

TUESDAY, JUNE 19 – July 21

650 IN COMMITTEE OF THE WHOLE ON THE PROPOSITIONS OF MR. PATTERSON

651 The substitute offered yesterday by Mr. Dickenson being rejected by a vote now taken on it; Con. N. Y. N. J. Del. Ay – 4. Mas. Pa. V. N. C. S. C. Geo. No – 6. Mayd. divided.

652 Mr. PATTERSON's plan was again at large before the Committee.

653 Mr. MADISON. Much stress has been laid by some gentlemen on the want of power in the Convention to propose any other than a federal plan. To what had been answered by others, he would only add, that neither of the characteristics attached to a federal plan would support this objection. One characteristic, was that in a federal Government, the power was exercised not on the people individually; but on the people collectively, on the States. Yet in some instances as in piracies, captures &c. the existing Confederacy, and in many instances, the amendments to it proposed by Mr. Patterson, must operate immediately on individuals. The other characteristic was that a federal Govt. derived its appointments not immediately from the people, but from the States which they respectively composed. Here too were facts on the other side. In two of the States, Connect. and Rh. Island, the delegates to Congs. were chosen, not by the Legislatures, but by the people at large; and the plan of Mr. P. intended no change in this particular.

654 It had been alledged (by Mr. Patterson), that the Confederation having been formed by unanimous consent, could be dissolved by unanimous Consent only. Does this doctrine result from the nature of compacts? does it arise from any particular stipulation in the articles of Confederation? If we consider the federal union as analogous to the fundamental compact by which individuals compose one Society, and which must in its theoretic origin at least, have been the unanimous act of the component members, it can not be said that no dissolution of the compact can be effected without unanimous consent. A breach of the fundamental principles of the compact by a part of the Society would certainly absolve the other part from their obligations to it. If the breach of any article by any of the parties, does not set the others at liberty, it is because, the contrary is implied in the compact itself, and particularly by that law of it, which gives an indefinite authority to the majority to bind the whole in all cases. This latter circumstance shews that we are not to consider the federal Union as analogous to the social compact of individuals: for if it were so, a Majority would have a right to bind the rest, and even to form a new Constitution for the whole, which the Gentn. from N. Jersey would be among the last to admit.

655 If we consider the federal Union as analogous not to the social compacts among individual men, but to the conventions among individual States – What is the doctrine resulting from these conventions? Clearly, according to the Expositors of the law of Nations, that a breach of any one article, by any one party, leaves all the other parties at liberty, to consider the whole convention as dissolved, unless they choose rather to compel the delinquent party to repair the breach. In some treaties indeed it is expressly stipulated that a violation of particular articles shall not have this consequence, and even that particular articles shall remain in force during war, which is in general understood to dissolve all subsisting Treaties.

656 But are there any exceptions of this sort to the Articles of confederation? So far from it that there is not even an express stipulation that force shall be used to compell an offending member of the Union to discharge its duty. He observed that the violations of the federal articles had been numerous & notorious. Among the most notorious was an act of N. Jersey herself; by which she expressly refused to comply with a constitutional requisition of Congs. and yielded no farther to the expostulations of their deputies, than barely to rescind her vote of refusal without passing any positive act of compliance. He did not wish to draw any rigid inferences from these observations. He thought it proper however that

the true nature of the existing confederacy should be investigated, and he was not anxious to strengthen the foundations on which it now stands.

657 Proceeding to the consideration of Mr. Patterson's plan, he stated the object of a proper plan to be twofold. First, to preserve the Union. Secondly, to provide a Governmt. that will remedy the evils felt by the States both in their united and individual capacities. Examine Mr. P.'s plan, & say whether it promises satisfaction in these respects.

6581. Will it prevent those violations of the law of nations & of Treaties which if not prevented must involve us in the calamities of foreign wars? The tendency of the States to these violations has been manifested in sundry instances. The files of Congs. contain complaints already, from almost every nation with which treaties have been formed. Hitherto indulgence has been shewn to us. This can not be the permanent disposition of foreign nations. A rupture with other powers is among the greatest of national calamities. It ought therefore to be effectually provided that no part of a nation shall have it in its power to bring them on the whole. The existing Confederacy does not sufficiently provide against this evil. The proposed amendment to it does not supply the omission. It leaves the will of the States as uncontrouled as ever.¹

6592. Will it prevent encroachments on the federal authority? A tendency to such encroachments has been sufficiently exemplified, among ourselves, as well as in every other confederated republic antient and Modern. By the federal articles, transactions with the Indians appertain to Congs. Yet in several instances, the States have entered into treaties & wars with them. In like manner no two or more States can form among themselves any treaties &c. without the consent of Congs. Yet Virga. & Maryd. in one instance-Pena. & N. Jersey in another, have entered into compacts, without previous application or subsequent apology. No State again can of right raise troops in time of peace without the like consent. Of all cases of the league, this seems to require the most scrupulous observance. Has not Massts, notwithstanding, the most powerful member of the Union, already raised a body of troops? Is she not now augmenting them, without having even deigned to apprise Congs. of Her intention? In fine-Have we not seen the public land dealt out to Cont. to bribe her acquiescence in the decree constitutionally awarded agst. her claim on the territory of Pena.? for no other possible motive can account for the policy of Congs. in that measure?¹

660 If we recur to the examples of other confederacies, we shall find in all of them the same tendency of the parts to encroach on the authority of the whole. He then reviewed the Amphycticonic & Achaean confederacies among the antients, and the Helvetic, Germanic & Belgic among the moderns, tracing their analogy to the U. States-in the constitution and extent of their federal authorities-in the tendency of the particular members to usurp on these authorities; and to bring confusion & ruin on the whole. -He observed that the plan of Mr. Pat-son besides omitting a controul over the States as a general defence of the federal prerogatives was particularly defective in two of its provisions. In the first place its ratification was not to be by the people at large, but by the legislatures. It could not therefore render the Acts of Congs. in pursuance of their powers, even legally paramount to the Acts of the States. And in the second place it gave to the federal Tribunal an appellate jurisdiction only-even in the criminal cases enumerated, The necessity of any such provision supposed a danger of undue acquittal in the State tribunals. Of what avail would an appellate tribunal be, after an acquittal? Besides in most if not all of the States, the Executives have by their respective Constitutions the right of pardg. How could this be taken from them by a legislative ratification only?

6613. Will it prevent trespasses of the States on each other? Of the e enough has been already seen. He instanced Acts of Virga. & Maryland which gave a preference to their own Citizens in cases where the Citizens of other States are entitled to equality of privileges by the Articles of Confederation. He considered the emissions of paper money & other kindred measures as also aggressions. The States relatively to one another being each of them either Debtor or Creditor; The creditor States must suffer

unjustly from every emission by the debtor States. We have seen retaliating acts on this subject which threatened danger not to the harmony only, but the tranquility of the Union. The plan of Mr. Paterson, not giving even a negative on the acts of the States, left them as much at liberty as ever to execute their unrighteous projects agst. each other.¹

6624. Will it secure the internal tranquility of the States themselves? The insurrections in Masss. admonished all the States of the danger to which they were exposed. Yet the plan of Mr. P. contained no provisions for supplying the defect of the Confederation on this point. According to the Republican theory indeed, Right & power being both vested in the majority, are held to be synonymous. According to fact & experience, a minority may in an appeal to force be an overmatch for the majority. In the first place, if the minority happen to include all such as possess the skill & habits of military life, with such as possess the great pecuniary resources, one third may conquer the remaining two thirds. In the second place, one third of those who participate in the choice of rulers may be rendered a majority by the accession of those whose poverty disqualifies them from a suffrage, & who for obvious reasons must be more ready to join the standard of sedition than that of established Government. And in the third place, where slavery exists, the Republican Theory becomes still more fallacious.

6635. Will it secure a good internal legislation & administration to the particular States? In developing the evils which vitiate the political system of the U.S. it is proper to take into view those which prevail within the States individually as well as those which affect them collectively: Since the former indirectly affect the whole; and there is great reason to believe that the pressure of them had a full share in the motives which produced the present Convention. Under this head he enumerated and animadverted on, first, the multiplicity of the laws passed by the several States. Secondly, the mutability of their laws. Thirdly, the injustice of them. And fourthly, the impotence of them: observing that Mr. Patterson's plan contained no remedy for this dreadful class of evils, and could not therefore be received as an adequate provision for the exigences of the Community.

6646. Will it secure the Union agst. the influence of foreign powers over its members. He pretended not to say that any such influence had yet been tried: but it was naturally to be expected that occasions would produce it. As lessons which claimed particular attention, he cited the intrigues practised among the Amphyctionic Confederates first by the Kings of Persia, and afterwards fatally by Philip of Macedon: among the Achaeans, first by Macedon & afterwards no less fatally by Rome: among the Swiss by Austria, France & the lesser neighbouring powers: among the members of the Germanic Body by France, England, Spain & Russia:- and in the Belgic Republic, by all the great neighbouring powers. The plan of Mr. Patterson, not giving to the general Councils any negative on the will of the particular States, left the door open for the like pernicious machinations among ourselves.¹

6657. He begged the smaller States which were most attached to Mr. Pattersons plan to consider the situation in which it would leave them. In the first place they would continue to bear the whole expence of maintaining their Delegates in Congress. It ought not to be said that if they were willing to bear this burden, no others had a right to complain. As far as it led the small States to forbear keeping up a representation, by which the public business was delayed, it was evidently a matter of common concern.

666An examination of the minutes of Congress would satisfy every one that the public business had been frequently delayed by this cause; and that the States most frequently unrepresented in Congs. were not the larger States. He reminded the convention of another consequence of leaving on a small State the burden of maintaining a Representation in Congs. During a considerable period of the War, one of the Representatives of Delaware, in whom alone before the signing of the Confederation the entire vote of that State and after that event one half of its vote, frequently resided, was a Citizen & Resident of Pena. and held an office in his own State incompatible with an appointment from it to Conga. During another period, the same State was represented by three delegates two of whom were citizens of Penna.

and the third a Citizen of New Jersey. These expedients must have been intended to avoid the burden of supporting delegates from their own State. But whatever might have been ye. cause, was not in effect the vote of one State doubled, and the influence of another increased by it? In the 2d. place The coercion, on which the efficacy of the plan depends, can never be exerted but on themselves. The larger States will be impregnable, the smaller only can feel the vengeance of it. He illustrated the position by the history of the Amphyctionic Confederates: and the ban of the German Empire. It was the cobweb wch. could entangle the weak, but would be the sport of the strong.

6678. He begged them to consider the situation in which they would remain in case their pertinacious adherence to an inadmissible plan, should prevent the adoption of any plan. The contemplation of such an event was painful; but it would be prudent to submit to the task of examining it at a distance, that the means of escaping it might be the more readily embraced. Let the Union of the States be dissolved, and one of two consequences must happen. Either the States must remain individually independent & sovereign; or two or more Confederacies must be formed among them. In the first event would the small States be more secure agst. the ambition & power of their larger neighbours, than they would be under a general Government pervading with equal energy every part of the Empire, and having an equal interest in protecting every part agst. every other part? In the second, can the smaller expect that their larger neighbours would confederate with them on the principle of the present confederacy, which gives to each member, an equal suffrage; or that they would exact less severe concessions from the smaller States, than are proposed in the scheme of Mr. Randolph?1

668The great difficulty lies in the affair of Representation; and if this could be adjusted, all others would be surmountable.

669It was admitted by both the gentlemen from N. Jersey (Mr. Brearly and Mr. Patterson) that it would not be just to allow Virga. which was 16 times as large as Delaware an equal vote only. Their language was that it would not be safe for Delaware to allow Virga. 16 times as many votes. The expedient proposed by them was that all the States should be thrown into one mass and a new partition be made into 13 equal parts. Would such a scheme be practicable? The dissimilarities existing in the rules of property, as well as in the manners, habits and prejudices of different States, amounted to a prohibition of the attempt. It had been found impossible for the power of one of the most absolute princes in Europe (K. of France) directed by the wisdom of one of the most enlightened and patriotic Ministers (Mr. Neckar) that any age has produced to equalize in some points only the different usages & regulations of the different provinces. But admitting a general amalgamation and repartition of the States to be practicable, and the danger apprehended by the smaller States from a proportional representation to be real; would not a particular and voluntary coalition of these with their neighbours, be less inconvenient to the whole community, and equally effectual for their own safety. If N. Jersey or Delaware conceived that an advantage would accrue to them from an equalization of the States, in which case they would necessarily form a junction with their neighbours, why might not this end be attained by leaving them at liberty by the Constitution to form such a junction whenever they pleased? And why should they wish to obtrude a like arrangement on all the States, when it was, to say the least, extremely difficult, would be obnoxious to many of the States, and when neither the inconvenience, nor the benefit of the expedient to themselves, would be lessened, by confining it to themselves. -The prospect of many new States to the Westward was another consideration of importance. If they should come into the Union at all, they would come when they contained but few inhabitants. If they shd. be entitled to vote according to their proportions of inhabitants, all would be right & safe. Let them have an equal vote, and a more objectionable minority than ever might give law to the whole.

670On a question for postponing generally the 1st. proposition of Mr. Patterson's plan, it was agreed to: N. Y. & N J. only being no-

671On the question moved by Mr. King whether the Committee should rise & Mr. Randolphs

propositions be re-reported without alteration, which was in fact a question whether Mr. R's should be adhered to as preferable to those of Mr. Patterson: Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye-7; New York, New Jersey, Delaware, no-3; Maryland divided.

672 State of the resolutions submitted to the consideration of the House by the honorable Mr. Randolph, as altered, amended, and agreed to, in a Committee of the whole House.

6731. Resolved that it is the opinion of this Committee that a national government ought to be established consisting of a Supreme Legislative, Judiciary, and Executive.

6742. Resolved. that the national Legislature ought to consist of Two Branches.

6753. Resolved that the members of the first branch of the national Legislature ought to be elected by the People of the several States for the term of Three years. to receive fixed stipends, by which they may be compensated for the devotion of their time to public service to be paid out of the National-Treasury. to be ineligible to any Office established by a particular State or under the authority of the United-States (except those peculiarly belonging to the functions of the first branch) during the term of service, and under the national government for the space of one year after it's expiration.

6764. Resolved. that the members of the second Branch of the national Legislature ought to be chosen by the individual Legislatures. to be of the age of thirty years at least. to hold their offices for a term sufficient to ensure their independency, namely seven years. to receive fixed stipends, by which they may be compensated for the devotion of their time to public service-to be paid out of the National Treasury to be ineligible to any office established by a particular State, or under the authority of the United States (except those peculiarly belonging to the functions of the second branch) during the term of service, and under the national government, for the space of one year after it's expiration.

6775. Resolved that each branch ought to possess the right of originating acts.

6786. Resolved. that the national Legislature ought to be empowered to enjoy the legislative rights vested in Congress by the confederation-and moreover to legislate in all cases to which the separate States are incompetent: or in which the harmony of the United States may be interrupted by the exercise of individual legislation. to negative all laws passed by the several States contravening, in the opinion of the national Legislature, the articles of union, or any treaties subsisting under the authority of the union.

6797. Resolved. that the right of suffrage in the first branch of the national Legislature ought not to be according to the rule established in the articles of confederation: but according to some equitable ratio of representation- namely, in proportion to the whole number of white and other free citizens and inhabitants of every age, sex, and condition including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, except Indians, not paying taxes in each State.

6808. Resolved. that the right of suffrage in the second branch of the national Legislature ought to be according to the rule established for the first.

6819. Resolved. that a national Executive be instituted to consist of a single person. to be chosen by the National Legislature. for the term of seven years. with power to carry into execution the national Laws, to appoint to Offices in cases not otherwise provided for to be ineligible a second time, and to be removable on impeachment and conviction of mal practice or neglect of duty. to receive a fixed stipend, by which he may be compensated for the devotion of his time to public service to be paid out of the national Treasury.

68210. Resolved. that the national executive shall have a right to negative any legislative act: which

shall not be afterwards passed unless by two third parts of each branch of the national Legislature.

68311. Resolved. that a national Judiciary be established to consist of One Supreme Tribunal. The Judges of which to be appointed by the second Branch of the National Legislature. to hold their offices during good behaviour to receive, punctually, at stated times, a fixed compensation for their services: in which no encrease or diminution shall be made so as to affect the persons actually in office at the time of such encrease or diminution

68412. Resolved. That the national Legislature be empowered to appoint inferior Tribunals.

68513. Resolved. that the jurisdiction of the national Judiciary shall extend to cases which respect the collection of the national revenue: impeachments of any national officers: and questions which involve the national peace and harmony.

68614. Resolved. that provision ought to be made for the admission of States, lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the national Legislature less than the whole.

68715. Resolved. that provision ought to be made for the continuance of Congress and their authorities until a given day after the reform of the articles of Union shall be adopted; and for the completion of all their engagements.

68816. Resolved that a republican constitution, and its existing laws, ought to be guaranteed to each State by the United States.

68917. Resolved. that provision ought to be made for the amendment of the articles of Union, whensoever it shall seem necessary.

69018. Resolved. that the Legislative, Executive, and Judiciary powers within the several States ought to be bound by oath to support the articles of Union.

69119. Resolved. that the amendments which shall be offered to the confederation by the Convention, ought at a proper time or times, after the approbation of Congress to be submitted to an assembly or assemblies of representatives, recommended by the several Legislatures, to be expressly chosen by the People to consider and decide thereon.

692Mr. Randolph's plan as reported from the Committee June 13 being before the house, the 1. propos: "that a Natl. Govt. ought to be established consisting &c." being taken up.

693Mr. WILSON observed that by a Natl. Govt. he did not mean one that would swallow up the State Govts. as seemed to be wished by some gentlemen. He was tenacious of the idea of preserving the latter. He thought, contrary to the opinion of (Col. Hamilton) that they might not only subsist but subsist on friendly terms with the former. They were absolutely necessary for certain purposes which the former could not reach. All large Governments must be subdivided into lesser jurisdictions. As Examples he mentioned Persia, Rome, and particularly the divisions & subdivisions of England by Alfred.

694Col. HAMILTON coincided with the proposition as it stood in the Report. He had not been understood yesterday. By an abolition of the States, he meant that no boundary could be drawn between the National & State Legislatures; that the former must therefore have indefinite authority. If it were limited at all, the rivalry of the States would gradually subvert it. Even as Corporations the extent of some of them as Va. Massts. &c. would be formidable. As States, he thought they ought to be abolished. But he admitted the necessity of leaving in them, subordinate jurisdictions. The examples of Persia & the Roman Empire, cited by (Mr. Wilson) were he thought in favor of his doctrine: the great powers delegated to the Satraps & proconsuls, having frequently produced revolts, and schemes of

independence.

695Mr. KING, wished as every thing depended on this proposition, that no objections might be improperly indulged agst. the phraseology of it. He conceived that the import of the terms "States" "Sovereignty" "national" "federal," had been often used & applied in the discussions inaccurately & delusively. The States were not "Sovereigns" in the sense contended for by some. They did not possess the peculiar features of sovereignty, they could not make war, nor peace, nor alliances nor treaties. Considering them as political Beings, they were dumb, for they could not speak to any foreign Sovereign whatever. They were deaf, for they could not hear any propositions from such Sovereign. They had not even the organs or faculties of defence or offence, for they could not of themselves raise troops, or equip vessels, for war.

696On the other side, if the Union of the States comprizes the idea of a confederation, it comprizes that also of consolidation. A Union of the States is a Union of the men composing them, from whence a national character results to the whole. Congs. can act alone without the States-they can act & their acts will be binding agst. the Instructions of the States. If they declare war: war is de jure declared-captures made in pursuance of it are lawful-No acts of the States can vary the situation, or prevent the judicial consequences. If the States therefore retained some portion of their sovereignty, they had certainly divested themselves of essential portions of it. If they formed a confederacy in some respects-they formed a Nation in others-The Convention could clearly deliberate on & propose any alterations that Congs. could have done under ye. federal articles, and could not Congs. propose by virtue of the last article, a change in any article whatever: and as well that relating to the equality of suffrage, as any other. He made these remarks to obviate some scruples which had been expressed. He doubted much the practicability of annihilating the States; but thought that much of their power ought to be taken from them.

697Mr. MARTIN, said he considered that the separation from G. B. placed the 13 States in a state of Nature towards each other; that they would have remained in that state till this time, but for the confederation; that they entered into the confederation on the footing of equality; that they met now to amend it on the same footing; and that he could never accede to a plan that would introduce an inequality and lay 10 States at the mercy of Va. Massts. and Penna.

698Mr. WILSON, could not admit the doctrine that when the Colonies became independent of G. Britain, they became independent also of each other. He read the declaration of Independence, observing thereon that the United Colonies were declared to be free & independent States; and inferring that they were independent, not individually but Unitedly and that they were confederated as they were independent, States.

699Col. HAMILTON, assented to the doctrine of Mr. Wilson. He denied the doctrine that the States were thrown into a State of Nature He was not yet prepared to admit the doctrine that the Confederacy, could be dissolved by partial infractions of it. He admitted that the States met now on an equal footing but could see no inference from that against concerting a change of the system in this particular. He took this occasion of observing for the purpose of appeasing the fears of the small States, that two circumstances would render them secure under a National Govt. in which they might lose the equality of rank they now held: one was the local situation of the 3 largest States Virga. Masts. & Pa. They were separated from each other by distance of place, and equally so, by all the peculiarities which distinguish the interests of one State from those of another. No combination therefore could be dreaded. In the second place, as there was a gradation in the States from Va. the largest down to Delaware the smallest, it would always happen that ambitious combinations among a few States might & wd. be counteracted by defensive combinations of greater extent among the rest. No combination has been seen among the large Counties merely as such, agst. lesser Counties. The more close the Union of the States, and the more compleat the authority of the whole: the less opportunity will be allowed to the stronger States to

injure the weaker.

700Adj.

701 WEDNESDAY, JUNE 20

702 IN CONVENTION

703 Mr. William Blount from N. Carolina took his seat.

704 The first Resolution of the Report of Come. of the whole being before the House.

705 Mr. ELSEWORTH 2d. by Mr. GORHAM, moves to alter it so as to run "that the Government of the United States ought to consist of a supreme legislative, Executive and Judiciary." This alteration he said would drop the word national, and retain the proper title "the United States." He could not admit the doctrine that a breach of any of the federal articles could dissolve the whole. It would be highly dangerous not to consider the Confederation as still subsisting. He wished also the plan of the Convention to go forth as an amendment of the articles of the Confederation, since under this idea the authority of the Legislatures could ratify it. If they are unwilling, the people will be so too. If the plan goes forth to the people for ratification several succeeding Conventions within the States would be unavoidable. He did not like these conventions. They were better fitted to pull down than to build up Constitutions.

706 Mr. Randolph, did not object to the change of expression, but apprised the gentleman who wished for it that he did not admit it for the reasons assigned; particularly that of getting rid of a reference to the people for ratification. The motion of Mr. Ellsewth. was acquiesced in nem: con:

707 The 2d. Resol: "that the national Legislature ought to consist of two branches" being taken up, the word "national" struck out as of course.

708 Mr. LANSING, observed that the true question here was, whether the Convention would adhere to or depart from the foundation of the present Confederacy; and moved instead of the 2d. Resolution, "that the powers of Legislation be vested in the U. States in Congress." He had already assigned two reasons agst. such an innovation as was proposed: First, the want of competent powers in the Convention. Secondly, the state of the public mind.

709 It had been observed by (Mr. Madison) in discussing the first point, that in two States the Delegates to Congs. were chosen by the people. Notwithstanding the first appearance of this remark, it had in fact no weight, as the Delegates however chosen, did not represent the people merely as so many individuals; but as forming a Sovereign State. (Mr. Randolph) put it, he said, on its true footing namely that the public safety superseded the scruple arising from the review of our powers. But in order to feel the force of this consideration, the same impression must be had of the public danger. He had not himself the same impression, and could not therefore dismiss his scruple. (Mr. Wilson) contended that as the Convention were only to recommend, they might recommend what they pleased. He differed much from him. Any act whatever of so respectable a body must have a great effect, and if it does not succeed, will be a source of great dissensions. He admitted that there was no certain criterion of the public mind on the subject. He therefore recurred to the evidence of it given by the opposition in the States to the scheme of an Impost. It could not be expected that those possessing Sovereignty could ever voluntarily part with it. It was not to be expected from any one State, much less from thirteen. 1

710 He proceeded to make some observations on the plan itself and the argumts. urged in support of it. The point of Representation could receive no elucidation from the case of England. The corruption of the boroughs did not proceed from their comparative smallness: but from the actual fewness of the inhabitants, some of them not having more than one or two. A great inequality existed in the Counties

of England. Yet the like complaint of peculiar corruption in the small ones had not been made. It had been said that Congress represent the State prejudices: will not any other body whether chosen by the Legislatures or people of the States, also represent their prejudices? It had been asserted by his colleague (Col. Hamilton) that there was no coincidence of interests among the large States that ought to excite fears of oppression in the smaller. If it were true that such a uniformity of interests existed among the States, there was equal safety for all of them, whether the representation remained as heretofore, or were proportioned as now proposed.

711 It is proposed that the Genl. Legislature shall have a negative on the laws of the States. Is it conceivable that there will be leisure for such a task? there will on the most moderate calculation, be as many Acts sent up from the States as there are days in the year. Will the members of the general Legislature be competent Judges? Will a gentleman from Georgia be a Judge of the expediency of a law which is to operate in N. Hamshire. Such a Negative would be more injurious than that of Great Britain heretofore was. It is said that the National Govt. must have the influence arising from the grant of offices and honors. In order to render such a Government effectual be believed such an influence to be necessary. But if the States will not agree to it, it is in vain, worse than in vain to make the proposition. If this influence is to be attained, the States must be entirely abolished. Will any one say this would ever be agreed to? He doubted whether any Genl. Government equally beneficial to all can be attained. That now under consideration he is sure, must be utterly unattainable.

712 He had another objection. The system was too novel & complex. No man could foresee what its operation will be either with respect to the Genl. Govt. or the State Govts. One or other it has been surmised must absorb the whole.

713 Col. MASON, did not expect this point would have been reagitated. The essential differences between the two plans, had been clearly stated. The principal objections agst. that of Mr. R. were the want of power & the want of practicability. There can be no weight in the first as the fiat is not to be here, but in the people. He thought with his colleague Mr. R. that there were besides certain crises, in which all the ordinary cautions yielded to public necessity. He gave as an example, the eventual Treaty with G.B. in forming which the Comrs. of the U. S. had boldly disregarded the improvident shackles of Congs. had given to their Country an honorable & happy peace, and instead of being censured for the transgression of their powers, had raised to themselves a monument more durable than brass.

714 The impracticability of gaining the public concurrence he thought was still more groundless. (Mr. Lansing) had cited the attempts of Congress to gain an enlargement of their powers, and had inferred from the miscarriage of these attempts, the hopelessness of the plan which he (Mr. L) opposed. He thought a very different inference ought to have been drawn; viz that the plan which (Mr. L) espoused, and which proposed to augment the powers of Congress, never could be expected to succeed. He meant not to throw any reflections on Congs. as a body, much less on any particular members of it. He meant however to speak his sentiments without reserve on this subject; it was a privilege of Age, and perhaps the only compensation which nature had given for the privation of so many other enjoyments: and he should not scruple to exercise it freely. Is it to be thought that the people of America, so watchful over their interests; so jealous of their liberties, will give up their all, will surrender both the sword and the purse, to the same body, and that too not chosen immediately by themselves? They never will. They never ought. Will they trust such a body, with the regulation of their trade, with the regulation of their taxes; with all the other great powers, which are in contemplation? Will they give unbounded confidence to a secret Journal-to the intrigues-to the factions which in the nature of things appertain to such an Assembly? If any man doubts the existence of these characters of Congress, let him consult their Journals for the years 78, 79, & 80. -It will be said, that if the people are averse to parting with power, why is it hoped that they will part with it to a National Legislature. The proper answer is that in this case they do not part with power: they only transfer it from one sett of immediate Representatives

to another sett.

715 Much has been said of the unsettled state of the mind of the people, he believed the mind of the people of America, as elsewhere, was unsettled as to some points; but settled as to others. In two points he was sure it was well settled. First, in an attachment to Republican Government. Secondly, in an attachment to more than one branch in the Legislature. Their constitutions accord so generally in both these circumstances, that they seem almost to have been preconcerted. This must either have been a miracle, or have resulted from the genius of the people. The only exceptions to the establishmt. of two branches in the Legislatures are the State of Pa. & Congs. and the latter the only single one not chosen by the people themselves. What has been the consequence? The people have been constantly averse to giving that Body further powers.

716 It was acknowledged by (Mr. Patterson) that his plan could not be enforced without military coercion. Does he consider the force of this concession. The most jarring elements of Nature; fire & water themselves are not more incompatible than such a mixture of civil liberty and military execution. Will the militia march from one State into another, in order to collect the arrears of taxes from the delinquent members of the Republic? Will they maintain an army for this purpose? Will not the Citizens of the invaded State assist one another till they rise as one Man, and shake off the Union altogether. Rebellion is the only case, in which the military force of the State can be properly exerted agst. its Citizens. In one point of view he was struck with horror at the prospect of recurring to this expedient. To punish the non- payment of taxes with death, was a severity not yet adopted by despotism itself: yet this unexampled cruelty would be mercy compared to a military collection of revenue, in which the bayonet could make no discrimination between the innocent and the guilty.

717 He took this occasion to repeat, that notwithstanding his solicitude to establish a national Government, he never would agree to abolish the State Govts. or render them absolutely insignificant. They were as necessary as the Genl. Govt. and he would be equally careful to preserve them. He was aware of the difficulty of drawing the line between them, but hoped it was not insurmountable. The Convention, tho' comprising so many distinguished characters, could not be expected to make a faultless Govt. And he would prefer trusting to posterity the amendment of its defects, rather than to push the experiment too far.

