislature, is one of the greatest evils, which can be inflicted on a people; our great object is to provide a remedy, to put a final end to legislative quackery, that the people may have some repose in the management of their own concerns, in their own way.

When any thing is said in favor of a Senate, one gentleman cries out, monopoly. Now it is to be presumed that the gentleman understands the meaning of the word; we shall of course be sure of his vote, when he shall perceive that the House of Representatives have monopolized the whole power of legislation, and that we are attempting to break up that monopoly, by dividing the power between the House and the Senate.

Another gentleman says the House have a great many checks upon them at present—that they are checked by their committees. I have already shown how this is, that instead of being checked by their committees, very unfortunately for the cause of justice, they check their committees.

Another gentleman says, the Senate will be an aristocracy. Let us examine this a moment. Suppose the Council of Censors had proposed that the House of Representatives, when met, should elect a Council of thirty from their own body, and that every bill before it should become a law, should pass the House and Council. Would there be any aristocracy in this? I cannot perceive any in such division of power and yet, I confess, sir, it is not quite *democratic* enough to suit my taste. I would have the people themselves elect this Council of thirty, and then should any one be so whimsical, as to move to erase the word Council, and to insert the word Senate, I would not object.

Now, Mr. Chairman, how is all this to be accounted for? What has conjured up all these unfounded objections against amending the Constitution? We speak of blind instinct, and with the same propriety we may speak of blind habit; for in nothing does habit appear so near akin to instinct, as in regard to the government under which we live. Without this trait in the character of man, he would not be fitted for any government. Without it a despotic government could not exist—and a republican government would indeed soon be amended all away. Influenced by this habit, we

hear gentleman say, why amend the constitution? It is the very best constitution in the United States. They say it feelingly; it comes from the very bottom of the heart; it does one good to hear it; it is the language of pure patriotism; it arises from a strong attachment to our institutions; to the constitution as it is, and has been, ever since they came upon the stage. And no one can endure the least change or alteration in the object of his most ardent affections; he will not admit of the removal even of that which is to all others a deformity—and we can all say with more truth than poetry, Vermont

"With all thy faults I love thee still."

Mr. Chairman, we have had a very striking instance of the force of habit, in attaching the people to the old Judiciary System. They had been so long habituated to attending the old County Courts, either as jurors, parties, or witnesses, or to enjoy the excitement and bustle peculiar to those courts and those times, that when those courts were abolished they were so dissatisfied that the legislature were compelled to restore them. In the mean time the habit of attending them, had, in the course of seven or eight years, been greatly weakened, and when the object of their attachment was again restored to them, it had lost much of its attractions, and they soon abolished that worse than useless appendage to our Judiciary system, never to be revived.

And will any one at this day undertake to account for the strong attachment of the people to that burthensome, and I may add demoralizing system, in any other way? Will any one doubt that it was the mere force of habit, that rendered the people so averse to a change? What but the force of habit so strongly attached the people of Connecticut to their old colonial charter, that they were never able to form a constitution until the year 1818? Surely it was not that they revered that charter, because it issued by the special grace, certain knowledge, and mere motion of his most gracious Majesty—no, they were somewhat too republican for that.

The people of Rhode Island still live under their old colonial charter; several attempts have been made by the intelligent part of the community to form a constitution, but the force of habit had become too strong to be overcome. The people had been so long accustomed to attend an election twice a year, to vote, and to fight, that they could not give it up; hence the phrase, "Rhode Island boxing"—fighting about the ballot box. Thus in Rhode Island we find men, as we find them every where habitually, I may say in-

stinctively attached to the government under which they came into the world. In their convention for forming a constitution, the same feelings have been manifested, the same language made use of, which we have witnessed here. "Why change the government"? "Why form a Constitution while we are doing so well"? "We have the very best government in the United States, the most Democratic government on earth, the people govern in every thing; even in the courts, the people on the jury decide every thing, and the judges, having no other concern in the case, see that the parties have fair play with the jury. "As I was born under the blessed charter of Charles second—I wish to die under it." Now will gentlemen say with what feeling they look upon the people of Rhode Island, thus fastened by blind habit to that old charter, a mere apology for a Constitution? Do they not partake of both wonder and pity? And can we be quite sure that intelligent men in the other States, are not looking upon us with kindred feelings, mixed it may be with a faint hope from the intelligence and patriotism of this Convention.

But gentlemen who are so very sure that we have the best Constitution in the United States, need not go so far as Rhode Island. Let them just cross the Connecticut river into the Granite State. A State where there are more natural born and thorough bred republicans, than in any other State in the Union, except our own Green Mountain State. In both States alike, more than in any other, the body of the inhabitants consist of an industrious, frugal, independant yeomanry; jealous of their rights and prepared, at all times, to defend them. Go then to the most plain sensible man that you can find in that State, and undertake to convince him, that we have the best constitution in America, and undertake to convince him too that he lives under a deadly aristocracy, a Senate, and a permanent Judiciary; that the people are Slaves, as they have given up to the Governor and Council, the whole power of appointment. On the other hand that we live under a free government—that we have retained all the power in our own hands. Our House of Representatives have the whole power of legislation, no Senate to sit as master over them. Instead of a Senate we have a Governor and Council, who have no power to check or control the House of Representatives and are therefore perfectly harmless. The House of Representatives and the twelve Counsellors make all appointments. The judges of our Courts, too are appointed annually. Thus we have a pure Democratic government; we have lived under this government for more than half a century,