718 Mr. LUTHER MARTIN agreed with (Col Mason) as to the importance of the State Govts. he would support them at the expence of the Genl. Govt. which was instituted for the purpose of that support. He saw no necessity for two branches, and if it existed Congress might be organized into two. He considered Congs as representing the people, being chosen by the Legislatures who were chosen by the people. At any rate, Congress represented the Legislatures; and it was the Legislatures not the people who refused to enlarge their powers. Nor could the rule of voting have been the ground of objection, otherwise ten of the States must always have been ready, to place further confidence in Congs. The causes of repugnance must therefore be looked for elsewhere. -At the separation from the British Empire, the people of America preferred the establishment of themselves into thirteen separate sovereignties instead of incorporating themselves into one: to these they look up for the security of their lives, liberties & properties: to these they must look up. The federal Govt. they formed, to defend the whole agst. foreign nations, in case of war, and to defend the lesser States agst. the ambition of the larger: they are afraid of granting power unnecessarily, lest they should defeat the original end of the Union; lest the powers should prove dangerous to the sovereignties of the particular States which the Union was meant to support; and expose the lesser to being swallowed up by the larger. He conceived also that the people of the States having already vested their powers in their respective Legislatures, could not resume them without a dissolution of their governments. He was agst. Conventions in the States: was not agst. assisting States agst. rebellious subjects; thought the federal plan of Mr. Patterson did not require coercion more than the National one, as the latter must depend for the deficiency of its

revenues on requisitions & quotas, and that a national Judiciary extended into the States would be ineffectual, and would be viewed with a jealousy inconsistent with its usefulness.

719Mr. SHERMAN 2ded & supported Mr. Lansings motion. He admitted two branches to be necessary in the State Legislatures, but saw no necessity for them in a Confederacy of States. The examples were all, of a single Council. Congs. carried us thro' the war, and perhaps as well as any Govt. could have done. The complaints at present are not that the views of Congs. are unwise or unfaithful; but that their powers are insufficient for the execution of their views. The national debt & the want of power somewhere to draw forth the National resources, are the great matters that press. All the States were sensible of the defect of power in Congs. He thought much might be said in apology for the failure of the State Legislatures to comply with the confederation. They were afraid of bearing too hard on the people, by accumulating taxes; no constitutional rule had been or could be observed in the quotas-the accounts also were unsettled & every State supposed itself in advance, rather than in arrears. For want of a general system, taxes to a due amount had not been drawn from trade which was the most convenient resource. As almost all the States had agreed to the recommendation of Congs. on the subject of an impost, it appeared clearly that they were willing to trust Congs. with power to draw revenue from Trade. There is no weight therefore in the argument drawn from a distrust of Congs. for money matters being the most important of all, if the people will trust them with power as to them, they will trust them with any other necessary powers. Congs. indeed by the confederation have in fact the right of saying how much the people shall pay, and to what purpose it shall be applied: and this right was granted to them in the expectation that it would in all cases have its effect.

720If another branch were to be added to Congs. to be chosen by the people, it would serve to embarrass. The people would not much interest themselves in the elections, a few designing men in the large districts would carry their points, and the people would have no more confidence in their new representatives than in Congs. He saw no reason why the State Legislatures should be unfriendly as had been suggested, to Congs. If they appoint Congs. and approve of their measures, they would be rather favorable and partial to them.

721The disparity of the States in point of size he perceived was the main difficulty. But the large States had not yet suffered from the equality of votes enjoyed by the small ones. In all great and general points, the interests of all the States were the same. The State of Virga. notwithstanding the equality of votes, ratified the Confederation without even proposing any alteration. Massts. also ratified without any material difficulty &c. In none of the ratifications is the want of two branches noticed or complained of. To consolidate the States as some had proposed would dissolve our Treaties with foreign Nations, which had been formed with us, as confederated States. He did not however suppose that the creation of two branches in the Legislature would have such an effect.

722If the difficulty on the subject of representation can not be otherwise got over, he would agree to have two branches, and a proportional representation in one of them; provided each State had an equal voice in the other. This was necessary to secure the rights of the lesser States; otherwise three or four of the large States would rule the others as they please. Each State like each individual had its peculiar habits usages and manners, which constituted its happiness. It would not therefore give to others a power over this happiness, any more than an individual would do, when he could avoid it.

723Mr. WILSON, urged the necessity of two branches; observed that if a proper model was not to be found in other Confederacies it was not to be wondered at. The number of them was small & the duration of some at least short. The Amphyctionic & Achaean were formed in the infancy of political Science; and appear by their History & fate, to have contained radical defects. The Swiss & Belgic Confederacies were held together not by any vital principle of energy but by the incumbent pressure of formidable neighbouring nations: The German owed its continuance to the influence of the H. of Austria. He appealed to our own experience for the defects of our Confederacy. He had been 6 years of

the 12 since the commencement of the Revolution, a member of Congress, and had felt all its weaknesses.

724He appealed to the recollection of others whether on many important occasions, the public interest had not been obstructed by the small members of the Union. The success of the Revolution was owing to other causes, than the Constitution of Congress. In many instances it went on even agst. the difficulties arising from Congs. themselves. He admitted that the large States did accede as had been stated, to the Confederation in its present form. But it was the effect of necessity not of choice. There are other instances of their yielding from the same motive to the unreasonable measures of the small States. The situation of things is now a little altered. He insisted that a jealousy would exist between the State Legislatures & the General Legislature: observing that the members of the former would have views & feelings very distinct in this respect from their constituents. A private Citizen of a State is indifferent whether power be exercised by the Genl. or State Legislatures, provided it be exercised most for his happiness. His representative has an interest in its being exercised by the body to which he belongs. He will therefore view the National Legisl: with the eye of a jealous rival. He observed that the addresses of Congs. to the people at large, had always been better received & produced greater effect, than those made to the Legislatures.

725On the question for postponing in order to take up Mr. Lansings proposition "to vest the powers of Legislation in Congs." Connecticut, New York, New Jersey, Delaware, aye-4; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no-6; Maryland divided.

726On motion of the Deputies from Delaware, the question on the 2d. Resolution in the Report from the Committee of the whole was postponed till tomorrow.

727Adjd.

728THURSDAY, JUNE 21

729IN CONVENTION

730Mr. Jonathan Dayton from N. Jersey took his seat.

731The second Resolution in the Report from the Committee of the Whole, being under consideration.

732Docr. JOHNSON. On a comparison of the two plans which had been proposed from Virginia & N. Jersey, it appeared that the peculiarity which characterized the latter was its being calculated to preserve the individuality of the States. The plan from Va. did not profess to destroy this individuality altogether, but was charged with such a tendency. One Gentleman alone (Col. Hamilton) in his animadversions on the plan of N. Jersey, boldly and decisively contended for an abolition of the State Govts. Mr. Wilson & the gentlemen from Virga. who also were adversaries of the plan of N. Jersey held a different language. They wished to leave the States in possession of a considerable, tho' a subordinate jurisdiction. They had not yet however shewn how this cd. consist with, or be secured agst. the general sovereignty & jurisdiction, which they proposed to give to the national Government. If this could be shewn in such a manner as to satisfy the patrons of the N. Jersey propositions, that the individuality of the States would not be endangered, many of their objections would no doubt be removed. If this could not be shewn their objections would have their full force. He wished it therefore to be well considered whether in case the States, as was proposed, shd. retain some portion of sovereignty at least, this portion could be preserved, without allowing them to participate effectually in the Genl. Govt., without giving them each a distinct and equal vote for the purpose of defending themselves in the general Councils.

733Mr. WILSON'S respect for Docr. Johnson, added to the importance of the subject led him to

attempt, unprepared as he was, to solve the difficulty which had been started. It was asked how the Genl. Govt. and individuality of the particular States could be reconciled to each other; and how the latter could be secured agst the former? Might it not, on the other side be asked how the former was to be secured agst. the latter? It was generally admitted that a jealousy & rivalry would be felt between the Genl. & particular Govts. As the plan now stood, tho' indeed contrary to his opinion, one branch of the Genl. Govt. (the Senate or second branch) was to be appointed by the State Legislatures. The State Legislatures, therefore, by this participation in the Genl. Govt. would have an opportunity of defending their rights. Ought not a reciprocal opportunity to be given to the Genl. Govt. of defending itself by having an appointment of some one constituent branch of the State Govts. If a security be necessary on one side, it wd. seem reasonable to demand it on the other. But taking the matter in a more general view, he saw no danger to the States from the Genl. Govt. In case a combination should be made by the large ones it wd. produce a general alarm among the rest; and the project wd. be frustrated. But there was no temptation to such a project. The States having in general a similar interest, in case of any propositions in the National Legislature to encroach on the State Legislatures, he conceived a general alarm wd. take place in the National Legislature itself, that it would communicate itself to the State Legislatures, and wd. finally spread among the people at large. The Genl. Govt. will be as ready to preserve the rights of the States as the latter are to preserve the rights of individuals; all the members of the former, having a common interest, as representatives of all the people of the latter, to leave the State Govts. in possession of what the people wish them to retain. He could not discover, therefore any danger whatever on the side from which it was apprehended. On the contrary, he conceived that in spite of every precaution the general Govt. would be in perpetual danger of encroachments from the State Govts.

734Mr. MADISON was of the opinion in the first place that there was less danger of encroachment from the Genl. Govt. than from the State Govts., and in the second place that the mischief from encroachments would be less fatal if made by the former, than if made by the latter.

7351. All the examples of other confederacies prove the greater tendency in such systems to anarchy than to tyranny; to a disobedience of the members than usurpations of the federal head. Our own experience had fully illustrated this tendency. -But it will be said that the proposed change in the principles & form of the Union will vary the tendency; that the Genl. Govt. will have real & greater powers, and will be derived in one branch at least from the people, not from the Govts. of the States. To give full force to this objection, let it be supposed for a moment that indefinite power should be given to the Genl. Legislature, and the States reduced to corporations dependent on the Genl. Legislature; Why shd. it follow that the Genl. Govt. wd. take from the States any branch of their power as far as its operation was beneficial, and its continuance desirable to the people? In some of the States, particularly in Connecticut, all the Townships are incorporated, and have a certain limited jurisdiction. Have the Representatives of the people of the Townships in the Legislature of the State ever endeavored to despoil the Townships of any part of their local authority? As far as this local authority is convenient to the people they are attached to it; and their representatives chosen by & amenable to them naturally respect their attachment to this, as much as their attachment to any other right or interest. The relation of a General Govt. to State Govts. is parallel.

7362. Guards were more necessary agst. encroachments of the State Govts. on the Genl. Govt. than of the latter on the former. The great objection made agst. an abolition of the State Govts. was that the Genl. Govt. could not extend its care to all the minute objects which fall under the cognizance of the local jurisdictions. The objection as stated lay not agst. the probable abuse of the general power, but agst. the imperfect use that could be made of it throughout so great an extent of country, and over so great a variety of objects. As far as as its operation would be practicable it could not in this view be improper; as far as it would be impracticable, the convenience of the Genl. Govt. itself would concur

with that of the people in the maintenance of subordinate Governments. Were it practicable for the Genl. Govt. to extend its care to every requisite object without the cooperation of the State Govts. the people would not be less free as members of one great Republic than as members of thirteen small ones. A Citizen of Delaware was not more free than a Citizen of Virginia: nor would either be more free than a Citizen of America. Supposing therefore a tendency in the Genl. Government to absorb the State Govts. no fatal consequence could result. Taking the reverse as the supposition, that a tendency should be left in the State Govts. towards an independence on the General Govt. and the gloomy consequences need not be pointed out. 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.

737On the question for resolving "that the Legislature ought to consist of two Branches" – Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye-7; New York, New Jersey, Delaware, no-3; Maryland, divided.

738The third resolution of the Report being taken into consideration.

739Genl. PINKNEY moved "that the 1st. branch, instead of being elected by the people, shd. be elected in such manner as the Legislature of each State should direct." He urged first that this liberty would give more satisfaction, as the Legislatures could then accomodate the mode to the convenience & opinions of the people. Secondly that it would avoid the undue influence of large Counties which would prevail if the elections were to be made in districts as must be the mode intended by the Report of the Committee. Thirdly that otherwise disputed elections must be referred to the General Legislature which would be attended with intolerable expence and trouble to the distant parts of the republic.

740Mr. L. MARTIN seconded the Motion.

741Col. HAMILTON considered the motion as intended manifestly to transfer the election from the people to the State Legislatures, which would essentially vitiate the plan. It would increase that State influence which could not be too watchfully guarded agst. All too must admit the possibility, in case the Genl. Govt. shd. maintain itself, that the State Govts. might gradually dwindle into nothing. The system therefore shd. not be engrafted on what might possibly fail.

742Mr. MASON urged the necessity of retaining the election by the people. Whatever inconvenience may attend the democratic principle, it must actuate one part of the Govt. It is the only security for the rights of the people.

743Mr. SHERMAN, would like an election by the Legislatures best, but is content with the plan as it stands.

744Mr. RUTLIDGE could not admit the solidity of the distinction between a mediate & immediate election by the people. It was the same thing to act by oneself, and to act by another. An election by the Legislature would be more refined than an election immediately by the people: and would be more likely to correspond with the sense of the whole community. If this Convention had been chosen by the people in districts it is not to be supposed that such proper characters would have been preferred. The Delegates to Congs. he thought had also been fitter men than would have been appointed by the people at large.

745Mr. WILSON considered the election of the 1st. branch by the people not only as the corner Stone, but as the foundation of the fabric: and that the difference between a mediate & immediate election was immense. The difference was particularly worthy of notice in this respect: that the Legislatures are actuated not merely by the sentiment of the people; but have an official sentiment opposed to that of the Genl. Govt. and perhaps to that of the people themselves.

746Mr. KING enlarged on the same distinction. He supposed the Legislatures wd. constantly choose men subservient to their own views as contrasted to the general interest; and that they might even devise modes of election that wd. be subversive of the end in view. He remarked several instances in which the views of a State might be at variance with those of the Genl. Govt.: and mentioned particularly a competition between the National & State debts, for the most certain & productive funds.

747Genl. PINKNEY was for making the State Govts. a part of the General System. If they were to be abolished, or lose their agency, S. Carolina & other States would have but a small share of the benefits of Govt.

748On the question for Genl. Pinkney motion to substitute election of the 1st. branch in such mode as the Legislatures should appoint, in stead of its being elected by the people." Connecticut, New Jersey, Delaware, South Carolina, aye-4; Massachusetts, New York, Pennsylvania, Virginia, North Carolina, Georgia, no-6; Maryland, divided.

749General PINKNEY then moved that the 1st. branch be elected by the people in such mode as the Legislatures should direct; but waved it on its being hinted that such a provision might be more properly tried in the detail of the plan.

750On the question for ye. election of the 1st. branch by the people." Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye – 9; New Jersey, no – 1; Maryland, divided.

751The election of the 1st. branch "for the term of three years," being considered.

752Mr. Randolph moved to strike out, "three years" and insert "two years"-he was sensible that annual elections were a source of great mischiefs in the States, yet it was the want of such checks agst. the popular intemperence as were now proposed, that rendered them so mischievous. He would have preferred annual to biennial, but for the extent of the U. S. and the inconvenience which would result from them to the representatives of the extreme parts of the Empire. The people were attached to frequency of elections. All the Constitutions of the States except that of S. Carolina, had established annual elections.

753Mr. DICKENSON. The idea of annual elections was borrowed from the antient usage of England, a country much less extensive than ours. He supposed biennial would be inconvenient. He preferred triennial: and in order to prevent the inconvenience of an entire change of the whole number at the same moment, suggested a rotation, by an annual election of one third.

754Mr. ELSEWORTH was opposed to three years, supposing that even one year was preferable to two years. The people were fond of frequent elections and might be safely indulged in one branch of the Legislature. He moved for 1 year.

755Mr. STRONG seconded & supported the motion.

756Mr. WILSON being for making the 1st. branch an effectual representation of the people at large, preferred an annual election of it. This frequency was most familiar & pleasing to the people. It would not be more inconvenient to them, than triennial elections, as the people in all the States have annual meetings with which the election of the National representatives might be made to co-incide. He did not conceive that it would be necessary for the Natl. Legisl: to sit constantly; perhaps not half-perhaps not one fourth of the year.

757Mr. MADISON was persuaded that annual elections would be extremely inconvenient and apprehensive that biennial would be too much so: he did not mean inconvenient to the electors; but to the representatives. They would have to travel seven or eight hundred miles from the distant parts of the Union; and would probably not be allowed even a reimbursement of their expences. Besides, none

of those who wished to be re-elected would remain at the seat of Governmt.; confiding that their absence would not affect them. The members of Congs. had done this with few instances of disappointment. But as the choice was here to be made by the people themselves who would be much less complaisant to individuals, and much more susceptible of impressions from the presence of a Rival candidate, it must be supposed that the members from the most distant States would travel backwards & forwards at least as often as the elections should be repeated. Much was to be said also on the time requisite for new members who would always form a large proportion, to acquire that knowledge of the affairs of the States in general without which their trust could not be usefully discharged.

758Mr. SHERMAN preferred annual elections, but would be content with biennial. He thought the Representatives ought to return home and mix with the people. By remaining at the seat of Govt. they would acquire the habits of the place which might differ from those of their Constituents.

759Col. MASON observed that the States being differently situated such a rule ought to be formed as would put them as nearly as possible on a level. If elections were annual the middle States would have a great advantage over the extreme ones. He wished them to be biennial; and the rather as in that case they would coincide with the periodical elections of S. Carolina as well of the other States.

760Col. HAMILTON urged the necessity of 3 years. There ought to be neither too much nor too little dependence, on the popular sentiments. The checks in the other branches of Governmt. would be but feeble, and would need every auxiliary principle that could be interwoven. The British House of Commons were elected septennially, yet the democratic spirit of ye. Constitution had not ceased. Frequency of elections tended to make the people listless to them; and to facilitate the success of little cabals. This evil was complained of in all the States. In Virga. it had been lately found necessary to force the attendance & voting of the people by severe regulations.

761On the question for striking out "three years" – Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye – 7; New York, Delaware, Maryland, no – 3; New Jersey, divided.

762The motion for "two years" was then inserted nem. con.

763Adj.

764FRIDAY, JUNE 22

765IN CONVENTION

766The clause in the third Resolution "to receive fixed stipends to be paid out of the Nationl. Treasury" being considered.

767Mr. ELSEWORTH, moved to substitute payment by the States out of their own Treasurys: observing that the manners of different States were very different in the Stile of living and in the profits accruing from the exercise of like talents. What would be deemed therefore a reasonable compensation in some States, in others would be very unpopular, and might impede the system of which it made a part.

768Mr. WILLIAMSON favored the idea. He reminded the House of the prospect of new States to the Westward. They would be too poor-would pay little into the common Treasury-and would have a different interest from the old States. He did not think therefore that the latter ought to pay the expences of men who would be employed in thwarting their measures & interests.

769Mr. GHORUM, wished not to refer the matter to the State Legislatures who were always paring down salaries in such a manner as to keep out of offices men most capable of executing the functions

of them. He thought also it would be wrong to fix the compensation by the constitution, because we could not venture to make it as liberal as it ought to be without exciting an enmity agst. the whole plan. Let the Natl. Legisl: provide for their own wages from time to time; as the State Legislatures do. He had not seen this part of their power abused, nor did he apprehend an abuse of it.

770Mr. Randolph said he feared we were going too far, in consulting popular prejudices. Whatever respect might be due to them, in lesser matters, or in cases where they formed the permanent character of the people, he thought it neither incumbent on nor honorable for the Convention, to sacrifice right & justice to that consideration. If the States were to pay the members of the Natl. Legislature, a dependence would be created that would vitiate the whole System. The whole nation has an interest in the attendance & services of the members. The Nationl. Treasury therefore is the proper fund for supporting them.

771Mr. KING, urged the danger of creating a dependence on the States by leavg. to them the payment of the members of the Natl. Legislature. He supposed it wd. be best to be explicit as to the compensation to be allowed. A reserve on that point, or a reference to the Natl. Legislature of the quantum, would excite greater opposition than any sum that would be actually necessary or proper.

772Mr. SHERMAN contended for referring both the quantum and the payment of it to the State Legislatures.

773Mr. WILSON was agst. fixing the compensation as circumstances would change and call for a change of the amount. He thought it of great moment that the members of the Natl. Govt. should be left as independent as possible of the State Govts. in all respects.

774Mr. MADISON concurred in the necessity of preserving the compensations for the Natl. Govt. independent on the State Govts. but at the same time approved of fixing them by the Constitution, which might be done by taking a standard which wd. not vary with circumstances. He disliked particularly the policy suggested by Mr. Wiliamson of leaving the members from the poor States beyond the Mountains, to the precarious & parsimonious support of their constituents. If the Western States hereafter arising should be admitted into the Union, they ought to be considered as equals & as brethren. If their representatives were to be associated in the Common Councils, it was of common concern that such provisions should be made as would invite the most capable and respectable characters into the service.

775Mr. HAMILTON apprehended inconvenience from fixing the wages. He was strenuous agst. making the National Council dependent on the Legislative rewards of the States. Those who pay are the masters of those who are paid. Payment by the States would be unequal as the distant States would have to pay for the same term of attendance and more days in travelling to & from the seat of Govt. He expatiated emphatically on the difference between the feelings & views of the people-& the Governments of the States arising from the personal interest & official inducements which must render the latter unfriendly to the Genl. Govt.

776Mr. WILSON moved that the Salaries of the 1st. branch "be ascertained by the National Legislature," and be paid out of the Natl. Treasury.

777Mr. MADISON, thought the members of the Legisl. too much interested to ascertain their own compensation. It wd. be indecent to put their hands into the public purse for the sake of their own pockets.

778On this question, shall the salaries of the first branch be ascertained by the National Legislature? New Jersey, Pennsylvania, aye-2; Massachusetts, Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina, no-7; New York, Georgia, divided.

779On the question for striking out "Natl. Treasury" as moved by Mr. Elseworth.

780Mr. HAMILTON renewed his opposition to it. He pressed the distinction between the State Govts. & the people. The former wd. be the rivals of the Genl. Govt. The State legislatures ought not therefore to be the paymasters of the latter.

781Mr. ELSEWORTH. If we are jealous of the State Govts. they will be so of us. If on going home I tell them we gave the Gen: Govt. such powers because we cd. not trust you, will they adopt it, and witht. yr. approbation it is a nullity.

782On the question: Massachusetts, Connecticut, North Carolina, South Carolina, aye-4; New Jersey, Pennsylvania, Delaware, Maryland, Virginia, no-5; New York, Georgia, divided, so it passed in the negative.*

783On a question for substituting "adequate compensation" in place of "fixt stipends" it was agreed to nem. con. the friends of the latter being willing that the practicability of fixing the compensation should be considered hereafter in forming the details.

784It was then moved by Mr. BUTLER that a question be taken on both points jointly; to wit "adequate compensation to be paid out of the Natl. Treasury." It was objected to as out of order, the parts having been separately decided on. The Presidt.

785_____

786* It appeared that Massts. concurred, not because they thought the State Treasy. ought to be substituted; but because they thought nothing should be said on the subject, in which case it wd. silently devolve on the Natl. Treasury to support the National Legislature.

787referred the question of order to the House, and it was determined to be in order. Con. N. J. Del. Md. N. C. S. C. – ay – 6. N. Y. Pa. Va. Geo. No – 4. Mass: divided. The question on the sentence was then postponed by S. Carolina in right of the State.

788Col. MASON moved to insert "twenty-five years of age as a qualification for the members of the 1st. branch." He thought it absurd that a man to day should not be permitted by the law to make a bargain for himself, and tomorrow should be authorized to manage the affairs of a great nation. It was the more extraordinary as every man carried with him in his own experience a scale for measuring the deficiency of young politicians; since he would if interrogated be obliged to declare that his political opinions at the age of 21. were too crude & erroneous to merit an influence on public measures. It had been said that Congs. had proved a good school for our young men. It might be so for any thing he knew but if it were, he chose that they should bear the expence of their own education.1

789Mr. WILSON was agst. abridging the rights of election in any shape. It was the same thing whether this were done by disqualifying the objects of choice, or the persons chusing. The motion tended to damp the efforts of genius, and of laudable ambition. There was no more reason for incapacitating youth than age, where the requisite qualifications were found. Many instances might be mentioned of signal services rendered in high stations to the public before the age of 25: The present Mr. Pitt and Lord Bolingbroke were striking instances.

790On the question for inserting "25 years of age" – Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, aye-7; Massachusetts, Pennsylvania, Georgia, no-3; New York, divided.

791Mr. GHORUM moved to strike out the last member of the third Resolution concerning ineligibility of members of the 1st. branch to office during the term of their membership & for one year after. He considered it unnecessary & injurious. It was true abuses had been displayed in G. B. but no one cd.

say how far they might have contributed to preserve the due influence of the Govt. nor what might have ensued in case the contrary theory had been tried.

792Mr. BUTLER opposed it. This precaution agst. intrigue was necessary. He appealed to the example of G. B. where men get into Parlt. that they might get offices for themselves or their friends. This was the source of the corruption that ruined their Govt.

793Mr. KING, thought we were refining too much. Such a restriction on the members would discourage merit. It would also give a pretext to the Executive for bad appointments, as he might always plead this as a bar to the choice he wished to have made.

794Mr. WILSON was agst. fettering elections, and discouraging merit. He suggested also the fatal consequence in time of war, of rendering perhaps the best Commanders ineligible: appealed to our situation during the late war, and indirectly leading to a recollection of the appointment of the Commander in Chief out of Congress.

795Col. MASON was for shutting the door at all events agst. corruption. He enlarged on the venality and abuses in this particular in G. Britain: and alluded to the multiplicity of foreign Embassies by Congs. The disqualification he regarded as a corner stone in the fabric.

796Col. HAMILTON. There are inconveniences on both sides. We must take man as we find him, and if we expect him to serve the public must interest his passions in doing so. A reliance on pure patriotism had been the source of many of our errors. He thought the remark of Mr. Ghorum a just one. It was impossible to say what wd be the effect in G. B. of such a reform as had been urged. It was known that one of the ablest politicians (Mr. Hume) had pronounced all that influence on the side of the crown, which went under the name of corruption, an essential part of the weight which maintained the equilibrium of the Constitution.

797On Mr. Ghorum's Motion for striking out "ineligibility," it was lost by an equal division of the votes. Massachusetts, New Jersey, North Carolina, Georgia, aye-4; Connecticut, Maryland, Virginia, South Carolina, no- 4; New York, Pennsylvania, Delaware, divided.

798Adj.

799SATURDAY, JUNE 23

800IN CONVENTION

801The third Resolution being resumed.

802On the question yesterday postponed by S. Carol: for agreeing to the whole sentence "for allowing an adequate compensation to be paid out of the Treasury of the U. States." Massachusetts, New Jersey, Pennsylvania, Maryland, Virginia, aye-5; Connecticut, New York, Delaware, North Carolina, South Carolina, no-5; Georgia, divided. So the question was lost, & the sentence not inserted:

803Genl. PINKNEY moves to strike out the ineligibility of members of the 1st. branch to offices established "by a particular State." He argued from the inconvenience to which such a restriction would expose both the members of the 1st. branch, and the States wishing for their services; and from the smallness of the object to be attained by the restriction.

804It wd. seem from the ideas of some that we are erecting a Kingdom to be divided agst. itself, he disapproved such a fetter on the Legislature.

805Mr. SHERMAN seconds the motion. It wd. seem that we are erecting a Kingdom at war with itself. The Legislature ought not to be fettered in such a case.

806On the question: Connecticut, New York, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye-8; Massachusetts, Pennsylvania, Delaware, no-3.

807Mr. MADISON renewed his motion yesterday made & waved to render the members of the 1st. branch "ineligible during their term of service, & for one year after- to such offices only as should be established, or the emoluments thereof, augmented by the Legislature of the U. States during the time of their being members." He supposed that the unnecessary creation of offices, and increase of salaries, were the evils most experienced, & that if the door was shut agst. them: it might properly be left open for the appointt. of members to other offices as an encouragemt. to the Legislative service.

808Mr. Alex: MARTIN seconded the motion.

809Mr. BUTLER. The amendt. does not go far eno' & wd. be easily evaded

810Mr. RUTLIDGE, was for preserving the Legislature as pure as possible, by shutting the door against appointments of its own members to office, which was one source of its corruption.

811Mr. MASON. The motion of my colleague is but a partial remedy for the evil. He appealed to him as a witness of the shameful partiality of the Legislature of Virginia to its own members. He enlarged on the abuses & corruption in the British Parliament, connected with the appointment of its members. He cd. not suppose that a sufficient number of Citizens could not be found who would be ready, without the inducement of eligibility to offices, to undertake the Legislative service. Genius & virtue it may be said, ought to be encouraged. Genius, for aught he knew, might, but that virtue should be encouraged by such a species of venality, was an idea, that at least had the merit of being new.

812Mr. KING remarked that we were refining too much in this business; and that the idea of preventing intrigue and solicitation of offices was chimerical. You say that no member shall himself be eligible to any office. Will this restrain him from availing himself of the same means which would gain appointments for himself, to gain them for his son, his brother, or any other object of his partiality. We were losing therefore the advantages on one side, without avoiding the evils on the other.

813Mr. WILSON supported the motion. The proper cure he said for corruption in the Legislature was to take from it the power of appointing to offices. One branch of corruption would indeed remain, that of creating unnecessary offices, or granting unnecessary salaries, and for that the amendment would be a proper remedy. He animadverted on the impropriety of stigmatizing with the name of venality the laudable ambition of rising into the honorable offices of the Government; an ambition most likely to be felt in the early & most incorrupt period of life, & which all wise & free Govts. had deemed it sound policy, to cherish, not to check. The members of the Legislature have perhaps the hardest & least profitable task of any who engage in the service of the state. Ought this merit to be made a disqualification?

814Mr. SHERMAN, observed that the motion did not go far enough. It might be evaded by the creation of a new office, the translation to it of a person from another office, and the appointment of a member of the Legislature to the latter. A new Embassy might be established to a new Court, & an ambassador taken from another, in order to create a vacancy for a favorite member. He admitted that inconveniencies lay on both sides. He hoped there wd. be sufficient inducements to the public service without resorting to the prospect of desirable offices, and on the whole was rather agst. the motion of Mr. Madison.

815Mr. GERRY thought there was great weight in the objection of Mr. Sherman. He added as another objection agst. admitting the eligibility of members in any case that it would produce intrigues of ambitious men for displacing proper officers, in order to create vacancies for themselves. In answer to Mr. King he observed that although members, if disqualified themselves might still intrigue & cabal for their sons, brothers &c, yet as their own interest would be dearer to them, than those of their nearest

connections, it might be expected they would go greater lengths to promote it.

816Mr. MADISON had been led to this motion as a middle ground between an eligibility in all cases, and an absolute disqualification. He admitted the probable abuses of an eligibility of the members, to offices, particularly within the gift of the Legislature He had witnessed the partiality of such bodies to their own members, as had been remarked of the Virginia assembly by his colleague (Col. Mason). He appealed however to him, in turn to vouch another fact not less notorious in Virginia, that the backwardness of the best citizens to engage in the Legislative service gave but too great success to unfit characters.

817The question was not to be viewed on one side only. The advantages & disadvantages on both ought to be fairly compared. The objects to be aimed at were to fill all offices with the fittest characters, & to draw the wisest & most worthy citizens into the Legislative service. If on one hand, public bodies were partial to their own members; on the other they were as apt to be misled by taking characters on report, or the authority of patrons and dependents. All who had been concerned in the appointment of strangers on those recommendations must be sensible of this truth. Nor wd. the partialities of such Bodies be obviated by disqualifying their own members. Candidates for office would hover round the seat of Govt. or be found among the residents there, and practise all the means of courting the favor of the members. A great proportion of the appointments made by the States were evidently brought about in this way. In the general Govt. the evil must be still greater, the characters of distant states, being much less known throughout the U. States than those of the distant parts of the same State. The elections by Congress had generally turned on men living at the seat of the fedl Govt. or in its neighbourhood.-As to the next object, the impulse to the Legislative service, was evinced by experience to be in general too feeble with those best qualified for it. This inconvenience wd. also be more felt in the Natl. Govt. than in the State Govts. as the sacrifices reqd. from the distant members, wd. be much greater, and the pecuniary provisions, probably, more disproportionate. It wd. therefore be impolitic to add fresh objections to the Legislative service by an absolute disqualification of its members.

818The point in question was whether this would be an objection with the most capable citizens. Arguing from experience he concluded that it would. The Legislature of Virga. would probably have been without many of its best members, if in that situation, they had been ineligible to Congs. to the Govt. & other honorable offices of the State.

819Mr. BUTLER thought Characters fit for office wd. never be unknown.

820Col. MASON. If the members of the Legislature are disqualified, still the honors of the State will induce those who aspire to them to enter that service, as the field in which they can best display & improve their talents, & lay the train for their subsequent advancement.

821Mr. JENIFER remarked that in Maryland, the Senators chosen for five years, cd. hold no other office & that this circumstance gained them the greatest confidence of the people.

822On the question for agreeing to the motion of Mr. Madison. Connecticut, New Jersey, aye-2; New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no-8; Massachusetts, divided.

823Mr. SHERMAN movd. to insert the words "and incapable of holding" after the words "ineligible to any office" wch. was agreed to without opposition.

824The word "established" & the words "under the Natl. Govt." were struck out of the third Resolution.

825Mr. SPAIGHT called for a division of the question, in consequence of which it was so put, as that it turned on the first member of it, "on the ineligibility of members during the term for which they were

elected"-whereon the States were, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, aye-8; Pennsylvania, Georgia, no-2; Massachusetts, divided.

826On the 2d. member of the sentence extending ineligibility of members to one year after the term for which they were elected

827Col MASON thought this essential to guard agst. evasions by resignations, and stipulations for office to be fulfilled at the expiration of the legislative term. Mr. GERRY, had known such a case. Mr. HAMILTON. Evasions cd. not be prevented-as by proxies- by friends holding for a year, & then opening the way &c. Mr. RUTLIDGE admitted the possibility of evasions but was for contracting them as far as possible. On the question: New York, Delaware, Maryland, South Carolina, aye-4; Massachusetts, Connecticut, New Jersey, Virginia, North Carolina, Georgia, no-6; Pennsylvania, divided.

828Adj.

829[The delegates did not convene on Sunday, June 24.]

830MONDAY, JUNE 25

831IN CONVENTION

832The fourth Resolution being taken up.

833Mr. PINKNEY spoke as follows – The efficacy of the System will depend on this article. In order to form a right judgment. in the case, it will be proper to examine the situation of this Country more accurately than it has yet been done. The people of the U. States are perhaps the most singular of any we are acquainted with. Among them there are fewer distinctions of fortune & less of rank, than among the inhabitants of any other nation. Every freeman has a right to the same protection & security; and a very moderate share of property entitles them to the possession of all the honors and privileges the public can bestow: hence arises a greater equality, than is to be found among the people of any other country, and an equality which is more likely to continue-I say this equality is likely to continue, because in a new Country, possessing immense tracts of uncultivated lands, where every temptation is offered to emigration & where industry must be rewarded with competency, there will be few poor, and few dependent-Every member of the Society almost, will enjoy an equal power of arriving at the supreme offices & consequently of directing the strength & sentiments of the whole Community. None will be excluded by birth, & few by fortune, from voting for proper persons to fill the offices of Government-the whole community will enjoy in the fullest sense that kind of political liberty which consists in the power the members of the State reserve to themselves, of arriving at the public offices, or at least, of having votes in the nomination of those who fill them.

834If this State of things is true & the prospect of its continuance probable, it is perhaps not politic to endeavour too close an imitation of a Government calculated for a people whose situation is, & whose views ought to be extremely different Much has been said of the Constitution of G. Britain. I will confess that I believe it to be the best Constitution in existence; but at the same time I am confident it is one that will not or can not be introduced into this Country, for many centuries. -If it were proper to go here into a historical dissertation on the British Constitution, it might easily be shewn that the peculiar excellence, the distinguishing feature of that Governmt. can not possibly be introduced into our System-that its balance between the Crown & the people can not be made a part of our Constitution. -that we neither have or can have the members to compose it, nor the rights, privileges & properties of so distinct a class of Citizens to guard. -that the materials for forming this balance or check do not exist, nor is there a necessity for having so permanent a part of our Legislative, until the Executive

power is so constituted as to have something fixed & dangerous in its principle-By this I mean a sole, hereditary, though limited Executive.

835That we cannot have a proper body for forming a Legislative balance between the inordinate power of the Executive and the people, is evident from a review of the accidents & circumstances which gave rise to the peage of Great Britain-I believe it is well ascertained that the parts which compose the British Constitution arose immediately from the forests of Germany; but the antiquity of the establishment of nobility is by no means clearly defined. Some authors are of opinion that the dignity denoted by the titles of dux and comes, was derived from the old Roman to the German Empire; while others are of opinion that they existed among the Germans long before the Romans were acquainted with them. The institution however of nobility is immemorial among the nations who may probably be termed the ancestors of Great Britain. -At the time they were summoned in England to become a part of the National Council, the circumstances which contributed to make them a constituent part of that constitution, must be well known to all gentlemen who have had industry & curiosity enough to investigate the subject-The nobles with their possessions & and dependents composed a body permanent in their nature and formidable in point of power. They had a distinct interest both from the King and the people; an interest which could only be represented by themselves, and the guardianship of which could not be safely intrusted to others. -At the time they were originally called to form a part of the National Council, necessity perhaps as much as other cause, induced the Monarch to look up to them. It was necessary to demand the aid of his subjects in personal & pecuniary services. The power and possessions of the Nobility would not permit taxation from any assembly of which they were not a part: & the blending of the deputies of the Commons with them, & thus forming what they called their parler-ment was perhaps as much the effect of chance as of any thing else. The Commons were at that time compleatly subordinate to the nobles, whose consequence & influence seem to have been the only reasons for their superiority; a superiority so degrading to the Commons that in the first Summons we find the peers are called upon to consult, the commons to consent. From this time the peers have composed a part of the British Legislature, and notwithstanding their power and influence have diminished & those of the Commons have increased, yet still they have always formed an excellent balance agst. either the encroachments of the Crown or the people.

836I have said that such a body cannot exist in this Country for ages, and that untill the situation of our people is exceedingly changed no necessity will exist for so permanent a part of the Legislature. To illustrate this I have remarked that the people of the United States are more equal in their circumstances than the people of any other Country-that they have very few rich men among them,-by rich men I mean those whose riches may have a dangerous influence, or such as are esteemed rich in Europe-perhaps there are not one hundred such on the Continent; that it is not probable this number will be greatly increased: that the genius of the people, their mediocrity of situation & the prospects which are afforded their industry in a Country which must be a new one for centuries are unfavorable to the rapid distinction of ranks. The destruction of the right of primogeniture & the equal division of the property of Intestates will also have an effect to preserve this mediocrity; for laws invariably affect the manners of a people. On the other hand that vast extent of unpeopled territory which opens to the frugal & industrious a sure road to competency & independence will effectually prevent for a considerable time the increase of the poor or discontented, and be the means of preserving that equality of condition which so eminently distinguishes us.

837If equality is as I contend the leading feature of the U. States, where then are the riches & wealth whose representation & protection is the peculiar province of this permanent body. Are they in the hands of the few who may be called rich; in the possession of less than a hundred citizens? certainly not. They are in the great body of the people, among whom there are no men of wealth, and very few of real poverty. -Is it probable that a change will be created, and that a new order of men will arise? If

under the British Government, for a century no such change was produced, I think it may be fairly concluded it will not take place while even the semblance of Republicanism remains. -How is this change to be effected? Where are the sources from whence it is to flow? From the landed interest? No. That is too unproductive & too much divided in most of the States. From the Monied interest? If such exists at present, little is to be apprehended from that source. Is it to spring from commerce? I believe it would be the first instance in which a nobility sprang from merchants. Besides, Sir, I apprehend that on this point the policy of the U. States has been much mistaken. We have unwisely considered ourselves as the inhabitants of an old instead of a new country. We have adopted the maxims of a State full of people & manufactures & established in credit. We have deserted our true interest, and instead of applying closely to those improvements in domestic policy which would have ensured the future importance of our commerce, we have rashly & prematurely engaged in schemes as extensive as they are imprudent. This however is an error which daily corrects itself & I have no doubt that a few more severe trials will convince us, that very different commercial principles ought to govern the conduct of these States.

838The people of this country are not only very different from the inhabitants of any State we are acquainted with in the modern world; but I assert that their situation is distinct from either the people of Greece or Rome, or of any State we are acquainted with among the antients. -Can the orders introduced by the institution of Solon, can they be found in the United States? Can the military habits & manners of Sparta be resembled to our habits & manners? Are the distinctions of Patrician & Plebeian known among us? Can the Helvetic or Belgic confederacies, or can the unwieldy, unmeaning body called the Germanic Empire, can they be said to possess either the same or a situation like ours? I apprehend not. -They are perfectly different, in their distinctions of rank, their Constitutions, their manners & their policy.

839Our true situation appears to me to be this. -a new extensive Country containing within itself the materials for forming a Government capable of extending to its citizens all the blessings of civil & religious liberty- capable of making them happy at home. This is the great end of Republican Establishments. We mistake the object of our Government, if we hope or wish that it is to make us respectable abroad. Conquest or superiority among other powers is not or ought not ever to be the object of republican systems. If they are sufficiently active & energetic to rescue us from contempt & preserve our domestic happiness & security, it is all we can expect from them,-it is more than almost any other Government ensures to its citizens.

840I believe this observation will be found generally true: -that no two people are so exactly alike in their situation or circumstances as to admit the exercise of the same Government with equal benefit: that a system must be suited to the habits & genius of the people it is to govern, and must grow out of them.

841The people of the U. S. may be divided into three classes-Professional men who must from their particular pursuits always have a considerable weight in the Government while it remains popular- Commercial men, who may or may not have weight as a wise or injudicious commercial policy is pursued. -If that commercial policy is pursued which I conceive to be the true one, the merchants of this Country will not or ought not for a considerable time to have much weight in the political scale. -The third is the landed interest, the owners and cultivators of the soil, who are and ought ever to be the governing spring in the system. -These three classes, however distinct in their pursuits are individually equal in the political scale, and may be easily proved to have but one interest. The dependence of each on the other is mutual. The merchant depends on the planter. Both must in private as well as public affairs be connected with the professional men; who in their turn must in some measure depend on them. Hence it is clear from this manifest connection, & the equality which I before stated exists, & must for the reasons then assigned, continue, that after all there is one, but one great & equal body of

citizens composing the inhabitants of this Country among whom there are no distinctions of rank, and very few or none of fortune.¹

842For a people thus circumstanced are we then to form a government & the question is what sort of Government is best suited to them.

843Will it be the British Govt.? No. Why? Because G. Britain contains three orders of people distinct in their situation, their possessions & their principles. -These orders combined form the great body of the Nation, and as in national expences the wealth of the whole community must contribute, so ought each component part to be duly and properly represented-No other combination of power could form this due representation, but the one that exists. -Neither the peers or the people could represent the royalty, nor could the Royalty & the people form a proper representation for the Peers. - Each therefore must of necessity be represented by itself, or the sign of itself; and this accidental mixture has certainly formed a Government admirably well balanced.

844But the U. States contain but one order that can be assimilated to the British Nation,-this is the order of Commons. They will not surely then attempt to form a Government consisting of three branches, two of which shall have nothing to represent. They will not have an Executive & Senate (hereditary) because the King & Lords of England are so. The same reasons do not exist and therefore the same provisions are not necessary.

845We must as has been observed suit our Governmt. to the people it is to direct. These are I believe as active, intelligent & susceptible of good Governmt. as any people in the world. The Confusion which has produced the present relaxed State is not owing to them. It is owing to the weakness & defects of a Govt. incapable of combining the various interests it is intended to unite, and destitute of energy. -All that we have to do then is to distribute the powers of Govt. in such a manner, and for such limited periods, as while it gives a proper degree of permanency to the Magistrate, will reserve to the people, the right of election they will not or ought not frequently to part with. -I am of opinion that this may easily be done; and that with some amendments the propositions before the Committee will fully answer this end.

846No position appears to me more true than this; that the General Govt. can not effectually exist without reserving to the States the possession of their local rights. They are the instruments upon which the Union must frequently depend for the support & execution of their powers, however immediately operating upon the people, and not upon the States.

847Much has been said about the propriety of abolishing the distinction of State Governments, & having but one general System. Suffer me for a moment to examine this

848question.*

849The mode of constituting the 2d. branch being under consideration.

850The word "national" was struck out and "United States" inserted.

851Mr. GHORUM, inclined to a compromise as to the rule of proportion. He thought there was some weight in the objections of the small States. If Va. should have 16. votes & Delre. with several other States together 16. those from Virga. would be more likely to unite than the others, and would therefore have an undue influence. This remark was applicable not only to States, but to Counties or other districts of the same State. Accordingly the Constitution of Massts. had provided that the representatives of the larger districts should not be in an exact ratio to their numbers. And experience he thought had shewn the provision to be expedient.

852Mr. READ. The States have heretofore been in a sort of partnership. They ought to adjust their old affairs before they opened a new account. He brought into view the appropriation of the common

interest in the Western lands, to the use of particular States. Let justice be done on this head; let the fund be applied fairly & equally to the discharge of the general debt, and the smaller States who had been injured; would listen then perhaps to those ideas of just representation which had been held out.

853Mr. GHORUM. could not see how the Convention could interpose in the case. Errors he allowed had been committed on the subject. But Congs. were now using their endeavors to rectify them. The best remedy would be such a Government as would have vigor enough to do justice throughout. This was certainly the best chance that could be afforded to the smaller States.

854Mr. WILSON. The question is shall the members of the 2d. branch be chosen by the Legislatures of the States? When he considered the amazing extent of Country-the immense population which is to fill it, the influence of the Govt. we are to form will have, not only on the present generation of our people & their multiplied posterity, but on

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856* The residue of this speech was not furnished like the above by Mr. Pinckney.

857the whole Globe, he was lost in the magnitude of the object. The project of Henry the 4th.

858& his Statesmen was but the picture in miniature of the great portrait to be exhibited. He was opposed to an election by the State Legislatures. In explaining his reasons it was necessary to observe the twofold relation in which the people would stand. First, as

859Citizens of the Genl. Govt., secondly, as Citizens of their particular State. The Genl. Govt. was meant for them in the first capacity: the State Govts. in the second. Both Govts. were derived from the people-both meant for the people-both therefore ought to be regulated on the same principles. The same train of ideas which belonged to the relation of the Citizens to their State Govts. were applicable to their relation to the Genl. Govt. and in forming the latter, we ought to proceed, by abstracting as much as possible from the idea of the State Govts. With respect to the province & object of the Genl. Govt. they should be considered as having no existence. The election of the 2d. branch by the Legislatures, will introduce & cherish local interests & local prejudices.

860The Genl. Govt. is not an assemblage of States, but of individuals for certain political purposes-it is not meant for the States, but for the individuals composing them; the individuals therefore not the States, ought to be represented in it: A proportion in this representation can be preserved in the 2d. as well as in the 1st. branch; and the election can be made by electors chosen by the people for that purpose. He moved an amendment to that effect which was not seconded.

861Mr. ELSEWORTH saw no reason for departing from the mode contained in the Report. Whoever chooses the member, he will be a Citizen of the State he is to represent & will feel the same spirit & act the same part whether he be appointed by the people or the Legislature. Every State has its particular views & prejudices, which will find their way into the general councils, through whatever channel they may flow. Wisdom was one of the characteristics which it was in contemplation to give the second branch. Would not more of it issue from the Legislatures; than from an immediate election by the people. He urged the necessity of maintaining the existence & agency of the States. Without their co-operation it would be impossible to support a Republican Govt. over so great an extent of Country. An army could scarcely render it practicable. The largest States are the worst Governed. Virga. is obliged to acknowledge her incapacity to extend her Govt. to Kentucky. Masts. can not keep the peace one hundred miles from her capitol and is now forming an army for its support. How long Pena. may be free from a like situation can not be foreseen. If the principles & materials of our Govt. are not adequate to the extent of these single States; how can it be imagined that they can support a single Govt. throughout the U. States. The only chance of supporting a Genl. Govt. lies in grafting it on those of the individual States.

862Docr. JOHNSON urged the necessity of preserving the State Govts. which would be at the mercy of the Genl. Govt. on Mr. Wilson's plan.

863Mr. MADISON thought it wd. obviate difficulty if the present resol: were postponed. & the 8th. taken up, which is to fix the right of suffrage in the 2d. branch.

864Mr. WILLIAMSON professed himself a friend to such a system as would secure the existence of the State Govts. The happiness of the people depended on it. He was at a loss to give his vote as to the Senate untill he knew the number of its members. In order to ascertain this, he moved to insert after "2d. branch of the Natl. Legislature" the words "who shall bear such proportion to the no. of the 1st. branch as 1 to -----." He was not seconded.

865Mr. MASON. It has been agreed on all hands that an efficient Govt. is necessary that to render it such it ought to have the faculty of self-defence, that to render its different branches effectual each of them ought to have the same power of self defence. He did not wonder that such an agreement should have prevailed on these points. He only wondered that there should be any disagreement about the necessity of allowing the State Govts. the same self-defence. If they are to be preserved as he conceived to be essential, they certainly ought to have this power, and the only mode left of giving it to them, was by allowing them to appoint the 2d. branch of the Natl. Legislature.1

866Mr. BUTLER observing that we were put to difficulties at every step by the uncertainty whether an equality or a ratio of representation wd. prevail finally in the 2d. branch, moved to postpone the 4th. Resol: & to proceed to the eighth Resol: on that point. Mr. MADISON seconded him.

867On the question: New York, Virginia, South Carolina, Georgia, aye-4; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, no-7.

868On a question to postpone the 4 and take up the 7. Resol: Mard. Va. N. C. S. C. Geo: aye – 5. Mas. Ct. N. Y. N. J. Pa. Del: no – 6.

869On the question to agree "that the members of the 2d. branch be chosen by the individual Legislatures," Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia, aye- 9; Pennsylvania, Virginia, no-2.†

870On a question on the clause requiring the age of 30 years at least- it was unanimously agreed to.

871On a question to strike out-the words "sufficient to ensure their independence" after the word "term" it was agreed to.

872The clause that the 2d. branch hold their offices for a term of seven years, being considered

873Mr. GHORUM suggests a term of "4 years," 1/4 to be elected every year.

874Mr. Randolph. supported the idea of rotation, as favorable to the wisdom & stability of the Corps, which might possibly be always sitting, and aiding the Executive. And moves after "7 years" to add, "to go out in fixt proportion" which was agreed to.

875Mr. WILLIAMSON. suggest "6 years," as more convenient for Rotation than 7 years.

876Mr. SHERMAN seconds him.

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878† It must be kept in view that the largest States particularly Pennsylvania & Virginia always considered the choice of the 2d. Branch by the State Legislatures as opposed to a proportional Representation to which they were attached as a fundamental principle of just Government. The smaller States who had opposite views, were reinforced by the members from the large States most anxious to secure the importance of the State Governments.

879Mr. REED proposed that they sh. hold their offices "during good" behaviour. Mr. R. MORRIS seconds him.

880Genl. PINKNEY proposed "4 years." A longer time wd. fix them at the seat of Govt. They wd. acquire an interest there, perhaps transfer their property & lose sight of the States they represent. Under these circumstances the distant States wd. labour under great disadvantages.

881Mr. SHERMAN moved to strike out "7 years" in order to take questions on the

882several propositions.

883On the question to strike out "seven" – Massachusetts, Connecticut, New York, New Jersey, North Carolina, South Carolina, Georgia, aye-7; Pennsylvania, Delaware, Virginia, no-3; Maryland, divided.

884On the question to insert "6 years," which failed 5 Sts. being ay. 5 no. & 1 divided: Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, aye-5; Massachusetts, New York, New Jersey, South Carolina, Georgia, no-5; Maryland, divided.

885On a motion to adjourn, the votes were 5 for 5 agst. it & 1 divided,-Con. N. J. Pa. Del. Va. –ay – 5. Massts. N. Y. N. C. S. C. Geo: no – 5. Maryd. divided.

886On the question for "5 years" it was lost. Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, aye-5; Massachusetts, New York, New Jersey, South Carolina, Georgia, no-5; Maryland, divided.

887Adj.

888TUESDAY, JUNE 26

889IN CONVENTION

890The duration of the 2d. branch being under consideration.

891Mr. GHORUM moved to fill the blank with "six years," one third of the members to go out every second year.

892Mr. WILSON 2ded. the motion.

893Genl. PINKNEY opposed six years in favor of four years. The States he said had different interests. Those of the Southern, and of S. Carolina in particular were different from the Northern. If the Senators should be appointed for a long term, they wd. settle in the State where they exercised their functions; and would in a little time be rather the representatives of that than of the State appointg. them.²

894Mr. READ movd. that the term be nine years. This wd. admit of a very convenient rotation, one third going out triennially. He wd. still prefer "during good behaviour," but being little supported in that idea, he was willing to take the longest term that could be obtained.

895Mr. BROOME 2ded. the motion.

896Mr. MADISON. In order to judge of the form to be given to this institution, it will be proper to take a view of the ends to be served by it. These were first to protect the people agst. their rulers: secondly to protect the people agst. the transient impressions into which they themselves might be led. A people deliberating in a temperate moment, and with the experience of other nations before them, on the plan of Govt. most likely to secure their happiness, would first be aware, that those chargd. with the public happiness, might betray their trust. An obvious precaution agst. this danger wd. be to divide the trust between different bodies of men, who might watch & check each other. In this they wd. be governed by the same prudence which has prevailed in organizing the subordinate departments of Govt., where all

business liable to abuses is made to pass thro' separate hands, the one being a check on the other.

897It wd. next occur to such a people, that they themselves were liable to temporary errors, thro' want of information as to their true interest, and that men chosen for a short term, & employed but a small portion of that in public affairs, might err from the same cause. This reflection wd. naturally suggest that the Govt. be so constituted, as that one of its branches might have an opportunity of acquiring a competent knowledge of the public interests Another reflection equally becoming a people on such an occasion, wd. be that they themselves, as well as a numerous body of Representatives, were liable to err also, from fickleness and passion. A necessary fence agst. this danger would be to select a portion of enlightened citizens, whose limited number, and firmness might seasonably interpose agst. impetuous councils.

898It ought finally to occur to a people deliberating on a Govt. for themselves, that as different interests necessarily result from the liberty meant to be secured, the major interest might under sudden impulses be tempted to commit injustice on the minority. In all civilized Countries the people fall into different classes havg a real or supposed difference of interests. There will be creditors & debtors, farmers, merchts. & manufacturers. There will be particularly the distinction of rich & poor. It was true as had been observd. (by Mr. Pinkney) we had not among us those hereditary distinctions, of rank which were a great source of the contests in the ancient Govts. as well as the modern States of Europe, nor those extremes of wealth or poverty which characterize the latter. We cannot however be regarded even at this time, as one homogeneous mass, in which every thing that affects a part will affect in the same manner the whole.¹

899In framing a system which we wish to last for ages, we shd. not lose sight of the changes which ages will produce. An increase of population will of necessity increase the proportion of those who will labour under all the hardships of life, & secretly sigh for a more equal distribution of its blessings. These may in time outnumber those who are placed above the feelings of indigence. According to the equal laws of suffrage, the power will slide into the hands of the former. No agrarian attempts have yet been made in in this Country, but syptoms, of a leveling spirit, as we have understood, have sufficiently appeared in a certain quarters to give notice of the future danger.

900How is this danger to be guarded agst. on republican principles? How is the danger in all cases of interested coalitions to oppress the minority to be guarded agst.? Among other means by the establishment of a body in the Govt. sufficiently respectable for its wisdom & virtue, to aid on such emergencies, the preponderance of justice by throwing its weight into that scale. Such being the objects of the second branch in the proposed Govt. he thought a considerable duration ought to be given to it. He did not conceive that the term of nine years could threaten any real danger; but in pursuing his particular ideas on the subject, he should require that the long term allowed to the 2d. branch should not commence till such a period of life, as would render a perpetual disqualification to be re-elected little inconvenient either in a public or private view. He observed that as it was more than probable we were now digesting a plan which in its operation wd. decide for ever the fate of Republican Govt. we ought not only to provide every guard to liberty that its preservation cd. require, but be equally careful to supply the defects which our own experience had particularly pointed out.

901Mr. SHERMAN. Govt. is instituted for those who live under it. It ought therefore to be so constituted as not to be dangerous to their liberties. The more permanency it has the worse if it be a bad Govt. Frequent elections are necessary to preserve the good behavior of rulers. They also tend to give permanency to the Government, by preserving that good behavior, because it ensures their re-election. In Connecticut elections have been very frequent, yet great stability & uniformity both as to persons & measures have been experienced from its original establishmt. to the present time; a period of more than 130 years. He wished to have provision made for steadiness & wisdom in the system to be adopted; but he thought six or four years would be sufficient. He shd. be content with either.

902Mr. READ wished it to be considered by the small States that it was their interest that we should become one people as much as possible; that State attachments shd. be extinguished as much as possible; that the Senate shd. be so constituted as to have the feelings of Citizens of the whole.

903Mr. HAMILTON. He did not mean to enter particularly into the subject. He concurred with Mr. Madison in thinking we were now to decide for ever the fate of Republican Government; and that if we did not give to that form due stability and wisdom, it would be disgraced & lost among ourselves, disgraced & lost to mankind for ever.

904He acknowledged himself not to think favorably of Republican Government; but addressed his remarks to those who did think favorably of it, in order to prevail on them to tone their Government as high as possible. He professed himself to be as zealous an advocate for liberty as any man whatever, and trusted he should be as willing a martyr to it though he differed as to the form in which it was most eligible.

905He concurred also in the general observations of (Mr. Madison) on the subject, which might be supported by others if it were necessary. It was certainly true: that nothing like an equality of property existed: that an inequality would exist as long as liberty existed, and that it would unavoidably result from that very liberty itself. This inequality of property constituted the great & fundamental distinction in Society. When the Tribunitial power had levelled the boundary between the patricians & plebeians, what followed? The distinction between rich & poor was substituted. He meant not however to enlarge on the subject. He rose principally to remark that (Mr. Sherman) seemed not to recollect that one branch of the proposed Govt. was so formed, as to render it particularly the guardians of the poorer orders of Citizens; nor to have adverted to the true causes of the stability which had been exemplified in Cont. Under the British system as well as the federal, many of the great powers appertaining to Govt. particularly all those relating to foreign Nations were not in the hands of the Govt. there. Their internal affairs also were extremely simple, owing to sundry causes many of which were peculiar to that Country. Of late the Governmt. had entirely given way to the people, and had in fact suspended many of its ordinary functions in order to prevent those turbulent scenes which had appeared elsewhere. He asks Mr. S. whether the State at this time, dare impose & collect a tax on ye. people? To these causes & not to the frequency of elections, the effect, as far as it existed ought to be chiefly ascribed.

906Mr. GERRY. wished we could be united in our ideas concerning a permanent Govt. All aim at the same end, but there are great differences as to the means. One circumstance He thought should be carefully attended to. There were not 1/1000 part of our fellow citizens who were not agst. every approach towards Monarchy. Will they ever agree to a plan which seems to make such an approach. The Convention ought to be extremely cautious in what they hold out to the people. Whatever plan may be proposed will be espoused with warmth by many out of respect to the quarter it proceeds from as well as from an approbation of the plan itself. And if the plan should be of such a nature as to rouse a violent opposition, it is easy to foresee that discord & confusion will ensue, and it is even possible that we may become a prey to foreign powers. He did not deny the position of Mr. Madison, that the majority will generally violate justice when they have an interest in so doing; But did not think there was any such temptation in this Country. Our situation was different from that of G. Britain: and the great body of lands yet to be parcelled out & settled would very much prolong the difference. Notwithstanding the symptoms of injustice which had marked many of our public Councils, they had not proceeded so far as not to leave hopes, that there would be a sufficient sense of justice & virtue for the purpose of Govt. He admitted the evils arising from a frequency of elections: and would agree to give the Senate a duration of four or five years. A longer term would defeat itself. It never would be adopted by the people.