and are more and more convinced that it is the best governmen on earth." He will be utterly astonished at this, as he has during his whole life lived under a constitution of government, differing from ours in every department. And having no doubt that the constitution of New Hampshire, is the most perfect that was ever formed, he will at once undertake to prove it to be so beyond all doubt. He will say in the first place, "our House of Representatives is pretty numerous as well as yours, but we like it the better for that; we consider that House as the grand inquest of the State. They bring with them when they assemble all the complaints, grievances, and want of, the people. The members therefore are full of projects in legislation, and our laws would consequently be changed more or less every year, but for the Senate. That being less numerous is a more responsible, and more deliberative body. The Senators being elected by districts, are independent of the House, each being responsible to the people of his own district. All bills, therefore, which pass the House undergo a strict scrutiny in the Senate, and are passed, amended, or rejected, as they judge the public good requires. Besides each House having equal powers, each is sensible that every bill which they pass will be strictly scrutinized in the other, they therefore, very carefully examine it themselves before they pass it. Hence a far less number of bills pass either House, than would pass were there no check upon them. Besides, the people of each district are ambitious to elect as able a man as the other districts, and generally the best men are sent to the Senate—and the two Houses being rivals for the public favor, all their talents are exerted for the public good. And as each House acts under restraint, not being able to pass any bill without the consent of the other, it subdues the temper of the members, and instead of that uncontrolable temper which I have sometimes thought I discovered in your House, it produces a temper of mind, exhibited by a great judge, when he observed, that it gave him great comfort when he had decided a case, to reflect, that it might be examined by another tribunal, that if he had committed an error it might be corrected, and so no injustice would be done. And then we have the best mode of appointments which has been devised in any of the States. The people of each county annually elect a counsellor; these form the Governor's Council, who with the Governor, make all appointments. Each, that is, the Governor and the Council, having a negative upon each other. We hear no complaint of this mode of appointment. Anciently, as I have been told, for it was before my remembrance, the legis-

lature made all appointments. But it produced at every session of the legislature, so much intrigue and corruption, that that mode of appointment was set aside, and the present mode adopted. Our judges, too, hold their offices during good behaviour, for we believe it to be important in every system of government, as far as possible, to bind men by their interest, to perform their official duties faithfully—this is the very best security we can have. Now when a judge is placed on the bench permanently, not subjected to a re-election, it is scarcely possible to conceive that he can have any other object in view, but that of establishing a high character as a learned, independent, and upright judge. So that all classes of men stand on a perfect level before him, having an equal chance for an impartial hearing, and decision. But how is it when the judges are elected annually, as with you, and by the legislature too? A man of influence, say a member of the legislature, is a party in an action with an obscure individual—they come before the court, and if the judges are perfectly upright men, they will rarely feel a desire that the case when fully and impartially examined, may be decided in favor of the influential party. The very idea of any partiality in the case, would strike them with horror. But is it possible that there should not be through the whole course of the trial, an insensible bias in favor of the influential party? And yet I am told that the midling and lower classes in society, who suffer the most under your Judiciary system, are those who are most strenuously opposed to a permanent Judiciary. Let those live under your Constitution who can but give me the Constitution of New Hampshire; and may it go down to my posterity entire and unmutilated?

Thus we see Sir, to whatever people we turn our attention, the same strong attachment to the government under which they have long lived, verifying the truth of what is said in the Declaration of Independence—That mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they have been accustomed. With us it is proved to the letter. And to the question—Why has not our Constitution been amended; if it has all along been so defective, it furnishes a satisfactory answer.

Mr Chairman, feeling grateful as I do for the attention which the committee have given to my remarks, I cannot so unreasonably tax their patience as to proceed further, but must come to a close. If, in the opinion of any, I have discovered too great a degree of earnestness, I only request them to consider, that while a youth I

witnessed the origin and progress of the government. I looked on with intense interest during the long and doubtful struggle for independence. In early life I became a humble actor in the concerns of the government. I was many years a member of the Assembly, where I witnessed an overbearing spirit, impatient of all restraint—yearly increasing with an increasing rage for legislation. A constant change of the laws was the consequence. All the evils of which I might never have known, had I not during the whole period attended the courts, where and where only can the whole extent of those evils be seen and felt. And being fully satisfied that all this arose from a defect in the constitution, I looked with increasing anxiety for the time when it should be amended. But observing that the body of the people, not aware that the evils arising from too much legislation, of which they all along complained, arose from a defect in the constitution, were becoming more blindly attatched to it, and more and more averse to any alteration of it—I despaired of living to see the day when the Constitution would be amended.

But for several years past I have been encouraged. I have seen this blind attachment to a most defective Constitution, gradually giving way before increased intelligence and the light of experience. I observed that in the convention of 1822, only 17 voted for a Senate. That in the convention of 1827, the number was more than doubled, 40 voting for a Senate.

And will any gentlemen say that we have not more than double that number in this convention in favor of a Senate? You perceive then the progress of public sentiment. This shows that the amendments under consideration will be adopted—if not now they must be at the end of this septenary. Why then not adopt them now. Why may I not be permitted to see it done?