907Mr. WILSON did not mean to repeat what had fallen from others, but wd. add an observation or two which he believed had not yet been suggested. Every nation may be regarded in two relations –

first to its own citizens, secondly to foreign nations. It is therefore not only liable to anarchy & tyranny within, but has wars to avoid & treaties to obtain from abroad. The Senate will probably be the depositary of the powers concerning the latter objects. It ought therefore to be made respectable in the eyes of foreign Nations. The true reason why G. Britain has not yet listened to a commercial treaty with us has been, because she had no confidence in the stability or efficacy of our Government. 9 years with a rotation, will provide these desirable qualities; and give our Govt. an advantage in this respect over Monarchy itself. In a monarchy much must always depend on the temper of the man. In such a body, the personal character will be lost in the political. He wd add another observation. The popular objection agst. appointing any public body for a long term was that it might by gradual encroachments prolong itself first into a body for life, and finally become a hereditary one. It would be a satisfactory answer to this objection that as 1/3 would go out triennially, there would be always three divisions holding their places for unequal times, and consequently acting under the influence of different views, and different impulses.

908 On the question for 9 years, 1/3 to go out triennially: Pennsylvania, Delaware, Virginia, aye- 3; Massachusetts, Connecticut, New York, New Jersey, Maryland, North Carolina, South Carolina, Georgia, no-8.

909 On the question for 6 years 1/3 to go out biennially: Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, aye-7; New York, New Jersey, South Carolina, Georgia, no-4.1

910 The clause of the fourth Resolution "To receive fixt stipends by which they may be compensated for their services" being considered

911 General PINKNEY proposed "that no Salary should be allowed." As this (the Senatorial) branch was meant to represent the wealth of the Country, it ought to be composed of persons of wealth; and if no allowance was to be made the wealthy along would undertake the service. He moved to strike out the clause.

912 Doctr. FRANKLIN seconded the motion. He wished the Convention to stand fair with the people. There were in it a number of young men who would probably be of the Senate. If lucrative appointments should be recommended we might be chargeable with having carved out places for ourselves. On the question, Masts. Connecticut* Pa. Md. S. Carolina ay – 5. N. Y. N. J. Del. Virga. N. C. Geo. no – 6.

913 Mr. WILLIAMSON moved to change the expression into these words towit "to receive a compensation for the devotion of their time to the public Service." The motion was seconded by Mr. Elseworth. And agreed to by all the States except S. Carola. It seemed to be meant only to get rid of the word "fixt" and leave greater room for modifying the provision on this point.

914 Mr. ELSEWORTH moved to strike out "to be paid out of the natil. Treasury" and insert "to be paid by their respective States." If the Senate was meant to strengthen the Govt. it ought to have the confidence of the States. The States will have an interest in keeping up a representation, and will make such provision for supporting the members as will ensure their attendance.

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916* Quer. whether Connecticut should not be-no, & Delaware, ay.

917 Mr. MADISON considered this as a departure from a fundamental principle, and subverting the end intended by allowing the Senate a duration of 6 years. They would if this motion should be agreed to, hold their places during pleasure; during the pleasure of the State Legislatures. One great end of the institution was, that being a firm, wise and impartial body, it might not only give stability to the Genl.

Govt. in its operations on individuals, but hold an even balance among different States. The motion would make the Senate like Congress, the mere Agents & Advocates of State interests & views, instead of being the impartial umpires & Guardians of justice and the general Good. Congs. had lately by the establishment of a board with full powers to decide on the mutual claims between the U. States & the individual States, fairly acknowledged themselves to be unfit for discharging this part of the business referred to them by the Confederation.

918Mr. DAYTON considered the payment of the Senate by the States as fatal to their independence. he was decided for paying them out of the Natl. Treasury.

919On the question for payment of the Senate to be left to the States as moved by Mr. Elseworth, it passed in the negative: Connecticut, New York, New Jersey, South Carolina, Georgia, aye-5; Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no-6.

920Col. MASON. He did not rise to make any motion, but to hint an idea which seemed to be proper for consideration. One important object in constituting the Senate was to secure the rights of property. To give them weight & firmness for this purpose, a considerable duration in office was thought necessary. But a longer term than 6 years, would be of no avail in this respect, if needy persons should be appointed. He suggested therefore the propriety of annexing to the office a qualification of property. He thought this would be very practicable; as the rules of taxation would supply a scale for measuring the degree of wealth possessed by every man.

921A question was then taken whether the words "to be paid out of the national treasury," should stand." Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, aye-5; Connecticut, New York, New Jersey, North Carolina, South Carolina, Georgia, no-6.

922Mr. BUTLER moved to strike out the ineligibility of Senators to State offices.

923Mr. WILLIAMSON seconded the motion.

924Mr. WILSON remarked the additional dependence this wd create in the Senators on the States. The longer the time he observed allotted to the officer, the more compleat will be the dependance, if it exists at all.

925Genl. PINKNEY was for making the States as much as could be conveniently done, a part of the Genl. Govt.: If the Senate was to be appointed by the States, it ought in pursuance of the same idea to be paid by the States: and the States ought not to be barred from the opportunity of calling members of it into offices at home. Such a restriction would also discourage the ablest men from going into the Senate.

926Mr. WILLIAMSON moved a resolution so penned as to admit of the two following questions. First, whether the members of the Senate should be ineligible to & incapable of holding offices under the U. States. Secondly, whether &c. under the particular States.

927On the Question to postpone in order to consider Mr. Williamson's Resoln. Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye-8; Massachusetts, New York, New Jersey, no-3.

928Mr. GERRY & Mr. MADISON-move to add to Mr. Williamsons first Quest: "and for 1 year thereafter." On this amendt. Connecticut, New York, Delaware, Maryland, Virginia, North Carolina, South Carolina, ay-7; Massachusetts, New Jersey, Pennsylvania, Georgia, no-4.

929On Mr. Will-son's 1 Question as amended. vz. inelig: & incapable &c. &c for 1 year &c. agd. to unanimously.

930On the second question as to ineligibility &c. to State offices. Massachusetts, Pennsylvania,

Virginia, aye-3; Connecticut, New York, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia, no-8.

931 The fifth Resol: "that each branch have the right of originating acts" was agreed to nem: con:

932 Adj.

933 WEDNESDAY, JUNE 27

934 IN CONVENTION

935 Mr. RUTLIDGE moved to postpone the 6th Resolution, defining the powers of Congs. in order to take up the 7 & 8 which involved the most fundamental points; the rules of suffrage in the 2 branches which was agreed to nem. con.

936 A question being proposed on the seventh Resolution: declaring that the suffrage in the first branch sd. be according to an equitable ratio.

937 Mr. L. MARTIN contended at great length and with great eagerness that the General Govt. was meant merely to preserve the State Govts.: not to govern individuals: that its powers ought to be kept within narrow limits; that if too little power was given to it, more might be added; but that if too much, it could never be resumed: that individuals as such have little to do but with their own States; that the Genl. Govt. has no more to apprehend from the States composing the Union, while it pursues proper measures, than a Govt. over individuals has to apprehend from its subjects: that to resort to the Citizens at large for their sanction to a new Govern. will be throwing them back into a State of Nature: that the dissolution of the State Govts. is involved in the nature of the process: that the people have no right to do this without the consent of those to whom they have delegated their power for State purposes: through their tongue only they can speak, through their ears, only, can hear: that the States have shewn a good disposition to comply with the Acts, of Congs. weak, contemptibly weak as that body has been; and have failed through inability alone to comply: that the heaviness of the private debts, and the waste of property during the war, were the chief causes of this inability: that he did not conceive the instances mentioned by Mr. Madison of compacts between Va. & Md. between Pa. & N. J. or of troops raised by Masses. for defence against the Rebels, to be violations of the articles of confederation-that an equal vote in each State was essential to the federal idea, and was founded in justice & freedom, not merely in policy: that tho' the States may give up this right of sovereignty, yet they had not, and ought not: that the States like individuals were in a State of nature equally sovereign & free. In order to prove that individuals in a State of nature are equally free & independent he read passages from Locke, Vattel, Lord Summers- Priestly. To prove that the case is the same with States till they surrender their equal sovereignty, he read other passages in Locke & Vattel, and also Rutherford: that the States being equal cannot treat or confederate so as to give up an equality of votes without giving up their liberty: that the propositions on the table were a system of slavery for 10 States: that as Va. Masses. & Pa. have 42/90 of the votes they can do as they please without a miraculous Union of the other ten: that they will have nothing to do, but to gain over one of the ten to make them compleat masters of the rest: that they can then appoint an Executive. & Judiciary & legislature for them as they please: that there was & would continue a natural predilection & partiality in men for their own States; that the States, particularly the smaller, would never allow a negative to be exercised over their laws: that no State in ratifying the Confederation had objected to the equality of votes; that the complaints at present run not agst. this equality but the want of power; that 16 members from Va. would be more likely to act in concert than a like number formed of members from different States; that instead of a junction of the small States as a remedy, he thought a division of the large States would be more eligible.¹

938This was the substance of a speech which was continued more than three hours. He was too much exhausted he said to finish his remarks, and reminded the House that he should tomorrow, resume them
939Adj.

940THURSDAY, JUNE 28

941IN CONVENTION

942Mr. L. MARTIN resumed his discourse, contending that the Genl. Govt. ought to be formed for the States, not for individuals: that if the States were to have votes in proportion to their numbers of people, it would be the same thing whether their representatives were chosen by the Legislatures or the people; the smaller States would be equally enslaved; that if the large States have the same interest with the smaller as was urged, there could be no danger in giving them an equal vote; they would not injure themselves, and they could not injure the large ones on that supposition without injuring themselves and if the interests, were not the same, the inequality of suffrage wd. be dangerous to the smaller States: that it will be in vain to propose any plan offensive to the rulers of the States, whose influence over the people will certainly prevent their adopting it: that the large States were weak at present in proportion to their extent: & could only be made formidable to the small ones, by the weight of their votes; that in case a dissolution of the Union should take place, the small States would have nothing to fear from their power; that if in such a case the three great States should league themselves together, the other ten could do so too: & that he had rather see partial confederacies take place, than the plan on the table.

943This was the substance of the residue of his discourse which was delivered with much diffuseness & considerable vehemence.

944Mr. LANSING & Mr. DAYTON moved to strike out "not." so that the 7 art: might read that the right of suffrage in the 1st. branch ought to be according to the rule established by the Confederation."

945Mr. DAYTON expressed great anxiety that the question might not be put till tomorrow; Governr. Livingston being kept away by indisposition, and the representation of N. Jersey thereby suspended.

946Mr. WILLIAMSON. thought that if any political truth could be grounded on mathematical demonstration, it was that if the States were equally sovereign now, and parted with equal proportions of sovereignty, that they would remain equally sovereign. He could not comprehend how the smaller States would be injured in the case, and wished some Gentleman would vouchsafe a solution of it. He observed that the small States, if they had a plurality of votes would have an interest in throwing the burdens off their own shoulders on those of the large ones. He begged that the expected addition of new States from the Westward might be taken into view. They would be small States, they would be poor States, they would be unable to pay in proportion to their numbers; their distance from market rendering the produce of their labour less valuable; they would consequently be tempted to combine for the purpose of laying burdens on commerce & consumption which would fall with greater weight on the old States.

947Mr. MADISON, Sd. he was much disposed to concur in any expedient not inconsistent with fundamental principles, that could remove the difficulty concerning the rule of representation. But he could neither be convinced that the rule contended for was just, nor that it was necessary for the safety of the small States agst. the large States. That it was not just, had been conceded by Mr. Breerly & Mr. Patterson themselves. The expedient proposed by them was a new partition of the territory of the U. States. The fallacy of the reasoning drawn from the equality of Sovereign States in the formation of compacts, lay in confounding mere Treaties, in which were specified certain duties to which the parties

were to be bound, and certain rules by which their subjects were to be reciprocally governed in their intercourse, with a compact by which an authority was created paramount to the parties, & making laws for the government of them. If France, England & Spain were to enter into a Treaty for the regulation of commerce &c with the Prince of Monaco & 4 or 5 other of the smallest sovereigns of Europe, they would not hesitate to treat as equals, and to make the regulations perfectly reciprocal. Wd. the case be the same, if a Council were to be formed of deputies from each with authority and discretion, to raise money, levy troops, determine the value of coin &c? Would 30 or 40. millions of people submit their fortunes into the hands, of a few thousands? If they did it would only prove that they expected more from the terror of their superior force, than they feared from the selfishness of their feeble associates. Why are Counties of the same states represented in proportion to their numbers? Is it because the representatives are chosen by the people themselves? So will be the representatives in the National Legislature. Is it because, the larger have more at stake than the smaller? The case will be the same with the larger & smaller States. Is it because the laws are to operate immediately on their persons & properties? The same is the case in some degree as the articles of confederation stand; the same will be the case in a far greater degree under the plan proposed to be substituted. In the cases of captures, of piracies, and of offences in a federal army; the property & persons of individuals depend on the laws of Congs.

948By the plan proposed a compleat power of taxation, the highest prerogative of supremacy is proposed to be vested in the National Govt. Many other powers are added which assimilate it to the Govt. of individual States. The negative proposed on the State laws, will make it an essential branch of the State Legislatures & of course will require that it should be exercised by a body established on like principles with the branches of those Legislatures.

949That it is not necessary to secure the small States agst. the large ones he conceived to be equally obvious: Was a combination of the large ones dreaded? this must arise either from some interest common to Va. Masts. & Pa. & distinguishing them from the other States or from the mere circumstance of similarity of size. Did any such common interest exist? In point of situation they could not have been more effectually separated from each other by the most jealous citizen of the most jealous State. In point of manners, Religion, and the other circumstances which sometimes beget affection between different communities, they were not more assimilated than the other States.- In point of the staple productions they were as dissimilar as any three other States in the Union. The Staple of Masts. was fish, of Pa. flower, of Va. Tobo.. Was a combination to be apprehended from the mere circumstance of equality of size? Experience suggested no such danger. The journals of Congs. did not present any peculiar association of these States in the votes recorded. It had never been seen that different Counties in the same State, conformable in extent, but disagreeing in other circumstances, betrayed a propensity to such combinations.

950Experience rather taught a contrary lesson. Among individuals of superior eminence & weight in Society, rivalships were much more frequent than coalitions. Among independent nations, pre-eminent over their neighbours, the same remark was verified. Carthage & Rome tore one another to pieces instead of uniting their forces to devour the weaker nations of the Earth. The Houses of Austria & France were hostile as long as they remained the greatest powers of Europe. England & France have succeeded to the pre-eminence & to the enmity. To this principle we owe perhaps our liberty. A coalition between those powers would have been fatal to us. Among the principal members of antient & Modern confederacies, we find the same effect from the same cause. The contentions, not the Coalitions of Sparta, Athens & Thebes, proved fatal to the smaller members of the Amphycyonic Confederacy. The contentions, not the combinations of Prussia & Austria, have distracted & oppressed the German empire. Were the large States formidable singly to their smaller neighbours? On this supposition the latter ought to wish for such a general Govt. as will operate with equal energy on the former as on

themselves. The more lax the band, the more liberty the larger will have to avail themselves of their superior force.

951 Here again Experience was an instructive monitor. What is ye situation of the weak compared with the strong in those stages of civilization in which the violence of individuals is least controuled by an efficient Government? The Heroic period of Antient Greece the feudal licentiousness of the middle ages of Europe, the existing condition of the American Savages, answer this question. What is the situation of the minor sovereigns in the great society of independent nations, in which the more powerful are under no controul but the nominal authority of the law of Nations? Is not the danger to the former exactly in proportion to their weakness. But there are cases still more in point. What was the condition of the weaker members of the Amphycyonic Confederacy. Plutarch (see life of Themistocles) will inform us that it happened but too often that the strongest cities corrupted & awed the weaker, and that Judgment went in favor of the more powerful party. What is the condition of the lesser states in the German Confederacy? We all know that they are exceedingly trampled upon; and that they owe their safety as far as they enjoy it, partly to their enlisting themselves, under the rival banners of the pre-eminent members, partly to alliances with neighbouring Princes which the Constitution of the Empire does not prohibit. What is the state of things in the lax system of the Dutch Confederacy? Holland contains about 1/2 the people, supplies about 1/2 the money, and by her influence, silently & indirectly governs the whole republic.¹

952 In a word, the two extremes before us are a perfect separation & a perfect incorporation, of the 13 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 every thing to fear from the larger. In the last they would have nothing to fear. The true policy of the small States therefore lies in promoting those principles & that form of Govt. which will most approximate the States to the condition of counties. Another consideration may be added. If the Genl. Govt. be feeble, the large States distrusting its continuance, and foreseeing that their importance & security may depend on their own size & strength, will never submit to a partition. Give to the Genl. Govt. sufficient energy & permanency, & you remove the objection. Gradual partitions of the large, & junctions of the small States will be facilitated, and time may effect that equalization, which is wished for by the small States now, but can never be accomplished at once.

953 Mr. WILSON. The leading argument of those who contend for equality of votes among the States is that the States as such being equal, and being represented not as districts of individuals, but in their political & corporate capacities, are entitled to an equality of suffrage. According to this mode of reasoning the representation of the boroughs in Engl^d which has been allowed on all hands to be the rotten part of the Constitution, is perfectly right & proper. They are like the States represented in their corporate capacity like the States therefore they are entitled to equal voices, old Sarum to as many as London. And instead of the injury supposed hitherto to be done to London, the true ground of complaint lies with old Sarum: for London instead of two which is her proper share, sends four representatives to Parliament.

954 Mr. SHERMAN. The question is not what rights naturally belong to man; but how they may be most equally & effectually guarded in Society. And if some give up more than others in order to obtain this end, there can be no room for complaint. To do otherwise, to require an equal concession from all, if it would create danger to the rights of some, would be sacrificing the end to the means. The rich man who enters into Society along with the poor man, gives up more than the poor man, yet with an equal vote he is equally safe. Were he to have more votes than the poor man in proportion to his superior stake, the rights of the poor man would immediately cease to be secure. This consideration prevailed when the articles of Confederation were formed.

955The determination of the question for striking out the word "not" was put off till tomorrow at the request of the Deputies of N. York.

956Dr. FRANKLIN. Mr. President. The small progress we have made after 4 or five weeks close attendance & continual reasonings with each other-our different sentiments on almost every question, several of the last producing as many noes as ays, is methinks a melancholy proof of the imperfection of the Human Understanding. We indeed seem to feel our own want of political wisdom, since we have been running about in search of it. We have gone back to ancient history for models of Government, and examined the different forms of those Republics which having been formed with the seeds of their own dissolution now no longer exist. And we have viewed Modern States all round Europe, but find none of their Constitutions suitable to our circumstances.

957In this situation of this Assembly, groping as it were in the dark to find political truth, and scarce able to distinguish it when presented to us, how has it happened, Sir, that we have not hitherto once thought of humbly applying to the Father of lights to illuminate our understandings? In the beginning of the Contest with G. Britain, when we were sensible of danger we had daily prayer in this room for the divine protection.- Our prayers, Sir, were heard, & they were graciously answered. All of us who were engaged in the struggle must have observed frequent instances of a superintending providence in our favor. To that kind providence we owe this happy opportunity of consulting in peace on the means of establishing our future national felicity. And have we now forgotten that powerful friend? or do we imagine that we no longer need his assistance? I have lived, Sir, a long time, and the longer I live, the more convincing proofs I see of this truth- that God Governs in the affairs of men. And if a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid? We have been assured, Sir, in the sacred writings, that "except the Lord build the House they labour in vain that build it." I firmly believe this; and I also believe that without his concurring aid we shall succeed in this political building no better, than the Builders of Babel: We shall be divided by our little partial local interests; our projects will be confounded, and we ourselves shall become a reproach and by word down to future ages. And what is worse, mankind may hereafter from this unfortunate instance, despair of establishing Governments by Human wisdom and leave it to chance, war and conquest.

958I therefore beg leave to move-that henceforth prayers imploring the assistance of Heaven, and its blessings on our deliberations, be held in this Assembly every morning before we proceed to business, and that one or more of the Clergy of this City be requested to officiate in that Service-1

959Mr. SHARMAN seconded the motion.

960Mr. HAMILTON & several others expressed their apprehensions that however proper such a resolution might have been at the beginning of the convention, it might at this late day, in the first place bring on it some disagreeable animadversions & in the second place lead the public to believe that the embarrassments and dissensions within the Convention, had suggested this measure. It was answered by Doctr. F. Mr. SHERMAN & others, that the past omission of a duty could not justify a further omission-that the rejection of such a proposition would expose the Convention to more unpleasant animadversions than the adoption of it: and that the alarm out of doors that might be excited for the state of things within, would at least be as likely to do good as ill.1

961Mr. WILLIAMSON, observed that the true cause of the omission could not be mistaken. The Convention had no funds.

962Mr. Randolph proposed in order to give a favorable aspect to ye. measure, that a sermon be preached at the request of the convention on the 4th of July, the anniversary of Independence; & thenceforward prayers &c to be read in ye. Convention every morning. Dr. FRANKn. 2ded. this motion After several unsuccessful attempts for silently postponing this matter by adjourng. the adjournment was at length carried, without any vote on the motion.

963FRIDAY, JUNE 29

964IN CONVENTION

965Doctr. JOHNSON. The controversy must be endless whilst Gentlemen differ in the grounds of their arguments; Those on one side considering the States as districts of people composing one political Society; those on the other considering them as so many political societies. The fact is that the States do exist as political Societies, and a Govt. is to be formed for them in their political capacity, as well as for the individuals composing them. Does it not seem to follow, that if the States as such are to exist they must be armed with some power of self-defence. This is the idea of (Col. Mason) who appears to have looked to the bottom of this matter. Besides the Aristocratic and other interests, which ought to have the means of defending themselves, the States have their interests as such, and are equally entitled to like means. On the whole he thought that as in some respects the States are to be considered in their political capacity, and in others as districts of individual citizens, the two ideas embraced on different sides, instead of being opposed to each other, ought to be combined; that in one branch the people, ought to be represented; in the other the States.

966Mr. GHORUM. The States as now confederated have no doubt a right to refuse to be consolidated, or to be formed into any new system. But he wished the small States which seemed most ready to object, to consider which are to give up most, they or the larger ones. He conceived that a rupture of the Union wd. be an event unhappy for all, but surely the large States would be least unable to take care of themselves, and to make connections with one another. The weak therefore were most interested in establishing some general system for maintaining order. If among individuals, composed partly of weak, and partly of strong, the former most need the protection of law & Government, the case is exactly the same with weak & powerful States. What would be the situation of Delaware (for these things he found must be spoken out, & it might as well be done at first as last) what wd. be the situation of Delaware in case of a separation of the States? Would she not be at the mercy of Pennsylvania? would not her true interest lie in being consolidated with her, and ought she not now to wish for such a union with Pa. under one Govt. as will put it out of the power of Pa. to oppress her? Nothing can be more ideal than the danger apprehended by the States, from their being formed into one nation. Massts. was originally three colonies, viz old Massts. Plymouth-& the province of Mayne. These apprehensions existed then. An incorporation took place; all parties were safe & satisfied; and every distinction is now forgotten. The case was similar with Connecticut & Newhaven. The dread of union was reciprocal; the consequence of it equally salutary and satisfactory.

967In like manner N. Jersey has been made one society out of two parts. Should a separation of the States take place, the fate of N. Jersey wd. be worst of all. She has no foreign commerce & can have but little. Pa. & N. York will continue to levy taxes on her consumption. If she consults her interest she wd. beg of all things to be annihilated. The apprehensions of the small States ought to be appeased by another reflection. Massts. will be divided. The province of Maine is already considered as approaching the term of its annexation to it; and Pa. will probably not increase, considering the present state of her population, & other events that may happen. On the whole he considered a Union of the States as necessary to their happiness, & a firm Genl. Govt. as necessary to their Union. He shd. consider it his duty if his colleagues viewed the matter in the same light he did to stay here as long as any other State would remain with them, in order to agree on some plan that could with propriety be recommended to the people.

968Mr. ELSWORTH, did not despair. He still trusted that some good plan of Govt. wd. be devised & adopted.

969Mr. READ. He shd. have no objection to the system if it were truly national, but it has too much of a federal mixture in it. The little States he thought had not much to fear. He suspected that the large

States felt their want of energy, & wished for a Genl. Govt. to supply the defect. Massts. was evidently labouring under her weakness and he believed Delaware wd. not be in much danger if in her neighbourhood. Delaware had enjoyed tranquility & he flattered himself wd. continue to do so. He was not however so selfish as not to wish for a good Genl. Govt. In order to obtain one the whole States must be incorporated. If the States remain, the representatives of the large ones will stick together, and carry every thing before them. The Executive also will be chosen under the influence of this partiality, and will betray it in his administration. These jealousies are inseparable from the scheme of leaving the States in existence. They must be done away. The ungranted lands also which have been assumed by particular States must be given up. He repeated his approbation of the plan of Mr. Hamilton, & wished it to be substituted for that on the table.

970Mr. MADISON agreed with Doctr. Johnson, that the mixed nature of the Govt. ought to be kept in view; but thought too much stress was laid on the rank of the States as political societies. There was a gradation, he observed from the smallest corporation, with the most limited powers, to the largest empire with the most perfect sovereignty. He pointed out the limitations on the sovereignty of the States, as now confederated their laws in relation to the paramount law of the Confederacy were analogous to that of bye laws to the supreme law within a State. Under the proposed Govt. the powers of the States will be much farther reduced. According to the views of every member, the Genl. Govt. will have powers far beyond those exercised by the British Parliament, when the States were part of the British Empire. It will in particular have the power, without the consent of the State Legislatures, to levy money directly from the people themselves; and therefore not to divest such unequal portions of the people as composed the several States, of an equal voice, would subject the system to the reproaches & evils which have resulted from the vicious representation in G. B.2

971He entreated the gentlemen representing the small States to renounce a principle wch. was confessedly unjust, which cd. never be admitted, & which if admitted must infuse mortality into a Constitution which we wished to last forever. He prayed them to ponder well the consequences of suffering the Confederacy to go to pieces. It had been sd. that the want of energy in the large states wd. be a security to the small. It was forgotten that this want of energy proceeded from the supposed security of the States agst. all external danger. Let each state depend on itself for its security, & let apprehensions arise arise of danger, from distant powers or from neighbouring States, & the languishing condition of all the States, large as well as small, wd. soon be transformed into vigorous & high toned Govts.

972His great fear was that their Govts. wd. then have too much energy, that this might not only be formidable in the large to the small States, but fatal to the internal liberty of all. The same causes which have rendered the old world the Theatre of incessant wars, & have banished liberty from the face of it, wd. soon produce the same effects here. The weakness & jealousy of the small States wd. quickly introduce some regular military force agst. sudden danger from their powerful neighbours. The example wd. be followed by others, and wd. soon become universal. In time of actual war, great discretionary powers are constantly given to the Executive Magistrate. Constant apprehension of war, has the same tendency to render the head too large for the body. A standing military force, with an overgrown Executive will not long be safe companions to liberty. The means of defence agst. foreign danger, have been always the instruments of tyranny at home. Among the Romans it was a standing maxim to excite a war, whenever a revolt was apprehended. Throughout all Europe, the armies kept up under the pretext of defending, have enslaved the people. It is perhaps questionable, whether the best concerted system of absolute power in Europe cd. maintain itself, in a situation, where no alarms of external danger cd. tame the people to the domestic yoke. The insular situation of G. Britain was the principal cause of her being an exception to the general fate of Europe. It has rendered less defence necessary, and admitted a kind of defence wch. cd. not be used for the purpose of oppression.1

973 These consequences he conceived ought to be apprehended whether the States should run into a total separation from each other, or shd. enter into partial confederacies. Either event wd. be truly deplorable; & those who might be accessory to either, could never be forgiven by their Country, nor by themselves.

974* Mr. HAMILTON observed that individuals forming political Societies modify their rights differently, with regard to suffrage. Examples of it are found in all the States. In all of them some individuals are deprived of the right altogether, not having the requisite qualification of property. In some of the States the right of suffrage is allowed in some cases and refused in others. To vote for a member in one branch, a certain quantum of property, to vote for a member in another branch of the Legislature, a higher quantum of property is required. In like manner States may modify their right of suffrage differently, the larger exercising a larger, the smaller a smaller share of it. But as States are a collection of individual men which ought we to respect most, the rights of the people composing them, or of the artificial beings resulting from the composition. Nothing could be more preposterous or absurd than to sacrifice the former to the latter. It has been sd. that if the smaller States renounce their equality, they renounce at the same time their liberty.

975 The truth is it is a contest for power, not for liberty. Will the men composing the small States be less free than those composing the larger. The State of Delaware having 40,000 souls will lose power, if she has 1/10 only of the votes allowed to Pa. having 400,000: but will the people of Del: be less free, if each citizen has an equal vote with each citizen of Pa. He admitted that common residence within the same State would produce a certain degree of attachment; and that this principle might have a certain influence on public affairs. He thought however that this might by some precautions be in a great measure excluded: and that no material inconvenience could result from it, as there could not be any ground for combination among the States whose influence was

976 _____

977* From this date he was absent till the 13th of August.

978 most dreaded. The only considerable distinction of interests, lay between the carrying & non-carrying States, which divides instead of uniting the largest States. No considerable inconvenience had been found from the division of the State of N. York into different districts of different sizes.

979 Some of the consequences of a dissolution of the Union, and the establishment of partial confederacies, had been pointed out. He would add another of a most serious nature. Alliances will immediately be formed with different rival & hostile nations of Europe, who will foment disturbances among ourselves, and make us parties to all their own quarrels. Foreign Nations having American dominion are & must be jealous of us. Their representatives betray the utmost anxiety for our fate, & for the result of this meeting, which must have an essential influence on it. -It had been said that respectability in the eyes of foreign Nations was not the object at which we aimed; that the proper object of republican Government was domestic tranquility & happiness. This was an ideal distinction. No Government could give us tranquility & happiness at home, which did not possess sufficient stability and strength to make us respectable abroad. This was the critical moment for forming such a Government. We should run every risk in trusting to future amendments. As yet we retain the habits of union. We are weak & sensible of our weakness. Henceforward the motives will become feebler, and the difficulties greater. It is a miracle that we are now here exercising our tranquil & free deliberations on the subject. It would be madness to trust to future miracles. A thousand causes must obstruct a reproduction of them.

980 Mr. PIERCE considered the equality of votes under the Confederation as the great source of the public difficulties. The members of Congress were advocates for local advantages. State distinctions must be sacrificed as far as the general good required, but without destroying the States. Tho' from a small

State he felt himself a Citizen of the U.S.

981Mr. GERRY urged that we never were independent States, were not such now, & never could be even on the principles of the Confederation. The States & the advocates for them were intoxicated with the idea of their sovereignty. He was a member of Congress at the time the federal articles were formed. The injustice of allowing each State an equal vote was long insisted on. He voted for it, but it was agst. his Judgment, and under the pressure of public danger, and the obstinacy of the lesser States. The present confederation he considered as dissolving. The fate of the Union will be decided by the Convention. If they do not agree on something, few delegates will probably be appointed to Congs. If they do Congs. will probably be kept up till the new System should be adopted. He lamented that instead of coming here like a band of brothers, belonging to the same family, we seemed to have brought with us the spirit of political negociators.

982Mr. L. MARTIN. remarked that the language of the States being sovereign & independent, was once familiar & understood; though it seemed now so strange & obscure. He read those passages in the articles of Confederation, which describe them in that language.

983On the question as moved by Mr. Lansing. Shall the word "not" be struck out. Connecticut, New York, New Jersey, Delaware, aye-4; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no-6; Maryland, divided.

984On the motion to agree to the clause as reported, "that the rule of suffrage in the 1st. branch ought not to be according to that established by the articles of the Confederation. Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye-6; Connecticut, New York, New Jersey, Delaware, no-4; Maryland, divided.

985Docr. JOHNSON & Mr. ELSEWORTH moved to postpone the residue of the clause, & take up-ye. 8-Resol:

986On the question. Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye- 9; Massachusetts, Delaware, no-2.

987Mr. ELSEWORTH moved that the rule of suffrage in the 2d. branch be the same with that established by the articles of confederation." He was not sorry on the whole he said that the vote just passed, had determined against this rule in the first branch. He hoped it would become a ground of compromise with regard to the 2d. branch. We were partly national; partly federal. The proportional representation in the first branch was conformable to the national principle & would secure the large States agst. the small. An equality of voices was conformable to the federal principle and was necessary to secure the Small States agst. the large. He trusted that on this middle ground a compromise would take place. He did not see that it could on any other. And if no compromise should take place, our meeting would not only be in vain but worse than in vain. To the Eastward he was sure Massts. was the only State that would listen to a proposition for excluding the States as equal political Societies, from an equal voice in both branches. The others would risk every consequence rather than part with so dear a right. An attempt to deprive them of it, was at once cutting the body of America in two, and as he supposed would be the case, somewhere about this part of it. The large States he conceived would notwithstanding the equality of votes, have an influence that would maintain their superiority. Holland, as had been admitted (by Mr. Madison) had, notwithstanding a like equality in the Dutch Confederacy, a prevailing influence in the public measures. The power of self-defence was essential to the small States. Nature had given it to the smallest insect of the creation.

988He could never admit that there was no danger of combinations among the large States. They will like individuals find out and avail themselves of the advantage to be gained by it. It was true the danger would be greater, if they were contiguous and had a more immediate and common interest. A defensive

combination of the small States was rendered more difficult by their greater number. He would mention another consideration of great weight. The existing confederation was founded on the equality of the States in the article of suffrage: was it meant to pay no regard to this antecedent plighted faith. Let a strong Executive, a Judiciary & Legislative power be created; but Let not too much be attempted; by which all may be lost. He was not in general a half-way man, yet he preferred doing half the good we could, rather than do nothing at all. The other half may be added, when the necessity shall be more fully experienced.

989Mr. BALDWIN could have wished that the powers of the General Legislature had been defined, before the mode of constituting it had been agitated. He should vote against the motion of Mr. Elseworth, tho' he did not like the Resolution as it stood in the Report of the Committee of the whole. He thought the second branch ought to be the representation of property, and that in forming it therefore some reference ought to be had to the relative wealth of their Constituents, and to the principles on which the Senate of Massts. was constituted. He concurred with those who thought it wd. be impossible for the Genl. Legislature to extend its cares to the local matters of the States.

990Adjd.

991SATURDAY, JUNE 30

992IN CONVENTION

993Mr. BREARLY moved that the Presidt. write to the Executive of N. Hamshire, informing it that the business depending before the Convention was of such a nature as to require the immediate attendance of the deputies of that State. In support of his motion he observed that the difficulties of the subject and the diversity of opinions called for all the assistance we could possibly obtain. (It was well understood that the object was to add N. Hamshire to the no. of States opposed to the doctrine of proportional representation, which it was presumed from her relative size she must be adverse to.)

994Mr. PATTERSON seconded the motion

995Mr. RUTLIDGE could see neither the necessity nor propriety of such a measure. They are not unapprized of the meeting, and can attend if they choose. Rho. Island might as well be urged to appoint & send deputies. Are we to suspend the business until the deputies arrive? if we proceed he hoped all the great points would be adjusted before the letter could produce its effect.

996Mr. KING. said he had written more than once as a private correspondent, & the answer gave him every reason to expect that State would be represented very shortly, if it shd. be so at all. Circumstances of a personal nature had hitherto prevented it. A letter cd. have no effect.

997Mr. WILSON wished to know whether it would be consistent with the rule or reason of secrecy, to communicate to N. Hamshire that the business was of such a nature as the motion described. It wd. spread a great alarm. Besides he doubted the propriety of soliciting any State on the subject; the meeting being merely voluntary.

998On [the] motion of Mr. Brearly: New York, New Jersey, aye-2; Massachusetts, Connecticut, Virginia, North Carolina, South Carolina, no-5; Maryland, divided: Pennsylvania, Delaware, Georgia, not on the floor.

999The motion of Mr. Elseworth being resumed for allowing each State an equal vote in ye 2d. branch.

1000Mr. WILSON did not expect such a motion after the establishment of ye. contrary principle in the 1st. branch; and considering the reasons which would oppose it, even if an equal vote had been allowed in the 1st. branch. The Gentleman from Connecticut (Mr. Elseworth) had pronounced that if the motion

should not be acceded to, of all the States North of Penna. one only would agree to any Genl. Government. He entertained more favorable hopes of Connt. and of the other Northern States. He hoped the alarms exceeded their cause, and that they would not abandon a Country to which they were bound by so many strong and endearing ties. But should the deplored event happen, it would neither stagger his sentiments nor his duty. If the minority of the people of America refuse to coalesce with the majority on just and proper principles, if a separation must take place, it could never happen on better grounds. The votes of yesterday agst. the just principle of representation, were as 22 to 90 of the people of America. Taking the opinions to be the same on this point, and he was sure if there was any room for change, it could not be on the side of the majority, the question will be shall less than 1/4 of the U. States withdraw themselves from the Union; or shall more than 3/4 renounce the inherent, indisputable, and unalienable rights of men, in favor of the artificial systems of States. If issue must be joined, it was on this point he would chuse to join it.

1001 The gentlemen from Connecticut in supposing that the preponderance secured to the majority in the 1st. branch had removed the objections to an equality of votes in the 2d. branch for the security of the minority, narrowed the case extremely. Such an equality will enable the minority to controul in all cases whatsoever, the sentiments and interests of the majority. Seven States will controul six: Seven States, according to the estimates that had been used, composed 24/90 of the whole people. It would be in the power then of less than 1/3 to overrule 2/3 whenever a question should happen to divide the States in that manner. Can we forget for whom we are forming a Government? Is it for men, or for the imaginary beings called States? Will our honest Constituents be satisfied with metaphysical distinctions? Will they, ought they to be satisfied with being told that the one third compose the greater number of States? The rule of suffrage ought on every principle to be the same in the 2d. as in the 1st. branch. If the Government be not laid on this foundation, it can be neither solid nor lasting. Any other principle will be local, confined & temporary. This will expand with the expansion, and grow with the growth of the U. States.

1002 Much has been said of an imaginary combination of three States. Sometimes a danger of monarchy, sometimes of aristocracy, has been charged on it. No explanation however of the danger has been vouchsafed. It would be easy to prove both from reason & history that rivalships would be more probable than coalitions; and that there are no coinciding interests that could produce the latter. No answer has yet been given to the observations of (Mr. Madison) on this subject. Should the Executive Magistrate be taken from one of the large States would not the other two be thereby thrown into the scale with the other States? Whence then the danger of monarchy? Are the people of the three large States more aristocratic than those of the small ones? Whence then the danger of aristocracy from their influence? It is all a mere illusion of names. We talk of States, till we forget what they are composed of. Is a real & fair majority, the natural hot-bed of aristocracy? It is a part of the definition of this species of Govt. or rather of tyranny, that the smaller number governs the greater. It is true that a majority of States in the 2d. branch can not carry a law agst. a majority of the people in the 1st. But this removes half only of the objection. Bad Governnts. are of two sorts. First, that which does too little. Secondly, that which does too much: that which fails thro' weakness; and that which destroys thro' oppression. Under which of these evils do the U. States at present groan? under the weakness and inefficiency of its Governnt.

1003 To remedy this weakness we have been sent to this Convention. If the motion should be agreed to, we shall leave the U. S. fettered precisely as heretofore; with the additional mortification of seeing the good purposes of ye. fair representation of the people in the 1st. branch, defeated in the 2d. Twenty four will still controul sixty six. He lamented that such a disagreement should prevail on the point of representation, as he did not foresee that it would happen on the other point most contested, the boundary between the Genl. & the local authorities. He thought the States necessary & valuable parts

of a good system.

1004Mr. ELSEWORTH. The capital objection of Mr. Wilson "that the minority will rule the majority" is not true. The power is given to the few to save them from being destroyed by the many. If an equality of votes had been given to them in both branches, the objection might have had weight. Is it a novel thing that the few should have a check on the many? Is it not the case in the British Constitution the wisdom of which so many gentlemen have united in applauding? Have not the House of Lords, who form so small a proportion of the nation a negative on the laws, as a necessary defence of their peculiar rights agst. the encroachmts. of the Commons. No instance of a Confederacy has existed in which an equality of voices has not been exercised by the members of it. We are running from one extreme to another. We are razing the foundations of the building, when we need only repair the roof. No salutary measure has been lost for want of a majority of the States, to favor it. If security be all that the great States wish for the 1st. branch secures them. The danger of combinations among them is not imaginary. Altho' no particular abuses could be foreseen by him, the possibility of them would be sufficient to alarm him. But he could easily conceive cases in which they might result from such combinations. Suppose that in pursuance of some commercial treaty or arrangement, three or four free ports & no more were to be established would not combinations be formed in favor of Boston-Philada. & some port of the Chesapeak? A like concert might be formed in the appointment of the great officers. He appealed again to the obligations of the federal pact which was still in force, and which had been entered into with so much solemnity; persuading himself that some regard would still be paid to the plighted faith under which each State small as well as great, held an equal right of suffrage in the general Councils. His remarks were not the result of partial or local views. The State he represented (Connecticut) held a middle rank.

1005Mr. MADISON did justice to the able & close reasoning of Mr. E. but must observe that it did not always accord with itself. On another occasion, the large States were described by him as the Aristocratic States, ready to oppress the small. Now the small are the House of Lords requiring a negative to defend them agst. the more numerous commons. Mr. E. had also erred in saying that no instance had existed in which confederated States had not retained to themselves a perfect equality of suffrage. Passing over the German system in which the K. of Prussia has nine voices, he reminded Mr. E. of the Lycian confederacy, in which the component members had votes proportioned to their importance, and which Montesquieu recommends as the fittest model for that form of Government. Had the fact been as stated by Mr. E. it would have been of little avail to him, or rather would have strengthened the arguments agst. him; the History & fate of the several confederacies modern as well as Antient, demonstrating some radical vice in their structure.

1006In reply to the appeal of Mr. E. to the faith plighted in the existing federal compact, he remarked that the party claiming from others an adherence to a common engagement ought at least to be guiltless itself of a violation. Of all the States however Connecticut was perhaps least able to urge this plea. Besides the various omissions to perform the stipulated acts from which no State was free, the Legislature of that State had by a pretty recent vote, positively, refused to pass a law for complying with the Requisitions of Congs. and had transmitted a copy of the vote to Congs. It was urged, he said, continually that an equality of votes in the 2d. branch was not only necessary to secure the small, but would be perfectly safe to the large ones whose majority in the 1st. branch was an effectual bulwark.

1007But notwithstanding this apparent defence, the majority of States might still injure the majority of the people. In the first place, they could obstruct the wishes and interests of the majority. Secondly, they could extort measures repugnant to the wishes & interest of the Majority. Thirdly, they could impose measures adverse thereto; as the 2d. branch will probably exercise some great powers, in which the 1st. will not participate.

1008He admitted that every peculiar interest whether in any class of citizens, or any description of

States, ought to be secured as far as possible. Wherever there is danger of attack there ought to be given a constitutional power of defence. But he contended that the States were divided into different interests not by their difference of size, but by other circumstances; the most material of which resulted partly from climate, but principally from the effects of their having or not having slaves. These two causes concurred in forming the great division of interests in the U. States. It did not lie between the large & small States: It lay between the Northern & Southern, and if any defensive power were necessary, it ought to be mutually given to these two interests. He was so strongly impressed with this important truth that he had been casting about in his mind for some expedient that would answer the purpose. The one which had occurred was that instead of proportioning the votes of the States in both branches, to their respective numbers of inhabitants computing the slaves in the ratio of 5 to 3, they should be represented in one branch according to the number of free inhabitants only; and in the other according to the whole no. counting the slaves as free. By this arrangement the Southern Scale would have the advantage in one House, and the Northern in the other. He had been restrained from proposing this expedient by two considerations: one was his unwillingness to urge any diversity of interests on an occasion where it is but too apt to arise of itself-the other was, the inequality of powers that must be vested in the two branches, and which wd. destroy the equilibrium of interests.

1009Mr. ELSEWORTH assured the House that whatever might be thought of the Representatives of Connecticut the State was entirely federal in her disposition. He appealed to her great exertions during the war, in supplying both men & money. The muster rolls would show she had more troops in the field than Virga. If she had been Delinquent, it had been from inability, and not more so than other States.

1010Mr. SHERMAN. Mr. Madison animadverted on the delinquency of the States, when his object required him to prove that the Constitution of Congs. was faulty. Congs. is not to blame for the faults of the States. Their measures have been right, and the only thing wanting has been, a further power in Congs. to render them effectual.

1011Mr. DAVY was much embarrassed and wished for explanations. The Report of the Committee allowing the Legislatures to choose the Senate, and establishing a proportional representation in it, seemed to be impracticable. There will according to this rule be ninety members in the outset, and the number will increase as new States are added. It was impossible that so numerous a body could possess the activity and other qualities required in it. Were he to vote on the comparative merits of the report as it stood, and the amendment, he should be constrained to prefer the latter. The appointment of the Senate by electors chosen by the people for that purpose was he conceived liable to an insuperable difficulty. The larger Counties or districts thrown into a general district, would certainly prevail over the smaller Counties or districts, and merit in the latter would be excluded altogether. The report therefore seemed to be right in referring the appointment to the Legislatures, whose agency in the general System did not appear to him objectionable as it did to some others. The fact was that the local prejudices & interests which could not be denied to exist, would find their way into the national councils whether the Representatives should be chosen by the Legislatures or by the people themselves. On the other hand, if a proportional representation was attended with insuperable difficulties, the making the Senate the Representative of the States, looked like bringing us back to Congs. again, and shutting out all the advantages expected from it. Under this view of the subject he could not vote for any plan for the Senate yet proposed. He thought that in general there were extremes on both sides. We were partly federal, partly national in our Union, and he did not see why the Govt. might not in some respects operate on the States, in others on the people.

1012Mr. WILSON admitted the question concerning the number of Senators, to be embarrassing. If the smallest States be allowed one, and the others in proportion, the Senate will certainly be too numerous. He looked forward to the time when the smallest States will contain 100,000 souls at least. Let there be then one Senator in each for every 100,000 souls and let the States not having that no. of inhabitants be

allowed one. He was willing himself to submit to this temporary concession to the small States; and threw out the idea as a ground of compromise.

1013Docr. FRANKLIN. The diversity of opinions turns on two points. If a proportional representation takes place, the small States contend that their liberties will be in danger. If an equality of votes is to be put in its place, the large States say their money will be in danger. When a broad table is to be made, and the edges of planks do not fit, the artist takes a little from both, and makes a good joint. In like manner here both sides must part with some of their demands, in order that they may join in some accomodating proposition. He had prepared one which he would read, that it might lie on the table for consideration.

1014The proposition was in the words following"

1015"That the Legislatures of the several States shall choose & send an equal number of Delegates, namely ----- who are to compose the 2d. branch of the General Legislature-

1016"That in all cases or questions wherein the Sovereignty of individual States may be affected, or whereby their authority over their own Citizens may be diminished, or the authority of the General Government within the several States augmented, each State shall have equal suffrage.

1017"That in the appointment of all Civil officers of ye. Genl. Govt. in the election of whom the 2d. branch may by the Constitution have part, each State shall have equal suffrage.

1018"That in fixing the Salaries of such officers, and in all allowances for public services, and generally in all appropriations & dispositions of money to be drawn out of the General Treasury; and in all laws for supplying that Treasury, the Delegates of the several States shall have suffrage in proportion to the Sums which their respective States do actually contribute to the Treasury." Where a Ship had many owners this was the rule of deciding on her expedition. He had been one of the Ministers from this Country to France during the joint war and wd. have been very glad if allowed a vote in distributing the money to carry it on.1

1019Mr. KING observed that the simple question was whether each State should have an equal vote in the 2d. branch; that it must be apparent to those gentlemen who liked neither the motion for this equality, nor the report as it stood, that the report was as susceptible of melioration as the motion; that a reform would be nugatory & nominal only if we should make another Congress of the proposed Senate: that if the adherence to an equality of votes was fixed & unalterable, there could not be less obstinacy on the other side, & that we were in fact cut asunder already, and it was in vain to shut our eyes against it: that he was however filled with astonishment 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: that his feelings were more harrowed & his fears more agitated for his Country than he could express, that he conceived this to be the last opportunity of providing for its liberty & happiness: that he could not therefore but repeat his amazement that when a just Governnt. founded on a fair representation of the people of America was within our reach, we should renounce the blessing, from an attachment to the ideal freedom & importance of States: that should this wonderful illusion continue to prevail, his mind was prepared for every event, rather than sit down under a Govt. founded on a vicious principle of representation, and which must be as short lived as it would be unjust. He might prevail on himself to accede to some such expedient as had been hinted by Mr. Wilson: but he never could listen to an equality of votes as proposed in the motion.

1020Mr. DAYTON. When assertion is given for proof, and terror substituted for argument, he presumed they would have no effect however eloquently spoken. It should have been shewn that the evils we have experienced have proceeded from the equality now objected to: and that the seeds of dissolution for the State Governments are not sown in the Genl. Government. He considered the system

on the table as a novelty, an amphibious monster; and was persuaded that it never would be recd. by the people.

1021Mr. MARTIN, wd. never confederate if it could not be done on just principles

1022Mr. MADISON would acquiesce in the concession hinted by Mr. Wilson, on condition that a due independence should be given to the Senate. The plan in its present shape makes the Senate absolutely dependent on the States. The Senate therefore is only another edition of Congs. He knew the faults of that Body & had used a bold language agst. it. Still he wd. preserve the State rights, as carefully as the trials by jury.

1023Mr. BEDFORD, contended that there was no middle way between a perfect consolidation and a mere confederacy of the States. The first is out of the question, and in the latter they must continue if not perfectly, yet equally sovereign. If political Societies possess ambition avarice, and all the other passions which render them formidable to each other, ought we not to view them in this light here? Will not the same motives operate in America as elsewhere? If any gentleman doubts it let him look at the votes. Have they not been dictated by interest, by ambition? Are not the large States evidently seeking to aggrandize themselves at the expense of the small? They think no doubt that they have right on their side, but interest had blinded their eyes. Look at Georgia. Though a small State at present, she is actuated by the prospect of soon being a great one. S. Carolina is actuated both by present interest & future prospects. She hopes too to see the other States cut down to her own dimensions. N. Carolina has the same motives of present & future interest. Virga. follows. Maryland. is not on that side of the Question. Pennsylvania. has a direct and future interest. Massachusetts. has a decided and palpable interest in the part she takes. Can it be expected that the small States will act from pure disinterestedness. Look at G. Britain. Is the Representation there less unequal? But we shall be told again that that is the rotten part of the Constitution. Have not the boroughs however held fast their constitutional rights? and are we to act with greater purity than the rest of mankind.

1024An exact proportion in the Representation is not preserved in any one of the States. Will it be said that an inequality of power will not result from an inequality of votes. Give the opportunity, and ambition will not fail to abuse it. The whole History of mankind proves it. The three large States have a common interest to bind them together in commerce. But whether a combination as we suppose, or a competition as others suppose, shall take place among them, in either case, the small States must be ruined. We must like Solon make such a Governmt. as the people will approve. Will the smaller States ever agree to the proposed degradation of them. It is not true that the people will not agree to enlarge the powers of the present Congs. The Language of the people has been that Congs. ought to have the power of collecting an impost, and of coercing the States where it may be necessary. On the first point they have been explicit &, in a manner, unanimous in their declarations. And must they not agree to this & similar measures if they ever mean to discharge their engagements. The little States are willing to observe their engagements, but will meet the large ones on no ground but that of the Confederation.

1025We have been told with a dictatorial air that this is the last moment for a fair trial in favor of a good Governmt. It will be the last indeed if the propositions reported from the Committee go forth to the people. He was under no apprehensions. The Large States dare not dissolve the Confederation. If they do the small ones will find some foreign ally of more honor and good faith, who will take them by the hand and do them justice. He did not mean by this to intimidate or alarm. It was a natural consequence; which ought to be avoided by enlarging the federal powers not annihilating the federal system. This is what the people expect. All agree in the necessity of a more efficient Govt. and why not make such an one; as they desire.

1026Mr. ELSEWORTH,. Under a National Govt. he should participate in the National Security, as remarked by (Mr. King) but that was all. What he wanted was domestic happiness. The Natl. Govt.

could not descend to the local objects on which this depended. It could only embrace objects of a general nature. He turned his eyes therefore for the preservation of his rights to the State Govts. From these alone he could derive the greatest happiness he expects in this life. His happiness depends on their existence, as much as a new born infant on its mother for nourishment. If this reasoning was not satisfactory, he had nothing to add that could be so.

1027Mr. KING was for preserving the States in a subordinate degree, and as far as they could be necessary for the purposes stated by Mr. Elsewth. He did not think a full answer had been given to those who apprehended a dangerous encroachment on their jurisdictions. Expedients might be devised as he conceived that would give them all the security the nature of things would admit of. In the establishmt. of Societies the Constitution was to the Legislature what the laws were to individuals. As the fundamental rights of individuals are secured by express provisions in the State Constitutions; why may not a like security be provided for the Rights of States in the National Constitution. The articles of Union between Engld. & Scotland furnish an example of such a provision in favor of sundry rights of Scotland. When that Union was in agitation, the same language of apprehension which has been heard from the smaller States, was in the mouths of the Scotch patriots. The articles however have not been violated and the Scotch have found an increase of prosperity & happiness. He was aware that this will be called a mere paper security. He thought it a sufficient answer to say that if fundamental articles of compact, are no sufficient defence against physical power, neither will there be any safety agst. it if there be no compact. He could not sit down, without taking some notice of the language of the honorable gentleman from Delaware (Mr. Bedford). It was not he that had uttered a dictatorial language. This intemperance had marked the honorabl gentleman himself. It was not he who with a vehemence unprecedented in that House, had declared himself ready to turn his hopes from our common Country, and court the protection of some foreign hand. This too was the language of the Honbl member himself. He was grieved that such a thought had entered his heart. He was more grieved that such an expression had dropped from his lips. The gentleman cd. only excuse it to himself on the score of passion. For himself whatever might be his distress, he wd. never court relief from a foreign power.

1028Adjourned

1029[The delegates did not convene on Sunday, July 1.]

1030MONDAY, JULY 2

1031IN CONVENTION

1032On the question for allowing each State one vote in the second branch as moved by Mr. Elseworth, it was lost by an equal division of votes: Connecticut, New York, New Jersey, Delaware, Maryland,* aye-5; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, no-5; Georgia, divided (Mr. Baldwin, aye, Mr. Houston, No).

1033Mr. PINKNEY thought an equality of votes in the 2d. branch inadmissible. At the same time candor obliged him to admit that the large States would feel a partiality for their own Citizens & give them a preference, in appointments: that they might also find some common points in their commercial interests, and promote treaties favorable to them. There is a real distinction between the Northern & Southn. interests. N. Carola. S.Carol: & Geo. in their Rice & Indigo had a peculiar interest which might be sacrificed. How then shall the larger States be prevented from administering the Genl. Govt. as they please, without being themselves unduly subjected to the will of the smaller? By allowing them some but not a full proportion. He was extremely anxious that something should be done, considering this as the last appeal to a regular experiment. Congs. have failed in almost every effort for an amendment of

the federal System. Nothing has prevented a dissolution of it, but the appointmt. of this Convention; & he could not express his alarms for the consequences of such an event He read his motion, to form the States into classes, with an apportionment of Senators among them, (see art. 4 of his plan).

1034General PINKNEY. was willing the motion might be considered. He did not entirely approve it. He liked better the motion of Doctr. Franklin (which see Saturday June 30). Some compromise seemed to be necessary: the States being exactly divided on the question for an equality of votes in the 2d. branch. He proposed that a Committee consisting of a member from each State should be appointed to devise & report some compromise.

1035Mr. L. MARTIN had no objection to a commitment, but no modifications whatever could reconcile the Smaller States to the least diminution of their equal Sovereignty.

1036Mr. SHARMAN. We are now at a full stop, and nobody he supposed meant that we shd. break up without doing something. A committee he thought most likely to hit on some expedient.

1037†Mr. Govr. MORRIS. thought a Come. adviseable as the Convention had been equally divided. He had a stronger reason also. The mode of appointing the 2d. branch tended he was sure to defeat the object of it. What is this object? to check the precipitation, changeableness, and excesses of the first branch. Every man of observation had seen in the democratic branches of the State Legislatures, precipitation-in Congress changeableness, in every department excesses agst. personal liberty private property & personal safety. What qualities are necessary to constitute a check in this case? Abilities

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1039* Mr. Jenifer not being present, Mr. Martin alone voted.

1040† He had just returned from N.Y. havg. left ye. Convention a few days after it commenced business.

1041and virtue, are equally necessary in both branches. Something more then is now wanted. In the first place, the checking branch must have a personal interest in checking the other branch, one interest must be opposed to another interest. Vices as they exist, must be turned agst. each other.

1042In the second place, it must have great personal property, it must have the aristocratic spirit; it must love to lord it thro' pride, pride is indeed the great principle that actuates both the poor & the rich. It is this principle which in the former resists, in the latter abuses authority.

1043In the third place, it should be independent. In Religion the Creature is apt to forget its Creator. That it is otherwise in political affairs, the late debates here are an unhappy proof. The aristocratic body, should be as independent & as firm as the democratic. If the members of it are to revert to a dependence on the democratic choice, the democratic scale will preponderate. All the guards contrived by America have not restrained the Senatorial branches of the Legislatures from a servile complaisance to the democratic. If the 2d. branch is to be dependent we are better without it. To make it independent, it should be for life. It will then do wrong, it will be said. He believed so: He hoped so. The Rich will strive to establish their dominion & enslave the rest. They always did. They always will. The proper security agst them is to form them into a separate interest. The two forces will then controul each other. Let the rich mix with the poor and in a Commercial Country, they will establish an oligarchy. Take away commerce, and the democracy will triumph. Thus it has been all the world over. So it will be among us. Reason tells us we are but men: and we are not to expect any particular interference of Heaven in our favor. By thus combining & setting apart, the aristocratic interest, the popular interest will be combined agst. it. There will be a mutual check and mutual security.

1044In the fourth place, an independence for life, involves the necessary permanency. If we change our measures no body will trust us: and how avoid a change of measures, but by avoiding a change of men.

Ask any man if he confides in Congs. if he confides in the State of Pena. if he will lend his money or enter into contract? He will tell you no. He sees no stability. He can repose no confidence. If G. B. were to explain her refusal to treat with us, the same reasoning would be employed.1

1045He disliked the exclusion of the 2d. branch from holding offices. It is dangerous. It is like the imprudent exclusion of the military officers during the war, from civil appointments. It deprives the Executive of the principal source of influence. If danger be apprehended from the Executive what a lift-handed way is this of obviating it? If the son, the brother or the friend can be appointed, the danger may be even increased, as the disqualified father &c. can then boast of a disinterestedness which he does not possess. Besides shall the best, the most able, the most virtuous citizens not be permitted to hold offices? Who then are to hold them? He was also agst. paying the Senators. They will pay themselves if they can. If they can not they will be rich and can do without it. Of such the 2d. branch ought to consist; and none but such can compose it if they are not to be paid.

1046He contended that the Executive should appoint the Senate & fill up vacancies. This gets rid of the difficulty in the present question. You may begin with any ratio you please; it will come to the same thing. The members being independt. & for life, may be taken as well from one place as from another.

1047It should be considered too how the scheme could be carried through the States. He hoped there was strength of mind eno' in this House to look truth in the face. He did not hesitate therefore to say that loaves & fishes must bribe the Demagogues. They must be made to expect higher offices under the general than the State Govts. A Senate for life will be a noble bait. Without such captivating prospects, the popular leaders will oppose & defeat the plan. He perceived that the 1st. branch was to be chosen by the people of the States: the 2d. by those chosen by the people. Is not here a Govt. by the States. A Governnt. by Compact between Virga. in the 1st. & 2d. branch; Masts. in the 1st. & 2d. branch &c. This is going back to mere treaty. It is no Govt. at all. It is altogether dependent on the States, and will act over again the part which Congs. has acted. A firm Governnt. alone can protect our liberties. He fears the influence of the rich. They will have the same effect here as elsewhere if we do not by such a Govt. keep them within their proper spheres. We should remember that the people never act from reason alone. The Rich will take the advantage of their passions & make these the instruments for oppressing them. The Result of the Contest will be a violent aristocracy, or a more violent despotism. The schemes of the Rich will be favored by the extent of the Country. The people in such distant parts can not communicate & act in concert. They will be the dupes of those who have more knowledge & intercourse. The only security agst. encroachments will be a select & sagacious body of men, instituted to watch agst. them on all sides. He meant only to hint these observations, without grounding any motion on them.

1048Mr. Randolph favored the commitment though he did not expect much benefit from the expedient. He animadverted on the warm & rash language of Mr. Bedford on Saturday; reminded the small States that if the large States should combine some danger of which he did not deny there would be a check in the revisionary power of the Executive, and intimated that in order to render this still more effectual, he would agree that in the choice of an Executive each State should have an equal vote. He was persuaded that two such opposite bodies as Mr. Morris had planned, could never long co-exist. Dissentions would arise as has been seen even between the Senate and H. of Delegates in Maryland, appeals would be made to the people; and in a little time, commotions would be the result-He was far from thinking the large States could subsist of themselves any more than the small; an avulsion would involve the whole in ruin, and he was determined to pursue such a scheme of Government as would secure us agst. such a calamity.

1049Mr. STRONG was for the Commitment; and hoped the mode of constituting both branches would be referred. If they should be established on different principles, contentions would prevail, and there would never be a concurrence in necessary measures. Doctr. WILLIAMSON. If we do not concede on

both sides, our business must soon be at an end. He approved of the Commitment, supposing that as the Come. wd. be a smaller body, a compromise would be pursued with more coolness

1050Mr. WILSON objected to the Committee, because it would decide according to that very rule of voting which was opposed on one side. Experience in Congs. had also proved the inutility of Committees consisting of members from each State

1051Mr. LANSING wd. not oppose the commitment, though expecting little advantage from it.

1052Mr. MADISON opposed the Commitment. He had rarely seen any other effect than delay from such Committees in Congs. Any scheme of compromise that could be proposed in the Committee might as easily be proposed in the House; and the report of the Committee where it contained merely the opinion of the Come. would neither shorten the discussion, nor influence the decision of the House.

1053Mr. GERRY was for the Commitmt. Something must be done, or we shall disappoint not only America, but the whole world. He suggested a consideration of the State we should be thrown into by the failure of the Union. We should be without an Umpire to decide controversies and must be at the mercy of events. What too is to become of our treaties-what of our foreign debts, what of our domestic? We must make concessions on both sides. Without these the Constitutions of the several States would never have been formed.

1054On the question "for committing," generally: Massachusetts, Connecticut, New York, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye- 9; New Jersey, Delaware, no-2.

1055On the question for committing it "to a member from each State." Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye-10; Pennsylvania, no-1.

1056The Committee elected by ballot, were Mr. Gerry, Mr. Elseworth, Mr. Yates, Mr. Patterson, Dr. Franklin, Mr. Bedford, Mr. Martin, Mr. Mason, Mr. Davy, Mr. Rutlidge, Mr. Baldwin.

1057That time might be given to the Committee, and to such as chose to attend to the celebrations on the anniversary of Independence, the Convention adjourned till Thursday.

1058[The delegates did not convene on Tuesday, July 3 and Wednesday, July 4.]

1059THURSDAY, JULY 5

1060IN CONVENTION

1061Mr. GERRY delivered in from the Committee appointed on Monday last the following Report.

1062"The Committee to whom was referred the 8th. Resol. of the Report from the Committee of the whole House, and so much of the 7th. as has not been decided on, submit the following Report: That the subsequent propositions be recommended to the Convention on condition that both shall be generally adopted. 1. That in the 1st. branch of the Legislature each of the States now in the Union shall be allowed 1 member for every 40,000 inhabitants of the description reported in the 7th. Resolution of the Come. of the whole House: that each State not containing that number shall be allowed 1 member: that all bills for raising or appropriating money, and for fixing the Salaries of the officers of the Governnt. of the U. States shall originate in the 1st. branch of the Legislature, and shall not be altered or amended by the 2d. branch: and that no money shall be drawn from the public Treasury. but in pursuance of appropriations to be orginated in the 1st. branch" II. That in the 2d. branch each State shall have an equal vote."*

1063Mr. GHORUM observed that as the report consisted of propositions mutually conditional he wished to hear some explanations touching the grounds on which the conditions were estimated.

1064Mr. GERRY. The Committee were of different opinions as well as the Deputations from which the Come. were taken, and agreed to the Report merely in order that some ground of accomodation might be proposed. Those opposed to the equality of votes have only assented conditionally; and if the other side do not generally agree will not be under any obligation to support the Report.

1065Mr. WILSON thought the Committee had exceeded their powers.

1066Mr. MARTIN was for taking the question on the whole report.

1067Mr. WILSON was for a division of the question: otherwise it wd. be a leap in the dark.

1068Mr. MADISON. could not regard the privilege of originating money bills as any concession on the side of the small States. Experience proved that it had no effect. If I

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1070* This report was founded on a motion in the Committee made by Dr Franklin. It was barely acquiesced in by the members from the State opposed to an equality of votes in the 2d branch and was evidently considered by the members on the other side, as a gaining of their point. A motion was made by Mr Sherman (who acted in place of Mr Elseworth who was kept away by indisposition.) In the Committee to the following effect "that each State should have an equal vote in the 2d branch; provided that no decision therein should prevail unless the majority of States concurring should also comprize a majority of the inhabitants of the U. States." This motion was not much deliberated on nor approved in the Committee. A similar proviso had been proposed in the debates on the articles of Confederation in 1777, to the articles giving certain powers to "nine States." See Journals of Congs for 1777, p. 462.

1071seven States in the upper branch wished a bill to be originated, they might surely find some member from some of the same States in the lower branch who would originate it. The restriction as to amendments was of as little consequence. Amendments could be handed privately by the Senate to members in the other house. Bills could be negatived that they might be sent up in the desired shape. If the Senate should yield to the obstinacy of the 1st. branch the use of that body as a check would be lost. If the 1st. branch should yield to that of the Senate, the privilege would be nugatory. Experience had also shewn both in G. B. and the States having a similar regulation that it was a source of frequent & obstinate altercations. These considerations had produced a rejection of a like motion on a former occasion when judged by its own merits. It could not therefore be deemed any concession on the present, and left in force all the objections which had prevailed agst. allowing each State an equal voice.

1072He conceived that the Convention was reduced to the alternative of either departing from justice in order to conciliate the smaller States, and the minority of the people of the U. S. or of displeasing these by justly gratifying the larger States and the majority of the people. He could not himself hesitate as to the option he ought to make. The Convention with justice & the majority of the people on their side, had nothing to fear. With injustice and the minority on their side they had every thing to fear. It was in vain to purchase concord in the Convention on terms which would perpetuate discord among their Constituents. The Convention ought to pursue a plan which would bear the test of examination, which would be espoused & supported by the enlightened and impartial part of America, & which they could themselves vindicate and urge. It should be considered that altho' at first many may judge of the system recommended, by their opinion of the Convention, yet finally all will judge of the Convention by the System. The merits of the System alone can finally & effectually obtain the public suffrage.

1073He was not apprehensive that the people of the small States would obstinately refuse to accede to

a Govt. founded on just principles, and promising them substantial protection. He could not suspect that Delaware would brave the consequences of seeking her fortunes apart from the other States, rather than submit to such a Govt. much less could he suspect that she would pursue the rash policy of courting foreign support, which the warmth of one of her representatives (Mr. Bedford) had suggested, or if she shd. that any foreign nation wd. be so rash as to hearken to the overture. As little could he suspect that the people of N. Jersey notwithstanding the decided tone of the gentlemen from that State, would choose rather to stand on their own legs, and bid defiance to events, than to acquiesce under an establishment founded on principles the justice of which they could not dispute, and absolutely necessary to redeem them from the exactions levied on them by the commerce of the neighbouring States. A review of other States would prove that there was as little reason to apprehend an inflexible opposition elsewhere. Harmony in the Convention was no doubt much to be desired. Satisfaction to all the States, in the first instance still more so. But if the principal States comprehending a majority of the people of the U. S. should concur in a just & judicious plan, he had the firmest hopes, that all the other States would by degrees accede to it.

1074Mr. BUTLER said he could not let down his idea of the people, of America so far as to believe they would from mere respect to the Convention adopt a plan evidently unjust. He did not consider the privilege concerning money bills as of any consequence. He urged that the 2d. branch ought to represent the States according to their property.

1075Mr. Govr. MORRIS. thought the form as well as the matter of the Report objectionable. It seemed in the first place to render amendments impracticable. In the next place, it seemed to involve a pledge to agree to the 2d. part if the 1st. shd. be agreed to. He conceived the whole aspect of it to be wrong. He came here as a Representative of America; he flattered himself he came here in some degree as a Representative of the whole human race; for the whole human race will be affected by the proceedings of this Convention. He wished gentlemen to extend their views beyond the present moment of time; beyond the narrow limits of place from which they derive their political origin. If he were to believe some things which he had heard, he should suppose that we were assembled to truck and bargain for our particular States. He cannot descend to think that any gentlemen are really actuated by these views. We must look forward to the effects of what we do. These alone ought to guide us.

1076Much has been said of the sentiments of the people. They were unknown. They could not be known. All that we can infer is that if the plan we recommend be reasonable & right; all who have reasonable minds and sound intentions will embrace it, notwithstanding what had been said by some gentlemen.

1077Let us suppose that the larger States shall agree; and that the smaller refuse: and let us trace the consequences. The opponents of the system in the smaller States will no doubt make a party, and a noise for a time, but the ties of interest, of kindred & of common habits which connect them with the other States will be too strong to be easily broken. In N. Jersey particularly he was sure a great many would follow the sentiments of Pena. & N. York. This Country must be united. If persuasion does not unite it, the sword will. He begged this consideration might have its due weight. The scenes of horror attending civil commotion can not be described, and the conclusion of them will be worse than the term of their continuance. The stronger party will then make traytors of the weaker; and the Gallows & Halter will finish the work of the sword. How far foreign powers would be ready to take part in the confusions he would not say. Threats that they will be invited have it seems been thrown out. He drew the melancholy picture of foreign intrusions as exhibited in the History of Germany, & urged it as a standing lesson to other nations. He trusted that the Gentlemen who may have hazarded such expressions, did not entertain them till they reached their own lips.

1078But returning to the Report he could not think it in any respect calculated for the public good. As the 2d. branch is now constituted, there will be constant disputes & appeals to the States which will

undermine the Genl. Government & controul & annihilate the 1st. branch. Suppose that the delegates from Massts. & Rho 1. in the Upper House disagree, and that the former are outvoted. What Results? they will immediately declare that their State will not abide by the decision, and make such representations as will produce that effect. The same may happen as to Virga. & other States. Of what avail then will be what is on paper. State attachments, and State importance have been the bane of this Country. We can not annihilate; but we may perhaps take out the teeth of the serpents. He wished our ideas to be enlarged to the true interest of man, instead of being circumscribed within the narrow compass of a particular Spot. And after all how little can be the motive yielded by selfishness for such a policy. Who can say whether he himself, much less whether his children, will the next year be an inhabitant of this or that State.

1079Mr. BEDFORD. He found that what he had said as to the small States being taken by the hand, had been misunderstood; and he rose to explain. He did not mean that the small States would court the aid & interposition of foreign powers. He meant that they would not consider the federal compact as dissolved untill it should be so by the Acts of the large States. In this case The consequence of the breach of faith on their part, and the readiness of the small States to fulfill their engagements, would be that foreign Nations having demands on this Country would find it their interest to take the small States by the hand, in order to do themselves justice. This was what he meant. But no man can foresee to what extremities the small States may be driven by oppression. He observed also in apology that some allowance ought to be made for the habits of his profession in which warmth was natural & sometimes necessary. But is there not an apology in what was said by (Mr. Govr. Morris) that the sword is to unite: by Mr. Ghorum that Delaware must be annexed to Penna. and N. Jersey divided between Pena. and N. York. To hear such language without emotion, would be to renounce the feelings of a man and the duty of a Citizen.

1080As to the propositions of the Committee, the lesser States have thought it necessary to have a security somewhere. This has been thought necessary for the Executive Magistrate of the proposed Govt. who has a sort of negative on the laws; and is it not of more importance that the States should be protected, than that the Executive branch of the Govt. shd. be protected. In order to obtain this, the smaller States have conceded as to the constitution of the first branch, and as to money bills. If they be not gratified by correspondent concessions as to the 2d. branch is it to be supposed they will ever accede to the plan; and what will be the consequence if nothing should be done! The condition of the U. States requires that something should be immediately done. It will be better that a defective plan should be adopted, than that none should be recommended. He saw no reason why defects might not be supplied by meetings 10, 15, or 20 years hence.

1081Mr. ELSEWORTH said he had not attended the proceedings of the Committee, but was ready to accede to the compromise they had reported. Some compromise was necessary; and he saw none more convenient or reasonable.

1082Mr. WILLIAMSON hoped that the expressions of individuals would not be taken for the sense of their colleagues, much less of their States which was not & could not be known. He hoped also that the meaning of those expressions would not be misconstrued or exaggerated. He did not conceive that (Mr. Govr. Morris) meant that the sword ought to be drawn agst. the smaller States. He only pointed out the probable consequences of anarchy in the U. S. A similar exposition ought to be given of the expressions (of Mr. Ghorum). He was ready to hear the Report discussed; but thought the propositions contained in it, the most objectionable of any he had yet heard.

1083Mr. PATTERSON said that he had when the Report was agreed to in the Come. reserved to himself the right of freely discussing it. He acknowledged that the warmth complained of was improper; but he thought the Sword & the Gallows little calculated to produce conviction. He complained of the manner in which Mr. M- & Mr. Govr. Morris had treated the small States.

1084Mr. GERRY. Tho' he had assented to the Report in the Committee, he had very material objections to it. We were however in a peculiar situation. We were neither the same Nation nor different Nations. We ought not therefore to pursue the one or the other of these ideas too closely. If no compromise should take place what will be the consequence. A secession he foresaw would take place; for some gentlemen seem decided on it; two different plans will be proposed; and the result no man could foresee. If we do not come to some agreement among ourselves some foreign sword will probably do the work for us.

1085Mr. MASON. The Report was meant not as specific propositions to be adopted; but merely as a general ground of accomodation. There must be some accomodation on this point, or we shall make little further progress in the work. Accomodation was the object of the House in the appointment of the Committee; and of the Committee in the Report they had made. And however liable the Report might be to objections, he thought it preferable to an appeal to the world by the different sides, as had been talked of by some Gentlemen. It could not be more inconvenient to any gentleman to remain absent from his private affairs, than it was for him: but he would bury his bones in this City rather than expose his Country to the Consequences of a dissolution of the Convention without any thing being done.

1086The 1st. proposition in the report for fixing the representation in the 1st. branch, one member for every 40,000 inhabitants, being taken up.

1087Mr. Govr. MORRIS objected to that scale of apportionment. He thought property ought to be taken into the estimate as well as the number of inhabitants. Life & liberty were generally said to be of more value, than property. An accurate view of the matter would nevertheless prove that property was the main object of Society. The savage State was more favorable to liberty than the Civilized; and sufficiently so to life. It was preferred by all men who had not acquired a taste for property; it was only renounced for the sake of property which could only be secured by the restraints of regular Government. These ideas might appear to some new, but they were nevertheless just. If property then was the main object of Govt. certainly it ought to be one measure of the influence due to those who were to be affected by the Governmt. He looked forward also to that range of New States which wd. soon be formed in the West. He thought the rule of representation ought to be so fixed as to secure to the Atlantic States a prevalence in the National Councils. The new States will know less of the public interest than these, will have an interest in many respects different, in particular will be little scrupulous of involving the Community in wars the burdens & operations of which would fall chiefly on the maritime States. Provision ought therefore to be made to prevent the maritime States from being hereafter outvoted by them. He thought this might be easily done by irrevocably fixing the number of representatives which the Atlantic States should respectively have, and the number which each new State will have. This wd. not be unjust, as the Western settlers wd. previously know the conditions on which they were to possess their lands. It would be politic as it would recommend the plan to the present as well as future interest of the States which must decide the fate of it.

1088Mr. RUTLIDGE. The gentleman last up had spoken some of his sentiments precisely. Property was certainly the principal object of Society. If numbers should be made the rule of representation, the Atlantic States would be subjected to the Western. He moved that the first proposition in the report be postponed in order to take up the following viz "that the suffrages of the several States be regulated and proportioned according to the sums to be paid towards the general revenue by the inhabitants of each State respectively. that an apportionment of suffrages, according to the ratio aforesaid shall be made and regulated at the end of ---- years from the 1st. meeting of the Legislature of the U. S. and at the end of every ---- years but that for the present, and until the period above mentioned, the suffrages shall be for N. Hampshire ---- for Massachts. ---- &c.-

1089Col. MASON said the case of new States was not unnoticed in the Committee; but it was thought and he was himself decidedly of opinion that if they made a part of the Union, they ought to be subject

to no unfavorable discriminations. Obvious considerations required it.

1090Mr. Randolph concurred with Mr. Mason.

1091On the Question on Mr. Rutlidges motion. South Carolina, aye-1; Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no-9; Georgia not on the floor.

1092Adj.

1093FRIDAY, JULY 6

1094IN CONVENTION

1095Mr. Govr. MORRIS moved to commit so much of the Report as relates to "1 member for every 40,000 inhabitants" His view was that they might absolutely fix the number for each State in the first instance; leaving the Legislature at liberty to provide for changes in the relative importance of the States, and for the case of new States.

1096Mr. WILSON 2ded. the motion; but with a view of leaving the Committee under no implied shackles.

1097Mr. GHORUM apprehended great inconvenience from fixing directly the number of Representatives to be allowed to each State. He thought the number of Inhabitants the true guide; tho' perhaps some departure might be expedient from the full proportion. The States also would vary in their relative extent by separations of parts of the largest States. A part of Virga. is now on the point of a separation. In the province of Mayne a Convention is at this time deliberating on a separation from Masts. In such events the number of representatives ought certainly to be reduced. He hoped to see all the States made small by proper divisions, instead of their becoming formidable as was apprehended, to the Small States. He conceived that let the Government be modified as it might, there would be a constant tendency in the State Governmts. to encroach upon it: it was of importance therefore that the extent of the States shd. be reduced as much & as fast as possible. The stronger the Govt. shall be made in the first instance the more easily will these divisions be effected; as it will be of less consequence in the opinion of the States whether they be of great or small extent.

1098Mr. GERRY did not think with his Colleague that the large States ought to be cut up. This policy has been inculcated by the middling and smaller States, ungenerously & contrary to the spirit of the Confederation. Ambitious men will be apt to solicit needless divisions, till the States be reduced to the size of Counties. If this policy should still actuate the small States, the large ones cou'd not confederate safely with them; but would be obliged to consult their safety by confederating only with one another. He favored the Commitment and thought that Representation ought to be in the Combined ratio of numbers of Inhabitants and of wealth, and not of either singly.

1099Mr. KING wished the clause to be committed chiefly in order to detach it from the Report with which it had no connection. He thought also that the Ratio of Representation proposed could not be safely fixed, since in a century & a half our computed increase of population would carry the number of representatives to an enormous excess; that ye. number of inhabitants was not the proper index of ability & wealth; that property was the primary object of Society; and that in fixing a ratio this ought not be excluded from the estimate. With regard to new States, he observed that there was something peculiar in the business which had not been noticed. The U. S. were now admitted to be proprietors of the Country N. West of the Ohio. Congs. by one of their ordinances have impolitically laid it out into ten States, and have made it a fundamental article of compact with those who may become settlers, that as soon as the number in any one State shall equal that of the smallest of the 13 original States, it may

claim admission into the union. Delaware does not contain it is computed more than 35,000 souls, and for obvious reasons will not increase much for a considerable time. It is possible then that if this plan be persisted in by Congs. 10 new votes may be added, without a greater addition of inhabitants than are represented by the single vote of Pena. The plan as it respects one of the new States is already irrevocable, the sale of the lands having commenced, and the purchasers & settlers will immediately become entitled to all the privileges of the compact.

1100Mr. BUTLER agreed to the Commitment if the Committee were to be left at liberty. He was persuaded that the more the subject was examined, the less it would appear that the number of inhabitants would be a proper rule of proportion. If there were no other objection the changeableness of the standard would be sufficient. He concurred with those who thought some balance was necessary between the old & new States. He contended strenuously that property was the only just measure of representation. This was the great object of Governnt: the great cause of war; the great means of carrying it on.

1101Mr. PINKNEY saw no good reason for committing. The value of land had been found on full investigation to be an impracticable rule. The contributions of revenue including imports & exports, must be too changeable in their amount; too difficult to be adjusted; and too injurious to the non-commercial States. The number of inhabitants appeared to him the only just & practicable rule. He thought the blacks ought to stand on an equality with the whites: But wd. agree to the ratio settled by Congs. He contended that Congs. had no right under the articles of Confederation to authorize the admission of new States; no such case having been provided for.

1102Mr. DAVY, was for committing the clause in order to get at the merits of the question arising on the Report. He seemed to think that wealth or property ought to be represented in the 2d. branch; and numbers in the 1st. branch.

1103On the Motion for committing as made by Mr. Govr. Morris. Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye-7; New York, Jersey, Delaware, no-3; Maryland, divided.

1104The members appd. by Ballot were Mr. Govr. Morris, Mr. Gorham, Mr. Randolph, Mr. Rutledge, Mr. King.

1105Mr. WILSON signified that his view in agreeing to the commitmt. was that the Come. might consider the propriety of adopting a scale similar to that established by the Constitution of Masts. which wd. give an advantage to ye. small States without substantially departing from the rule of proportion.

1106Mr. WILSON & Mr. MASON moved to postpone the clause relating to money bills in order to take up the clause relating to an equality of votes in the second branch.

1107On the question of postponement New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, aye-8; Massachusetts, Connecticut, North Carolina, no-3.

1108The clause relating to equality of votes being under consideration,

1109Docr. FRANKLIN observed that this question could not be properly put by itself, the Committee having reported several propositions as mutual conditions of each other. He could not vote for it if separately taken, but should vote for the whole together.

1110Col. MASON perceived the difficulty & suggested a reference of the rest of the Report to ye Committee just appointed, that the whole might be brought into one view.

1111Mr. Randolph disliked ye. reference to that Committee, as it consisted of members from States

opposed to the wishes of the smaller States, and could not therefore be acceptable to the latter.

1112Mr. MARTIN & Mr. JENIFER moved to postpone the clause till the Come. last appointed should report.

1113Mr. MADISON observed that if the uncommitted part of the Report was connected with the part just committed, it ought also to be committed; if not connected, it need not be postponed till report should be made.

1114On the question for postponing moved by Mr. Martin & Mr. Jennifer

1115Cont. N. J. Del. Md. Va. Geo., ay 6

1116Pa. N. C. S. C..... no 3

1117Mas. N. Y..... divided

1118The 1st. clause relating to the originating of money bills was then resumed.

1119Mr. GOVERNr. MORRIS was opposed to a restriction of this right in either branch, considered merely in itself and as unconnected with the point of representation in the 2d. branch. It will disable the 2d. branch from proposing its own money plans, and giving the people an opportunity of judging by comparison of the merits of those proposed by the 1st. branch.1

1120Mr. WILSON could see nothing like a concession here on the part of the smaller States. If both branches were to say yes or no, it was of little consequence which should say yes or no first, which last. If either was indiscriminately to have the right of originating, the reverse of the Report, would he thought be most proper; since it was a maxim that the least numerous body was the fittest for deliberation; the most numerous for decision. He observed that this discrimination had been transcribed from the British into several American constitutions. But he was persuaded that on examination of the American experiments it would be found to be a trifle light as air. Nor could he ever discover the advantage of it in the Parliamentary history of G. Britain. He hoped if there was any advantage in the privilege, that it would be pointed out.

1121Mr. WILLIAMSON thought that if the privilege were not common to both branches it ought rather to be confined to the 2d. as the bills in that case would be more narrowly watched, than if they originated with the branch having most of the popular confidence.

1122Mr. MASON. The consideration which weighed with the Committee was that the 1st. branch would be the immediate representatives of the people, the 2d. would not. Should the latter have the power of giving away the people's money, they might soon forget the source from whence they received it. We might soon have an aristocracy. He had been much concerned at the principles which had been advanced by some gentlemen, but had the satisfaction to find they did not generally prevail. He was a friend to proportional representation in both branches; but supposed that some points must be yielded for the sake of accomodation.

1123Mr. WILSON. If he had proposed that the 2d. branch should have an independent disposal of public money, the observations of (Col Mason) would have been a satisfactory answer. But nothing could be farther from what he had said. His question was how is the power of the 1st. branch increased or that of the 2d. diminished by giving the proposed privilege to the former? Where is the difference, in which branch it begins if both must concur, in the end?

1124Mr. GERRY would not say that the concession was a sufficient one on the part of the small States. But he could not but regard it in the light of a concession. It wd. make it a constitutional principle that the 2d. branch were not possessed of the Confidence of the people in money matters, which wd. lessen their weight & influence. In the next place if the 2d. branch were dispossessed of the privilege, they

wd. be deprived of the opportunity which their continuance in office 3 times as long as the 1st. branch would give them of making three successive essays in favor of a particular point.

1125Mr. PINKNEY thought it evident that the Concession was wholly on one side, that of the large States, the privilege of originating money bills being of no account.

1126Mr. Govr. MORRIS had waited to hear the good effects of the restriction. As to the alarm sounded, of an aristocracy, his creed was that there never was, nor ever will be a civilized Society without an aristocracy. His endeavor was to keep it as much as possible from doing mischief. The restriction if it has any real operation will deprive us of the services of the 2d. branch in digesting & proposing money bills of which it will be more capable than the 1st. branch. It will take away the responsibility of the 2d. branch, the great security for good behavior. It will always leave a plea, as to an obnoxious money bill that it was disliked, but could not be constitutionally amended; nor safely rejected. It will be a dangerous source of disputes between the two Houses. We should either take the British Constitution altogether or make one for ourselves. The Executive there has dissolved two Houses as the only cure for such disputes. Will our Executive be able to apply such a remedy? Every law directly or indirectly takes money out of the pockets of the people. Again What use may be made of such a privilege in case of great emergency? Suppose an Enemy at the door, and money instantly & absolutely necessary for repelling him, may not the popular branch avail itself of this duress, to extort concessions from the Senate destructive of the Constitution itself. He illustrated this danger by the example of the Long Parliament's expedts. for subverting the H. of Lords; concluding on the whole that the restriction would be either useless or pernicious.

1127Doctr. FRANKLIN did not mean to go into a justification of the Report; but as it had been asked what would be the use of restraining the 2d. branch from meddling with money bills, he could not but remark that it was always of importance that the people should know who had disposed of their money, & how it had been disposed of. It was a maxim that those who feel, can best judge. This end would, he thought, be best attained, if money affairs were to be confined to the immediate representatives of the people. This was his inducement to concur in the report. As to the danger or difficulty that might arise from a negative in the 2d. branch where the people wd. not be proportionally represented, it might easily be got over by declaring that there should be no such Negative: or if that will not do, by declaring that there shall be no such branch at all.

1128Mr. MARTIN said that it was understood in the Committee that the difficulties and disputes which had been apprehended, should be guarded agst. in the detailing of the plan.

1129Mr. WILSON. The difficulties & disputes will increase with the attempts to define & obviate them. Queen Anne was obliged to dissolve her Parliamt. in order to terminate one of these obstinate disputes between the two Houses. Had it not been for the mediation of the Crown, no one can say what the result would have been. The point is still sub judice in England. He approved of the principles laid down by the Hon'ble

1130President* (Doctr. Franklin) his Colleague, as to the expediency of keeping the people informed of their money affairs. But thought they would know as much, and be as well satisfied, in one way as in the other.

1131Genl. PINKNEY was astonished that this point should have been considered as a concession. He remarked that the restriction as to money bills had been rejected on the merits singly considered, by 8 States agst. 3. and that the very States which now called it a concession, were then agst. it as nugatory or improper in itself.

1132On the Question whether the clause relating to money bills in the Report of the Come. consisting of a member from each State, shd. stand as part of the Report: Connecticut, New Jersey, Delaware,

Maryland, North Carolina, aye-5; Pennsylvania, Virginia, South Carolina, no- 3; Massachusetts, New York, Georgia, divided.

1133A Question was then raised whether the question was carried in the affirmative: there being but 5 ays out of 11 States present. For the words of the Rule see May 28.

1134On this question: Mas. Cont. N. J. Pa. Del. Md. N. C. S. C. Geo ay – 9. N.Y. Va..... no 2

1135(In several preceding instances like votes had sub silentio been entered as decided in the affirmative.)

1136Adjourned

1137_____

1138* He was at that time President of the State of Pennsylvania.

1139SATURDAY, JULY 7

1140IN CONVENTION

1141The question "Shall the clause allowing each State one vote in the 2d. branch, stand as part of the Report"? being taken up

1142Mr. GERRY. This is the critical question. He had rather agree to it than have no accomodation. A Governnt. short of a proper national plan, if generally acceptable, would be preferable to a proper one which if it could be carried at all, would operate on discontented States. He thought it would be best to suspend this question till the Comme. appointed yesterday, should make report.

1143Mr. SHERMAN Supposed that it was the wish of every one that some Genl. Govt. should be established. An equal vote in the 2d. branch would, he thought, be most likely to give it the necessary vigor. The small States have more vigor in their Govts. than the large ones, the more influence therefore the large ones have, the weaker will be the Govt. In the large States it will be most difficult to collect the real & fair sense of the people. Fallacy & undue influence will be practiced with most success: and improper men will most easily get into office. If they vote by States in the 2d. branch, and each State has an equal vote, there must be always a majority of States as well as a majority of the people on the side of public measures, & the Govt. will have decision and efficacy. If this be not the case in the 2d. branch there may be a majority of States agst. public measures, and the difficulty of compelling them to abide by the public determination, will render the Government feebler than it has ever yet been.

1144Mr. WILSON was not deficient in a conciliating temper, but firmness was sometimes a duty of higher obligation. Conciliation was also misapplied in this instance. It was pursued here rather among the Representatives, than among the Constituents; and it wd. be of little consequence, if not established among the latter; and there could be little hope of its being established among them if the foundation should not be laid in justice and right.

1145On the Question shall the words stand as part of the Report? Connecticut, New York, New Jersey, Delaware, Maryland, North Carolina, aye-6; Pennsylvania, Virginia, South Carolina, no-3; Massachusetts, Georgia, divided.*

1146Mr. GERRY thought it would be proper to proceed to enumerate & define the powers to be vested in the Genl. Govt. before a question on the report should be taken, as to the rule of representation in the 2d. branch.

1147Mr. MADISON, observed that it wd. be impossible to say what powers could be safely & properly

vested in the Govt. before it was known, in what manner the States were to be represented in it. He was apprehensive that if a just representation were not the

1148basis of the Govt. it would happen, as it did when the Articles of Confederation were depending, that every effectual prerogative would be withdrawn or withheld, and the

1149New Govt. wd. be rendered as impotent and as shortlived as the old.

1150_____

1151* Several votes were given here in the affirmative or were divided because another final question was to be taken on the whole report.

1152Mr. PATTERSON would not decide whether the privilege concerning money bills were a valuable consideration or not: But he considered the mode & rule of representation in the 1st. branch as fully so. and that after the establishment of that point, the small States would never be able to defend themselves without an equality of votes in the 2d. branch. There was no other ground of accomodation. His resolution was fixt. He would meet the large States on that Ground and no other. For himself he should vote agst. the Report, because it yielded too much.

1153Mr. Govr. MORRIS. He had no resolution unalterably fixed except to do what should finally appear to him right. He was agst. the Report because it maintained the improper Constitution of the 2d. branch. It made it another Congress, a mere whisp of straw.

1154It had been sd. (by Mr. Gerry) that the new Governnt. would be partly national, partly federal; that it ought in the first quality to protect individuals; in the second, the States. But in what quality was it to protect the aggregate interest of the whole? Among the many provisions which had been urged, he had seen none for supporting the dignity and splendor of the American Empire. It had been one of our greatest misfortunes that the great objects of the nation had been sacrificed constantly to local views; in like manner as the general interests of States had been sacrificed to those of the Counties. What is to be the check in the Senate? none; unless it be to keep the majority of the people from injuring particular States. But particular States ought to be injured for the sake of a majority of the people, in case their conduct should deserve it. Suppose they should insist on claims evidently unjust, and pursue them in a manner detrimental to the whole body. Suppose they should give themselves up to foreign influence. Ought they to be protected in such cases?

1155They were originally nothing more than colonial corporations. On the declaration of Independence, a Governmt. was to be formed. The small States aware of the necessity of preventing anarchy, and taking advantage of the moment, extorted from the large ones an equality of votes. Standing now on that ground, they demand under the new system greater rights as men, than their fellow Citizens of the large States. The proper answer to them is that the same necessity of which they formerly took advantage, does not now exist, and that the large States are at liberty now to consider what is right, rather than what may be expedient.

1156We must have an efficient Govt. and if there be an efficiency in the local Govts. the former is impossible. Germany alone proves it. Notwithstanding their common diet, notwithstanding the great prerogatives of the Emperor as head of the Empire, and his vast resources, as sovereign of his particular dominions, no union is maintained: foreign influence disturbs every internal operation, & there is no energy whatever in the general Governmt. Whence does this proceed? From the energy of the local authorities; from its being considered of more consequence to support the Prince of Hesse, than the Happiness of the people of Germany. Do Gentlemen wish this to be ye case here. Good God, Sir, is it possible they can so delude themselves. What if all the Charters & Constitutions of the States were thrown into the fire, and all their demagogues into the ocean. What would it be to the happiness of America. And will not this be the case here if we pursue the train in wch. the business lies. We shall

establish an Aulic Council without an Emperor to execute its decrees. The same circumstances which unite the people here, unite them in Germany. They have there a common language, a common law, common usages and manners, and a common interest in being united; yet their local jurisdictions destroy every tie. The case was the same in the Grecian States. The United Netherlands are at this time torn in factions. With these examples before our eyes shall we form establishments which must necessarily produce the same effects. It is of no consequence from what districts the 2d. branch shall be drawn, if it be so constituted as to yield an asylum agst. these evils. As it is now constituted he must be agst. its being drawn from the States in equal portions. But shall be ready to join in devising such an amendment of the plan, as will be most likely to secure our liberty & happiness.

1157Mr. SHERMAN & Mr. ELSEWORTH moved to postpone the Question on the Report from the Committee of a member from each State, in order to wait for the Report from the Come. of 5 last appointed. Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, aye-6; New York, Virginia, North Carolina, South Carolina, Georgia, no-5.

1158Adj.

1159[The delegates did not convene on Sunday, July 8.]

1160MONDAY, JULY 9

1161IN CONVENTION

1162Mr. Daniel Carroll from Maryland took his Seat.

1163Mr. Govr. MORRIS delivered a report from the Come. of 5 members to whom was committed the clause in the Report of the Come. consisting of a member from each State, stating the proper ratio of Representatives in the 1st. branch, to be as 1 to every 40,000 inhabitants, as follows viz

1164"The Committee to whom was referred the 1st. clause of the 1st. proposition reported from the grand Committee, beg leave to report that in the 1st. meeting of the Legislature the 1st. branch thereof consist of 56. members of which Number, N. Hamshire shall have 2. Massts. 7. R. Id. 1. Cont 4. N. Y. 5. N. J. 3. Pa. 8. Del. 1. Md. 4. Va. 9. N. C. 5. S. C. 5. Geo. 2.- But as the present situation of the States may probably alter as well in point of wealth as in the number of their inhabitants, that the Legislature be authorized from time to time to augment ye. number of Representatives. And in case any of the States shall hereafter be divided, or any two or more States united, or any new States created within the limits of the United States, the Legislature shall possess authority to regulate the number of Representatives in any of the foregoing cases, upon the principles of their wealth and number of inhabitants."

1165Mr. SHERMAN wished to know on what principles or calculations the Report was founded. It did not appear to correspond with any rule of numbers, or of any requisition hitherto adopted by Congs.

1166Mr. GORHAM. Some provision of this sort was necessary in the outset. The number of blacks & whites with some regard to supposed wealth was the general guide Fractions could not be observed. The Legisre. is to make alterations from time to time as justice & propriety may require. Two objections prevailed agst. the rate of 1 member for every 40,000. inhts. The 1st. was that the Representation would soon be too numerous: the 2d. that the Westn. States who may have a different interest, might if admitted on that principle by degrees, outvote the Atlantic. Both these objections are removed. The number will be small in the first instance and may be continued so; and the Atlantic States having ye. Govt. in their own hands, may take care of their own interest, by dealing out the right of Representation in safe proportions to the Western States. These were the views of the Committee.

1167Mr. L MARTIN wished to know whether the Come. were guided in the ratio, by the wealth or

number of inhabitants, of the States, or both; noting its variations from former apportionments by Congs.

1168Mr. Govr. MORRIS & Mr. RUTLIDGE moved to postpone the 1st. paragraph relating to the number of members to be allowed each State in the first instance, and to take up the 2d. paragraph authorizing the Legislr. to alter the number from time to time according to wealth & inhabitants. The motion was agreed to nem. con.

1169On the Question on the 2d. paragh. taken without any debate: Massachusetts, Connecticut, Pennsylvania, Delaware Maryland, Virginia, North Carolina, South Carolina, Georgia, aye-9; New York, New Jersey, no-2.

1170Mr. SHERMAN moved to refer the 1st. part apportioning the Representatives, to a Comme. of a member from each State.

1171Mr. Govr. MORRIS seconded the motion; observing that this was the only case in which such Committees were useful.

1172Mr. WILLIAMSON. thought it would be necessary to return to the rule of numbers, but that the Western States stood on different footing. If their property should be rated as high as that of the Atlantic States, then their representation ought to hold a like proportion. Otherwise if their property was not to be equally rated.

1173Mr. Govr. MORRIS. The Report is little more than a guess. Wealth was not altogether disregarded by the Come. Where it was apparently in favor of one State, whose nos. were superior to the numbers of another, by a fraction only, a member extraordinary was allowed to the former: and so vice versa. The Committee meant little more than to bring the matter to a point for the consideration of the House.

1174Mr. REED asked why Georgia was allowed 2 members, when her number of inhabitants had stood below that of Delaware.

1175Mr. Govr. MORRIS. Such is the rapidity of the population of that State, that before the plan takes effect, it will probably be entitled to 2 Representatives

1176Mr. Randolph. disliked the report of the Come. but had been unwilling to object to it. He was apprehensive that as the number was not to be changed till the Natl. Legislature should please, a pretext would never be wanting to postpone alterations, and keep the power in the hands of those possessed of it. He was in favor of the commitmt. to a member from each State.

1177Mr. PATTERSON considered the proposed estimate for the future according to the Combined rules of numbers and wealth, as too vague. For this reason N. Jersey was agst. it. He could regard negro slaves in no light but as property. They are no free agents, have no personal liberty, no faculty of acquiring property, but on the contrary are themselves property, & like other property entirely at the will of the Master. Has a man in Virga. a number of votes in proportion to the number of his slaves? And if Negroes are not represented in the States to which they belong, why should they be represented in the Genl. Govt. What is the true principle of Representation? It is an expedient by which an assembly of certain individls. chosen by the people is substituted in place of the inconvenient meeting of the people themselves. If such a meeting of the people was actually to take place, would the slaves vote? They would not. Why then shd. they be represented. He was also agst. such an indirect encouragemt. of the slave trade; observing that Congs. in their act relating to the change of the 8 art: of Confedn. had been ashamed to use the term "slaves" & had substituted a description.1

1178Mr. MADISON, reminded Mr. Patterson that his doctrine of Representation which was in its principle the genuine one, must for ever silence the pretensions of the small States to an equality of votes with the large ones. They ought to vote in the same proportion in which their citizens would do, if

the people of all the States were collectively met. He suggested as a proper ground of compromise, that in the first branch the States should be represented according to their number of free inhabitants; and in the 2d. which had for one of its primary objects the guardianship of property, according to the whole number, including slaves.

1179Mr. BUTLER urged warmly the justice & necessity of regarding wealth in the apportionment of Representation.

1180Mr. KING had always expected that as the Southern States are the richest, they would not league themselves with the Northn. unless some respect were paid to their superior wealth. If the latter expect those preferential distinctions in Commerce & other advantages which they will derive from the connection they must not expect to receive them without allowing some advantages in return. Eleven out of 13 of the States had agreed to consider Slaves in the apportionment of taxation; and taxation and Representation ought to go together.²

1181On the question for committing the first paragraph of the Report to a member from each State. Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, aye-9; New York, South Carolina, no-2.

1182The Come. appointed were Mr. King. Mr. Sherman, Mr. Yates, Mr. Brearly, Mr. Govr. Morris, Mr. Reed, Mr. Carrol, Mr. Madison, Mr. Williamson, Mr. Rutledge, Mr. Houston.

1183Adj.

1184TUESDAY, JULY 10

1185IN CONVENTION

1186Mr. KING reported from the Come. yesterday appointed that the States at the 1st. meeting of the General Legislature, should be represented by 65 members in the following proportions, to wit. N. Hamshire by 3. Masts. 8. R. 1st. 1. Cont. 5. N. Y. 6. N. J. 4. Pa. 8. Del. 1. Md. 6. Va. 10. N. C. 5. S. C. 5. Georgia 3.

1187Mr. RUTLIDGE moved that N. Hampshire be reduced from 3 to 2. members. Her numbers did not entitle her to 3 and it was a poor State.

1188Genl. PINKNEY seconds the motion.

1189Mr. KING. N. Hamshire has probably more than 120,000 Inhabts. and has an extensive Country of tolerable fertility. Its inhabts may therefore be expected to increase fast. He remarked that the four Eastern States having 800,000 souls, have 1/3 fewer representatives than the four Southern States, having not more than 700,000 souls rating the blacks, as 5 for 3. The Eastern people will advert to these circumstances, and be dissatisfied. He believed them to be very desirous of uniting with their Southern brethren, but did not think it prudent to rely so far on that disposition as to subject them to any gross inequality. He was fully convinced that the question concerning a difference of interests did not lie where it had hitherto been discussed, between the great & small States; but between the Southern & Eastern. For this reason he had been ready to yield something in the proportion of representatives for the security of the Southern. No principle would justify the giving them a majority. They were brought as near an equality as was possible. He was not averse to giving them a still greater security, but did not see how it could be done.

1190Genl. PINKNEY. The Report before it was committed was more favorable to the S. States than as it now stands. If they are to form so considerable a minority, and the regulation of trade is to be given to the Genl. Government, they will be nothing more than overseers for the Northern States. He did not

expect the S. States to be raised to a majority of representatives, but wished them to have something like an equality. At present by the alterations of the Come. in favor of the N. States they are removed farther from it than they were before. One member indeed had been added to Virga. which he was glad of as he considered her as a Southern State. He was glad also that the members of Georgia were increased.

1191Mr. WILLIAMSON was not for reducing N. Hamshire from 3 to 2. but for reducing some others. The Southn. Interest must be extremely endangered by the present arrangement. The Northn. States are to have a majority in the first instance and the means of perpetuating it.¹

1192Mr. DAYTON observed that the line between Northn. & Southern interest had been improperly drawn: that Pa. was the dividing State, there being six on each side of her. Genl. PINKNEY urged the reduction, dwelt on the superior wealth of the Southern States, and insisted on its having its due weight in the Government.

1193Mr. Govr. MORRIS regretted the turn of the debate. The States he found had many Representatives on the floor. Few he feared were to be deemed the Representatives of America. He thought the Southern States have by the report more than their share of representation. Property ought to have its weight, but not all the weight. If the Southn. States are to supply money. The Northn. States are to spill their blood. Besides, the probable Revenue to be expected from the S. States has been greatly overrated. He was agst. reducing N. Hamshire.

1194Mr. Randolph was opposed to a reduction of N. Hamshire, not because she had a full title to three members: but because it was in his contemplation First, to make it the duty instead of leaving it to the discretion of the Legislature to regulate the representation by a periodical census. Second, to require more than a bare majority of votes in the Legislature in certain cases, & particularly in commercial cases.

1195On the question for reducing N. Hamshire from 3 to 2 Represents. it passed in the negative: North Carolina,* South Carolina, aye-2 ; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia,* no-8.

1196Genl. PINKNEY and Mr. ALEXr. MARTIN moved that 6 Reprs. instead of 5 be allowed to N. Carolina

1197On the Question, it passed in the negative. North Carolina, South Carolina, Georgia, aye-3; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, no-7.

1198Genl. PINKNEY & Mr. BUTLER made the same motion in favor of S. Carolina.

1199On the Question it passed in the negative: Delaware, North Carolina, South Carolina, Georgia, aye-4: Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, no-7.

1200Genl. PINKNEY & Mr. HOUSTON moved that Georgia be allowed 4 instead of 3 Reprs. urging the unexampled celerity of its population. On the Question, it passed in the Negative: Virginia, North Carolina, South Carolina, Georgia, aye-4; Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, no-7.

1201Mr. MADISON, moved that the number allowed to each State be doubled. A majority of a Quorum of 65 members, was too small a number to to represent the whole inhabitants of the U. States; They would not possess enough of the confidence of the people, and wd. be too sparsely taken from the people, to bring with them all the local information which would be frequently wanted. Double the number will not be too great, even with the future additions from New States. The additional expence was too inconsiderable to be regarded in so important a case. And as far as the augmentation might be unpopular on that score, the objection was overbalanced by its effect on the hopes of a greater number

of the popular Candidates.

1202Mr. ELSEWORTH urged the objection of expence, & that the greater the number, the more slowly would the business proceed; and the less probably be decided as it ought, at last. He thought the number of Representatives too great in most of the State Legislatures: and that a large number was less necessary in the Genl. Legislature than in those of the States,-as its business would relate to a few great, national Objects only.

1203Mr. SHERMAN would have preferred 50 to 65. The great distance they will have to travel will render their attendance precarious and will make it difficult to prevail on a sufficient number of fit men to undertake the service. He observed that the expected increase from New States also deserved consideration.

1204_____

1205* In the printed Journal, N. C. – no, Georgia – aye

1206Mr. GERRY was for increasing the number beyond 65. The larger the number, the less the danger of their being corrupted. The people are accustomed to & fond of a numerous representation, and will consider their rights as better secured by it. The danger of excess in the number may be guarded agst. by fixing a point within which the number shall always be kept.

1207Col. MASON admitted that the objection drawn from the consideration of expence, had weight both in itself, and as the people might be affected by it. But he thought it outweighed by the objections agst. the smallness of the number. 38, will he supposes, as being a majority of 65, form a quorum. 20 will be a majority of 38. This was certainly too small a number to make laws for America. They would neither bring with them all the necessary information relative to various local interests, nor possess the necessary confidence of the people. After doubling the number, the laws might still be made by so few as almost to be objectionable on that account.

1208Mr. READ was in favor of the Motion. Two of the States (Del. & R. I.) would have but a single member if the aggregate number should remain at 65. and in case of accident to either of these one State wd. have no representative present to give explanations or informations of its interests or wishes. The people would not place their confidence in so small a number. He hoped the objects of the Genl. Govt. would be much more numerous than seemed to be expected by some gentlemen, and that they would become more & more so. As to the New States the highest number of Reps. for the whole might be limited, and all danger of excess thereby prevented.

1209Mr. RUTLIDGE opposed the motion. The Representatives were too numerous in all the States. The full number allotted to the States may be expected to attend & the lowest possible quorum shd. not therefore be considered. The interests of their Constituents will urge their attendance too strongly for it to be omitted: and he supposed the Genl. Legislature would not sit more than 6 or 8 weeks in the year.

1210On the Question for doubling the number, it passed in the negative. Delaware, Virginia, aye-2; Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, North Carolina, South Carolina, Georgia, no-9.

1211On the question for agreeing to the apportionment of Reps. as amended by the last committee, it passed in the affirmative: Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, aye-9; South Carolina, Georgia, no-2.

1212Mr. BROOM gave notice to the House that he had concurred with a reserve to himself of an intention to claim for his State an equal voice in the 2d. branch: which he thought could not be denied after this concession of the small States as to the first branch.

1213Mr. Randolph moved as an amendment to the report of the Comtee. of five "that in order to ascertain the alterations in the population & wealth of the several States the Legislature should be required to cause a census, and estimate to be taken within one year after its first meeting; and every ----- years thereafter-and that the Legislr. arrange the Representation accordingly."

1214Mr. Govr. MORRIS opposed it as fettering the Legislature too much. Advantage may be taken of it in time of war or the apprehension of it, by new States to extort particular favors. If the mode was to be fixed for taking a census, it might certainly be extremely inconvenient: if unfixed the Legislature may use such a mode as will defeat the object: and perpetuate the inequality. He was always agst. such Shackles on the Legislr. They had been found very pernicious in most of the State Constitutions. He dwelt much on the danger of throwing such a preponderance into the Western Scale, suggesting that in time the Western people wd. outnumber the Atlantic States. He wished therefore to put it in the power of the latter to keep a majority of votes in their own hands. It was objected he said that if the Legislr. are left at liberty, they will never readjust the Representation. He admitted that this was possible; but he did not think it probable unless the reasons agst. a revision of it were very urgent & in this case, it ought not to be done.

1215It was moved to postpone the proposition of Mr. Randolph in order to take up the following, viz. "that the Committee of Eleven, to whom was referred the report of the Committee of five on the subject of Representation, be requested to furnish the Convention with the principles on which they grounded the Report," which was disagreed to: S.C. alone voting in the affirmative.

1216WEDNESDAY, JULY 11

1217IN CONVENTION

1218Mr. Randolph's motion requiring the Legislr. to take a periodical census for the purpose of redressing inequalities in the Representation, was resumed.

1219Mr. SHERMAN was agst. shackling the Legislature too much. We ought to choose wise & good men, and then confide in them.

1220Mr. MASON. The greater the difficulty we find in fixing a proper rule of Representation, the more unwilling ought we to be, to throw the task from ourselves, on the Genl. Legislr. He did not object to the conjectural ratio which was to prevail in the outset; but considered a Revision from time to time according to some permanent & precise standard as essential to ye. fair representation required in the 1st. branch. According to the present population of America, the Northn. part of it had a right to preponderate, and he could not deny it. But he wished it not to preponderate hereafter when the reason no longer continued. From the nature of man we may be sure, that those who have power in their hands will not give it up while they can retain it. On the contrary we know they will always when they can rather increase it. If the S. States therefore should have 3/4 of the people of America within their limits, the Northern will hold fast the majority of Representatives. 1/4 will govern the 3/4. The S. States will complain: but they may complain from generation to generation without redress. Unless some principle therefore which will do justice to them hereafter shall be inserted in the Constitution, disagreeable as the declaration was to him, he must declare he could neither vote for the system here, nor support it, in his State. Strong objections had been drawn from the danger to the Atlantic interests from new Western States. Ought we to sacrifice what we know to be right in itself, lest it should prove favorable to States which are not yet in existence. If the Western States are to be admitted into the Union, as they arise, they must, he wd. repeat, be treated as equals, and subjected to no degrading discriminations. They will have the same pride & other passions which we have, and will either not unite with or will speedily revolt from the Union, if they are not in all respects placed on an equal footing with their brethren. It

has been said they will be poor, and unable to make equal contributions to the general Treasury. He did not know but that in time they would be both more numerous & more wealthy than their Atlantic brethren. The extent & fertility of their soil, made this probable; and though Spain might for a time deprive them of the natural outlet for their productions, yet she will, because she must, finally yield to their demands. He urged that numbers of inhabitants; though not always a precise standard of wealth was sufficiently so for every substantial purpose.

1221Mr. WILLIAMSON was for making it the duty of the Legislature to do what was right & not leaving it at liberty to do or not to do it. He moved that Mr. Randolph's proposition be postponed. in order to consider the following "that in order to ascertain the alterations that may happen in the population & wealth of the several States, a census shall be taken of the free white inhabitants and $\frac{3}{5}$ ths. of those of other descriptions on the 1st. year after this Government shall have been adopted and every year thereafter; and that the Representation be regulated accordingly."

1222Mr. Randolph agreed that Mr. Williamson's proposition should stand in the place of his. He observed that the ratio fixed for the 1st. meeting was a mere conjecture, that it placed the power in the hands of that part of America, which could not always be entitled to it, that this power would not be voluntarily renounced; and that it was consequently the duty of the Convention to secure its renunciation when justice might so require; by some constitutional provisions. If equality between great & small States be inadmissible, because in that case unequal numbers of Constituents wd. be represented by equal numbers of votes; was it not equally inadmissible that a larger & more populous district of America should hereafter have less representation, than a smaller & less populous district. If a fair representation of the people be not secured, the injustice of the Govt. will shake it to its foundations. What relates to suffrage is justly stated by the celebrated Montesquieu, as a fundamental article in Republican Govts. If the danger suggested by Mr. Govr. Morris be real, of advantage being taken of the Legislature in pressing moments, it was an additional reason, for tying their hands in such a manner that they could not sacrifice their trust to momentary considerations. Congress have pledged the public faith to New States, that they shall be admitted on equal terms. They never would nor ought to accede on any other. The census must be taken under the direction of the General Legislature. The States will be too much interested to take an impartial one for themselves.

1223Mr. BUTLER & Genl. PINKNEY insisted that blacks be included in the rule of Representation, equally with the Whites: and for that purpose moved that the words "three fifths" be struck out.

1224Mr. GERRY thought that $\frac{3}{5}$ of them was to say the least the full proportion that could be admitted.

1225Mr. GHORUM. This ratio was fixed by Congress. as a rule of taxation. Then it was urged by the Delegates representing the States having slaves that the blacks were still more inferior to freemen. At present when the ratio of representation is to be established, we are assured that they are equal to freemen. The arguments on ye. former occasion had convinced him that $\frac{3}{5}$ was pretty near the just proportion and he should vote according to the same opinion now.

1226Mr. BUTLER insisted that the labour of a slave in S. Carola. was as productive & valuable as that of a freeman in Masss., that as wealth was the great means of defence and utility to the Nation they were equally valuable to it with freemen; and that consequently an equal representation ought to be allowed for them in a Government which was instituted principally for the protection of property, and was itself to be supported by property.¹

1227Mr. MASON, could not agree to the motion, notwithstanding it was favorable to Virginia. because he thought it unjust. It was certain that the slaves were valuable, as they raised the value of land, increased the exports & imports, and of course the revenue, would supply the means of feeding & supporting an army, and might in cases of emergency become themselves soldiers. As in these important respects they

were useful to the community at large, they ought not to be excluded from the estimate of Representation. He could not however regard them as equal to freemen and could not vote for them as such. He added as worthy of remark, that the Southern States have this peculiar species of property, over & above the other species of property common to all the States.¹

1228Mr. WILLIAMSON reminded Mr. Ghorum that if the Southn. States contended for the inferiority of blacks to whites when taxation was in view, the Eastern States on the same occasion contended for their equality. He did not however either then or now, concur in either extreme, but approved of the ratio of 3/5.

1229On Mr. Butlers motion for considering blacks as equal to Whites in the apportionmt. of Representation. Delaware, South Carolina, Georgia, aye- 3; Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, no-7; New York not on the floor.

1230Mr. Govr. MORRIS said he had several objections to the proposition of Mr. Williamson. In the first place, it fettered the Legislature too much. In the second place, it would exclude some States altogether who would not have a sufficient number to entitle them to a single Representative. In the third place, it will not consist with the Resolution passed on Saturday last authorising the Legislature to adjust the Representation from time to time on the principles or population & wealth nor with the principles of equity. If slaves were to be considered as inhabitants, not as wealth, then the sd. Resolution would not be pursued. If as wealth, then why is no other wealth but slaves included? These objections may perhaps be removed by amendments. His great objection was that the number of inhabitants was not a proper standard of wealth. The amazing difference between the comparative numbers & wealth of different Countries, rendered all reasoning superfluous on the subject. Numbers might with greater propriety be deemed a measure of strength, than of wealth, yet the late defence made by G. Britain, agst. her numerous enemies proved in the clearest manner, that it is entirely fallacious even in this respect.

1231Mr. KING thought there was great force in the objections of Mr. Govr. Morris: he would however accede to the proposition for the sake of doing something.

1232Mr. RUTLIDGE contended for the admission of wealth in the estimate by which Representation should be regulated. The Western States will not be able to contribute in proportion to their numbers; they shd. not therefore be represented in that proportion. The Atlantic States will not concur in such a plan. He moved that "at the end of years after the 1st. meeting of the Legislature, and of every years thereafter, the Legislature shall proportion the Representation according to the principles of wealth & population"

1233Mr. SHERMAN thought the number of people alone the best rule for measuring wealth as well as representation; and that if the Legislature were to be governed by wealth, they would be obliged to estimate it by numbers. He was at first for leaving the matter wholly to the discretion of the Legislature; but he had been convinced by the observations of (Mr. Randolph & Mr. Mason,) that the periods & the rule, of revising the Representation ought to be fixt by the Constitution

1234Mr. REID thought the Legislature ought not to be too much shackled. It would make the Constitution like Religious Creeds, embarrassing to those bound to conform to them & more likely to produce dissatisfaction and scism, than harmony and union.

1235Mr. MASON objected to Mr. Rutlidge motion, as requiring of the Legislature something too indefinite & impracticable, and leaving them a pretext for doing nothing.

1236Mr. WILSON had himself no objection to leaving the Legislature entirely at liberty. But considered wealth as an impracticable rule.

1237Mr. GHORUM. If the Convention who are comparatively so little biassed by local views are so much perplexed, How can it be expected that the Legislature hereafter under the full bias of those views, will be able to settle a standard. He was convinced by the arguments of others & his own reflections, that the Convention ought to fix some standard or other.

1238Mr. Govr. MORRIS. The argt. of others & his own reflections had led him to a very different conclusion. If we can't agree on a rule that will be just at this time, how can we expect to find one that will be just in all times to come. Surely those who come after us will judge better of things present, than we can of things future. He could not persuade himself that numbers would be a just rule at any time. The remarks of (Mr. Mason) relative to the Western Country had not changed his opinion on that head. Among other objections it must be apparent they would not be able to furnish men equally enlightened, to share in the administration of our common interests. The Busy haunts of men not the remote wilderness, was the proper school of political Talents. If the Western people get the power into their hands they will ruin the Atlantic interests. The Back members are always most averse to the best measures. He mentioned the case of Pena. formerly. The lower part of the State had ye. power in the first instance. They kept it in yr. own hands & the Country was ye. better for it. Another objection with him agst. admitting the blacks into the census, was that the people of Pena would revolt at the idea of being put on a footing with slaves. They would reject any plan that was to have such an effect. Two objections had been raised agst. leaving the adjustment of the Representation from time, to time, to the discretion of the Legislature. The first was they would be unwilling to revise it at all. The second that by referring to wealth they would be bound by a rule which if willing, they would be unable to execute. The 1st. objn. distrusts their fidelity. But if their duty, their honor & their oaths will not bind them, let us not put into their hands our liberty, and all our other great interests: let us have no Govt. at all. In the second place, if these ties will bind them, we need not distrust the practicability of the rule. It was followed in part by the Come. in the apportionment of Representatives yesterday reported to the House. The best course that could be taken would be to leave the interests of the people to the Representatives of the people.

1239Mr. MADISON, was not a little surprised to hear this implicit confidence urged by a member who on all occasions, had inculcated so strongly, the political depravity of men, and the necessity of checking one vice and interest by opposing to them another vice & interest. If the Representatives of the people would be bound by the ties he had mentioned, what need was there of a Senate? What of a Revisionary power? But his reasoning was not only inconsistent with his former reasoning, but with itself. At the same time that he recommended this implicit confidence to the Southern States in the Northern Majority, he was still more zealous in exhorting all to a jealousy of a Western Majority. To reconcile the gentln. with himself, it must be imagined that he determined the human character by the points of the compass. The truth was that all men having power ought to be distrusted to a certain degree. The case of Pena. had been mentioned where it was admitted that those who were possessed of the power in the original settlement, never admitted the new settlemts. to a due share of it. England was a still more striking example. The power there had long been in the hands of the boroughs, of the minority; who had opposed & defeated every reform which had been attempted. Virga. was in a less degree another example. With regard to the Western States, he was clear & firm in opinion, that no unfavorable distinctions were admissible either in point of justice or policy. He thought also that the hope of contributions to the Treasy. from them had been much underrated. Future contributions it seemed to be understood on all hands would be principally levied on imports & exports. The extent and fertility of the Western Soil would for a long time give to agriculture a preference over manufactures. Trials would be repeated till some articles could be raised from it that would bear a transportation to places where they could be exchanged for imported manufactures. Whenever the Mississipi should be opened to them, which would of necessity be ye. case, as soon as their population would subject them to any considerable share of the public burdin, imposts on their trade could be

collected with less expence & greater certainty, than on that of the Atlantic States. In the mean time, as their supplies must pass thro' the Atlantic States, their contributions would be levied in the same manner with those of the Atlantic States. -He could not agree that any substantial objection lay agst. fixing numbers for the perpetual standard of Representation. It was said that Representation & taxation were to go together; that taxation and wealth ought to go together, that population & wealth were not measures of each other. He admitted that in different climates, under different forms of Govt. and in different stages of civilization the inference was perfectly just. He would admit that in no situation, numbers of inhabitants were an accurate measure of wealth. He contended however that in the U. States it was sufficiently so for the object in contemplation. Altho' their climate varied considerably, yet as the Govts. the laws, and the manners of all were nearly the same, and the intercourse between different parts perfectly free, population, industry, arts, and the value of labour, would constantly tend to equalize themselves. The value of labour, might be considered as the principal criterion of wealth and ability to support taxes; and this would find its level in different places where the intercourse should be easy & free, with as much certainty as the value of money or any other thing. Wherever labour would yield most, people would resort, till the competition should destroy the inequality. Hence it is that the people are constantly swarming from the more to the less populous places—from Europe to Ama. from the Northn. & Middle parts of the U. S. to the Southern & Western. They go where land is cheaper, because there labour is dearer. If it be true that the same quantity of produce raised on the banks of the Ohio is of less value, than on the Delaware, it is also true that the same labor will raise twice or thrice, the quantity in the former, that it will raise in the latter situation.

1240Col. MASON. Agreed with Mr. Govr. Morris that we ought to leave the interests of the people to the Representatives of the people: but the objection was that the Legislature would cease to be the Representatives of the people. It would continue so no longer than the States now containing a majority of the people should retain that majority. As soon as the Southern & Western population should predominate, which must happen in a few years, the power wd. be in the hands of the minority, and would never be yielded to the majority, unless provided for by the Constitution

1241On the Question for postponing Mr. Williamson's motion, in order to consider that of Mr. Rutledge it passed in the negative. Massachusetts, Pennsylvania, Delaware, South Carolina, Georgia, aye-5; Connecticut, New Jersey, Maryland, Virginia, North Carolina, no-5.

1242On the question on the first clause of Mr. Williamson's motion as to taking a census of the free inhabitants; it passed in the affirmative: Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, aye-6; Delaware, Maryland, South Carolina, Georgia, no-4.

1243The next clause as to $\frac{3}{5}$ of the negroes being considered.

1244Mr. KING. being much opposed to fixing numbers as the rule of representation, was particularly so on account of the blacks. He thought the admission of them along with Whites at all, would excite great discontents among the States having no slaves. He had never said as to any particular point that he would in no event acquiesce in & support it; but he wd. say that if in any case such a declaration was to be made by him, it would be in this. He remarked that in the temporary allotment of Representatives made by the Committee, the Southern States had received more than the number of their white & three fifths of their black inhabitants entitled them to.

1245Mr. SHERMAN. S. Carola. had not more beyond her proportion than N. York & N. Hampshire, nor either of them more than was necessary in order to avoid fractions or reducing them below their proportion. Georgia had more; but the rapid growth of that State seemed to justify it. In general the allotment might not be just, but considering all circumstances, he was satisfied with it.

1246Mr. GHORUM. supported the propriety of establishing numbers as the rule. He said that in Masss. estimates had been taken in the different towns, and that persons had been curious enough to

compare these estimates with the respective numbers of people; and it had been found even including Boston, that the most exact proportion prevailed between numbers & property. He was aware that there might be some weight in what had fallen from his colleague, as to the umbrage which might be taken by the people of the Eastern States. But he recollected that when the proposition of Congs. for changing the 8th. art: of Confedn. was before the Legislature of Massts. the only difficulty then was to satisfy them that the negroes ought not to have been counted equally with the whites instead of being counted in the ratio of three fifths only.*

1247Mr. WILSON did not well see on what principle the admission of blacks in the proportion of three fifths could be explained. Are they admitted as Citizens? then why are they not admitted on an equality with White Citizens? are they admitted as property? then why is not other property admitted into the computation? These were difficulties however which he thought must be overruled by the necessity of compromise. He had some apprehensions also from the tendency of the blending of the blacks with the whites, to give disgust to the people of Pena. as had been intimated by his Colleague (Mr. Govr. Morris). But he differed from him in thinking numbers of inhabts. so incorrect a measure of wealth. He had seen the Western settlemts. of Pa. and on a comparison of them with the City of Philada. could discover little other difference, than that property was more unequally divided here than there. Taking the same number in the aggregate in the two situations he believed there would be little difference in their wealth and ability to contribute to the public wants.²

1248Mr. Govr. MORRIS was compelled to declare himself reduced to the dilemma of doing injustice to the Southern States or to human nature, and he must therefore do it to the former. For he could never agree to give such encouragement to the slave trade as would be given by allowing them a representation for their negroes, and he did not believe those States would ever confederate on terms that would deprive them of that trade.

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1250* They were then to have been a rule of taxation only.

1251On the Question for agreeing to include 3/5 of the blacks: Connecticut, Virginia, North Carolina, Georgia, aye-4; Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland,† South Carolina, no-6.1

1252On the question as to taking the census "the first year after the meeting of the Legislature" – Massachusetts, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, aye-7; Connecticut, Maryland, Georgia, no-3.

1253On filling the blank for the periodical census, with 15 years," Agreed to nem. con.

1254Mr. MADISON moved to add after "15 years," the words "at least" that the Legislature might anticipate when circumstances were likely to render a particular year inconvenient.

1255On this motion for adding "at least," it passed in the negative the States being equally divided. Massachusetts, Virginia, North Carolina, South Carolina, Georgia, aye-5; Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, no-5.

1256A Change in the phraseology of the other clause so as to read; "and the Legislature shall alter or augment the representation accordingly" was agreed to nem. con.

1257On the question on the whole resolution of Mr. Williamson as amended. Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no-9; so it was rejected unanimously.

1258Adjourned

1260† Mr. Carrol said in explanation of the vote of Md. that he wished the phraseology to be so altered as to obviate if possible the danger which had been expressed of giving umbrage to the Eastern & Middle States.

1261 THURSDAY, JULY 12

1262 IN CONVENTION

1263 Mr. Govr. MORRIS moved to add to the clause empowering the Legislature to vary the Representation according to the principles of wealth & numbers of inhabts. a "proviso that taxation shall be in proportion to Representation."2

1264 Mr. BUTLER contended again that Representation Sd.. be according to the full number of inhabts. including all the blacks; admitting the justice of Mr. Govr. Morris's motion.

1265 Mr. MASON also admitted the justice of the principle, but was afraid embarrassments might be occasioned to the Legislature by it. It might drive the Legislature to the plan of Requisitions.

1266 Mr. Govr. MORRIS, admitted that some objections lay agst. his motion, but supposed they would be removed by restraining the rule to direct taxation. With regard to indirect taxes on exports & imports & on consumption, the rule would be inapplicable. Notwithstanding what had been said to the contrary he was persuaded that the imports & consumption were pretty nearly equal throughout the Union.

1267 General PINKNEY liked the idea. He thought it so just that it could not be objected to. But foresaw that if the revision of the census was left to the discretion of the Legislature, it would never be carried into execution. The rule must be fixed, and the execution of it enforced by the Constitution. He was alarmed at what was said yesterday,* concerning the negroes. He was now again alarmed at what had been thrown out concerning the taxing of exports. S. Carola. has in one year exported to the amount of 600,000 Sterling all which was the fruit of the labor of her blacks. Will she be represented in proportion to this amount? She will not. Neither ought she then to be subject to a tax on it. He hoped a clause would be inserted in the system, restraining the Legislature from taxing Exports.

1268 Mr. WILSON approved the principle, but could not see how it could be carried into execution; unless restrained to direct taxation.

1269 Mr. Govr. MORRIS having so varied his Motion by inserting the word "direct." It passd. nem. con. as follows-"provided the always that direct taxation ought to be proportioned to representation."

1270 Mr. DAVIE, said it was high time now to speak out. He saw that it was meant by some gentlemen to deprive the Southern States of any share of Representation for their blacks. He was sure that N. Carola. would never confederate on any terms that did not rate them at least as 3/5 . If the Eastern States meant therefore to exclude them altogether the business was at an end.

1271 Dr. JOHNSON, thought that wealth and population were the true, equitable rules of representation; but he conceived that these two principles resolved themselves into one; population being the best measure of wealth. He concluded therefore that ye.

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1273* By Mr. Govr. Morris.

1274 number of people ought to be established as the rule, and that all descriptions including blacks equally with the whites, ought to fall within the computation. As various opinions had been expressed on the subject, he would move that a Committee might be appointed to take them into consideration

and report thereon.

1275Mr. Govr. MORRIS. It had been said that it is high time to speak out, as one member, he would candidly do so. He came here to form a compact for the good of America. He was ready to do so with all the States. He hoped & believed that all would enter into such a Compact. If they would not he was ready to join with any States that would. But as the Compact was to be voluntary, it is in vain for the Eastern States to insist on what the Southn. States will never agree to. It is equally vain for the latter to require what the other States can never admit; and he verily believed the people of Pena. will never agree to a representation of Negroes. What can be desired by these States more than has been already proposed; that the Legislature shall from time to time regulate Representation according to population & wealth.

1276Genl. PINKNEY desired that the rule of wealth should be ascertained and not left to the pleasure of the Legislature; and that property in slaves should not be exposed to danger under a Govr. instituted for the protection of property.

1277The first clause in the Report of the first Grand Committee was postponed.

1278Mr. ELSEWORTH. In order to carry into effect the principle established, moved to add to the last clause adopted by the House the words following "and that the rule of contribution by direct taxation for the support of the Government of the U. States shall be the number of white inhabitants, and three fifths of every other description in the several States, until some other rule that shall more accurately ascertain the wealth of the several States can be devised and adopted by the Legislature."

1279Mr. BUTLER seconded the motion in order that it might be committed.

1280Mr. Randolph was not satisfied with the motion. The danger will be revived that the ingenuity of the Legislature may evade or pervert the rule so as to perpetuate the power where it shall be lodged in the first instance. He proposed in lieu of Mr. Elseworth's motion, "that in order to ascertain the alterations in Representation that may be required from time to time by changes in the relative circumstances of the States, a census shall be taken within two years from the 1st. meeting of the Genl. Legislature of the U.S., and once within the term of every year afterwards, of all the inhabitants in the manner & according to the ratio recommended by Congress in their resolution of the 18th day of Apl. 1783; (rating the blacks at 3/5 of their number) and, that the Legislature of the U.S. shall arrange the Representation accordingly."-He urged strenuously that express security ought to be provided for including slaves in the ratio of Representation. He lamented that such a species of property existed. But as it did exist the holders of it would require this security. It was perceived that the design was entertained by some of excluding slaves altogether; the Legislature therefore ought not to be left at liberty.

1281Mr. ELSEWORTH withdraws his motion & seconds that of Mr. Randolph.

1282Mr. WILSON observed that less umbrage would perhaps be taken agst. an admission of the slaves into the Rule of representation, if it should be so expressed as to make them indirectly only an ingredient in the rule, by saying that they should enter into the rule of taxation: and as representation was to be according to taxation, the end would be equally attained. He accordingly moved & was 2ded. so to alter the last clause adopted by the House, that together with the amendment proposed the whole should read as follows-provided always that the representation ought to be proportioned according to direct taxation, and in order to ascertain the alterations in the direct taxation which may be required from time to time by the changes in the relative circumstances of the States. Resolved that a census be taken within two years from the first meeting of the Legislature of the U. States, and once within the term of every years afterwards of all the inhabitants of the U.S. in the manner and according to the ratio recommended by Congress in their Resolution of the eighteenth day of April, 1783; and that the

Legislature of the U. S. shall proportion the direct taxation accordingly."

1283Mr. KING. Altho' this amendment varies the aspect somewhat, he had still two powerful objections agst. tying down the Legislature to the rule of numbers. First, they were at this time an uncertain index of the relative wealth of the States. Secondly, if they were a just index at this time it can not be supposed always to continue so. He was far from wishing to retain any unjust advantage whatever in one part of the Republic. If justice was not the basis of the connection it could not be of long duration. He must be shortsighted indeed who does not foresee that whenever the Southern States shall be more numerous than the Northern, they can & will hold a language that will awe them into justice. If they threaten to separate now in case injury shall be done them, will their threats be less urgent or effectual, when force shall back their demands. Even in the intervening period, there will be no point of time at which they will not be able to say, do us justice or we will separate. He urged the necessity of placing confidence to a certain degree in every Govt. and did not conceive that the proposed confidence as to a periodical readjustment, of the representation exceeded that degree.

1284Mr. PINKNEY moved to amend Mr. Randolph's motion so as to make "blacks equal to the whites in the ratio of representation." This he urged was nothing more than justice. The blacks are the labourers, the peasants of the Southern States: they are as productive of pecuniary resources as those of the Northern States. They add equally to the wealth, and considering money as the sinew of war, to the strength of the nation. It will also be politic with regard to the Northern States, as taxation is to keep pace with Representation.¹

1285Genl. PINKNEY moves to insert 6 years instead of two, as the period computing from the 1st. meeting of ye. Legis-within which the first census should be taken.

1286On this question for inserting six years instead of "two" in the proposition of Mr. Wilson, it passed in the affirmative: Connecticut, New Jersey, Pennsylvania, Maryland, South Carolina, aye-5; Massachusetts, Virginia, North Carolina, Georgia, no-4; Delaware, divided.

1287On the question for filling the blank for ye. periodical census with 20 years, it it passed in the negative. Connecticut, New Jersey, Pennsylvania, aye-3; Massachusetts, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no-7.

1288On the question for 10 years, it passed in the affirmative. Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye-8; Connecticut, New Jersey, no-2.

1289On Mr. Pinkney's motion for rating blacks as equal to Whites instead of as 3/5- South Carolina, Georgia, aye-2; Massachusetts, Connecticut, (Doctor Johnson, aye), New Jersey, Pennsylvania, (3 against 2) Delaware, Maryland, Virginia, North Carolina, no-8.¹

1290Mr. Randolph's proposition as varied by Mr. Wilson being read for taking the question on the whole.

1291Mr. GERRY, urged that the principle of it could not be carried into execution as the States were not to be taxed as States. With regard to taxes on imports, he conceived they would be more productive. Where there were no slaves than where there were; the consumption being greater-

1292Mr. ELSEWORTH. In case of a poll tax there wd. be no difficulty. But there wd. probably be none. The sum allotted to a State may be levied without difficulty according to the plan used by the State in raising its own supplies.

1293On the question on ye. whole proposition; as proportioning representation to direct taxation & both to the white & 3/5 of the black inhabitants, & requiring a Census within six years-& within every ten years afterwards. Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, Georgia, aye-6; New Jersey, Delaware, no-2; Massachusetts, South Carolina, divided.¹

1294Adjourned.

1295FRIDAY, JULY 13

1296IN CONVENTION

1297It being moved to postpone the clause in the Report of the Committee of Eleven as to the originating of money bills in the first branch, in order to take up the following "that in the 2d. branch each State shall have an equal voice."

1298Mr. GERRY, moved to add as an amendment to the last clause agreed to by the House, "that from the first meeting of the Legislature of the U. S. till a census shall be taken all monies to be raised for supplying the public Treasury by direct taxation, shall be assessed on the inhabitants of the several States according to the number of their Representatives respectively in the 1st. branch." He said this would be as just before as after the Census: according to the general principle that taxation & Representation ought to go together.

1299Mr. WILLIAMSON feared that N. Hamshire will have reason to complain. 3 members were allotted to her as a liberal allowance, for this reason among others, that she might not suppose any advantage to have been taken of her absence. As she was still absent, and had no opportunity of deciding whether she would chuse to retain the number on the condition, of her being taxed in proportion to it, he thought the number ought to be reduced from three to two, before the question was taken on Mr. G's motion.

1300Mr. READ could not approve of the proposition. He had observed he said in the Committee a backwardness in some of the members from the large States, to take their full proportion of Representatives. He did not then see the motive. He now suspects it was to avoid their due share of taxation. He had no objection to a just & accurate adjustment of Representation & taxation to each other.

1301Mr. Govr. MORRIS & Mr. MADISON answered that the charge itself involved an acquittal, since notwithstanding the augmentation of the number of members allotted to Masts. & Va. the motion for proportioning the burdens thereto was made by a member from the former State & was approved by Mr-M from the latter who was on the Come. Mr. Govr. Morris said that he thought Pa. had her due share in 8 members; and he could not in candor ask for more. Mr. M. said that having always conceived that the difference of interest in the U, States lay not between the large & small, but the N. & Southn. States, and finding that the number of members allotted to the N. States was greatly superior, he should have preferred, an addition of two members to the S. States, to wit one to N. & 1 to S. Carla. rather than of one member to Virga. He liked the present motion, because it tended to moderate the views both of the opponents & advocates for rating very high, the negroes.

1302Mr. ELSEWORTH hoped the proposition would be withdrawn. It entered too much into detail. The general principle was already sufficiently settled. As fractions can not be regarded in apportioning the No. of representatives, the rule will be unjust, until an actual census shall be made. After that taxation may be precisely proportioned according to the principle established, to the number of inhabitants.

1303Mr. WILSON hoped the motion would not be withdrawn. If it shd. it will be made from another quarter. The rule will be as reasonable & just before, as after a Census. As to fractional numbers, the Census will not distroy, but ascertain them. And they will have the same effect after as before the Census: for as he understands the rule, it is to be adjusted not to the number of inhabitants, but of Representatives.

1304Mr. SHERMAN opposed the motion. He thought the Legislature ought to be left at liberty: in which case they would probably conform to the principles observed by Congs.

1305Mr. MASON did not know that Virga. would be a loser by the proposed regulation, but had some scruple as to the justice of it. He doubted much whether the conjectural rule which was to precede the Census, would be as just, as it would be rendered by an actual census.

1306Mr. ELSEWORTH & Mr. SHERMAN moved to postpone the motion of Mr. Gerry, on ye. question, it passed in the negative. Connecticut, New Jersey, Delaware, Maryland, aye-4; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no-6.

1307On the question on Mr. Gerry's motion; it passed in the negative, the States being equally divided. Massachusetts, Pennsylvania, North Carolina, South Carolina, Georgia, aye-5; Connecticut, New Jersey, Delaware, Maryland, Virginia, no-5.

1308Mr. GERRY finding that the loss of the question had proceeded from an objection with some, to the proposed assessment of direct taxes on the inhabitants of the States, which might restrain the Legislature to a poll tax, moved his proposition again, but so varied as to authorise the assessment on the States, which leaves the mode to the Legislature, viz "that from the 1st. meeting of the Legislature of the U. S. untill a census shall be taken, all monies for supplying the public Treasury by direct taxation shall be raised from the said several States according to the number of their representatives respectively in the 1st. branch."

1309On this varied question, it passed in the affirmative: Massachusetts, Virginia, North Carolina, South Carolina, Georgia, aye-5; Connecticut, New Jersey, Delaware, Maryland, no-4; Pennsylvania, divided.

1310On the motion of Mr. Randolph, the vote of Monday last authorising the Legislr. to adjust from time to time, the representation upon the principles of wealth & numbers of inhabitants was reconsidered by common consent in order to strike out "Wealth" and adjust the resolution to that requiring periodical revisions according to the number of whites & three fifths of the blacks: the motion was in the words following-"But as the present situation of the States may probably alter in the number of their inhabitants, that the Legislature of the U. S. be authorized from time to time to apportion the number of representatives: and in case any of the States shall hereafter be divided or any two or more States united or new States created within the limits of the U. S. the Legislature of the U.S. shall possess authority to regulate the number of Representatives in any of the foregoing cases, upon the principle of their number of inhabitants; according to the provisions hereafter mentioned."

1311Mr. Govr. MORRIS opposed the alteration as leaving still an incoherence. If Negroes were to be viewed as inhabitants, and the revision was to proceed on the principle of numbers of inhabts. they ought to be added in their entire number, and not in the proportion of $\frac{3}{5}$. If as property, the word wealth was right, and striking it out, would produce the very inconsistency which it was meant to get rid of.-The train of business & the late turn which it had taken, had led him he said, into deep meditation on it, and He wd. candidly state the result. A distinction had been set up & urged, between the Nn. & Southn. States. He had hitherto considered this doctrine as heretical. He still thought the distinction groundless. He sees however that it is persisted in, and that the Southn. Gentlemen will not be satisfied unless they see the way open to their gaining a majority in the public Councils. The consequence of such a transfer of power from the maritime to the interior & landed interest will he foresees be such an oppression to commerce, that he shall be obliged to vote for ye. vicious principle of equality in the 2d. branch in order to provide some defence for the N. States agst. it. But to come more to the point; either this distinction is fictitious or real; if fictitious let it be dismissed & let us proceed with due confidence. If it be real, instead of attempting to blend incompatible things, let us at once take a friendly leave of each other. There can be no end of demands for security if every particular interest is

to be entitled to it. The Eastern States may claim it for their fishery, and for other objects, as the Southn. States claim it for their peculiar objects. In this struggle between the two ends of the Union, what part ought the middle States in point of policy to take: to join their Eastern brethren according to his ideas. If the Southn. States get the power into their hands, and be joined as they will be with the interior Country, they will inevitably bring on a war with Spain for the Mississippi. This language is already held. the interior Country having no property nor interest exposed on the sea, will be little affected by such a war. He wished to know what security the Northn. & middle States will have agst. this danger. It has been said that N. C. S. C., and Georgia only will in a little time have a majority of the people of America. They must in that case include the great interior Country, and every thing was to be apprehended from their getting the power into their hands.

1312Mr. BUTLER. The security the Southn. States want is that their negroes may not be taken from them, which some gentlemen within or without doors, have a very good mind to do. It was not supposed that N. C. S. C. & Geo. would have more people than all the other States, but many more relatively to the other States than they now have. The people & strength of America are evidently bearing Southwardly & S. westwdly.1

1313Mr. WILSON. If a general declaration would satisfy any gentleman he had no indisposition to declare his sentiments. Conceiving that all men wherever placed have equal rights and are equally entitled to confidence, he viewed without apprehension the period when a few States should contain the superior number of people. The majority of people wherever found ought in all questions to govern the minority. If the interior Country should acquire this majority, it will not only have the right, but will avail itself of it whether we will or no. This jealousy misled the policy of G. Britain with regard to America. The fatal maxims espoused by her were that the Colonies were growing too fast, and that their growth must be stinted in time. What were the consequences? first. enmity on our part, then actual separation. Like consequences will result on the part of the interior settlements, if like jealousy & policy be pursued on ours. Further, if numbers be not a proper rule, why is not some better rule pointed out. No one has yet ventured to attempt it. Congs. have never been able to discover a better. No State as far as he had heard, has suggested any other. In 1783, after elaborate discussion of a measure of wealth all were satisfied then as they are now that the rule of numbers, does not differ much from the combined rule of numbers & wealth. Again he could not agree that property was the sole or primary object of Governnt. & society. The cultivation & improvement of the human mind was the most noble object. With respect to this object, as well as to other personal rights, numbers were surely the natural & precise measure of Representation. And with respect to property, they could not vary much from the precise measure. In no point of view however could the establishmt. of numbers as the rule of representation in the 1st. branch vary his opinion as to the impropriety of letting a vicious principle into the 2d. branch.

1314On the Question to strike out wealth, & to make the change as moved by Mr. Randolph, it passed in the affirmative – Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye- 9; Delaware, divided.1

1315Mr. REED moved to insert after the word- "divided," "or enlarged by addition of territory" which was agreed to nem. con.*

1316Adjourned1

1317_____

1318* His object probably was to provide for such cases as an enlargemt. of Delaware by annexing to it the Peninsula on the East side of the Chesapeak.

1319 SATURDAY, JULY 14

1320 IN CONVENTION

1321 Mr. L. MARTIN called for the question on the whole report, including the parts relating to the origination of money bills, and the equality of votes in the 2d. branch.

1322 Mr. GERRY. wished before the question should be put, that the attention of the House might be turned to the dangers apprehended from Western States. He was for admitting them on liberal terms, but not for putting ourselves into their hands. They will if they acquire power like all men, abuse it. They will oppress commerce, and drain our wealth into the Western Country. To guard agst. these consequences, he thought it necessary to limit the number of new States to be admitted into the Union, in such a manner, that they should never be able to outnumber the Atlantic States. He accordingly moved "that in order to secure the liberties of the States already confederated, the number of Representatives in the 1st. branch, of the States which shall hereafter be established, shall never exceed in number, the Representatives from such of the States as shall accede to this confederation.

1323 Mr. KING. seconded the motion.

1324 Mr. SHERMAN, thought there was no probability that the number of future States would exceed that of the Existing States. If the event should ever happen, it was too remote to be taken into consideration at this time. Besides We are providing for our posterity, for our children & our grand Children, who would be as likely to be citizens of new Western States, as of the old States. On this consideration alone, we ought to make no such discrimination as was proposed by the motion.

1325 Mr. GERRY. If some of our children should remove, others will stay behind, and he thought it incumbent on us to provide for their interests. There was a rage for emigration from the Eastern States to the Western Country, and he did not wish those remaining behind to be at the mercy of the Emigrants. Besides foreigners are resorting to that country, and it is uncertain what turn things may take there.

1326 On the question for agreeing to the Motion of Mr. Gerry, it passed in the negative. Massachusetts, Connecticut, Delaware, Maryland, aye-4; New Jersey, Virginia, North Carolina, South Carolina, Georgia, no-5; Pennsylvania, divided.

1327 Mr. RUTLIDGE proposed to reconsider the two propositions touching the originating of money bills in the first & the equality of votes in the second branch.

1328 Mr. SHERMAN was for the question on the whole at once. It was he said a conciliatory plan, it had been considered in all its parts, a great deal of time had been spent upon it, and if any part should now be altered, it would be necessary to go over the whole ground again.

1329 Mr. L. MARTIN urged the question on the whole. He did not like many parts of it. He did not like having two branches, nor the inequality of votes in the 1st. branch. He was willing however to make trial of the plan, rather than do nothing.

1330 Mr. WILSON traced the progress of the report through its several stages, remarking yt. when on the question concerning an equality of votes, the House was divided, our Constituents had they voted as their representatives did, would have stood as 2/3 agst. the equality, and 1/3 only in favor of it. This fact would ere long be known, and it would appear that this fundamental point has been carried by 1/3 agst. 2/3. What hopes will our Constituents entertain when they find that the essential principles of justice have been violated in the outset of the Governmt. As to the privilege of originating money bills, it was not considered by any as of much moment, and by many as improper in itself. He hoped both clauses wd. be reconsidered. The equality of votes was a point of such critical importance, that every

opportunity ought to be allowed, for discussing and collecting the mind of the Convention upon it.

1331Mr. L. MARTIN denies that there were 2/3 agst. the equality of votes. The States that please to call themselves large, are the weakest in the Union. Look at Mass. Look at Virga. Are they efficient States? He was for letting a separation take place if they desired it. He had rather there should be two Confederacies, than one founded on any other principle than an equality of votes in the 2d. branch at least.

1332Mr. WILSON was not surprised that those who say that a minority does more than a majority should say the minority is stronger than the majority. He supposed the next assertion will be that they are richer also; though he hardly expected it would be persisted in when the States shall be called on for taxes & troops-

1333Mr. GERRY. also animadverted on Mr. L. Martins remarks on the weakness of Mass. He favored the reconsideration with a view not of destroying the equality of votes; but of providing that the States should vote per capita, which he said would prevent the delays & inconveniences that had been experienced in Congs. and would give a national aspect & Spirit to the management of business. He did not approve of a reconsideration of the clause relating to money bills. It was of great consequence. It was the corner stone of the accomodation. If any member of the Convention had the exclusive privilege of making propositions, would any one say that it would give him no advantage over other members. The Report was not altogether to his mind. But he would agree to it as it stood rather than throw it out altogether.

1334The reconsideration being tacitly agreed to.

1335Mr. PINKNEY moved that instead of an equality of votes, the States should be represented in the 2d. branch as follows: N. H. by. 2. members. Mas. 4. R. I. 1. Cont. 3. N.Y. 3. N.J. 2. Pa. 4. Del I. Md. 3. Virga.5. N.C.3. S.C.3. Geo. 2.making in the whole 36.

1336Mr. WILSON seconds the motion

1337Mr. DAYTON. The smaller States can never give up their equality. For himself he would in no event yield that security for their rights.

1338Mr. SHERMAN urged the equality of votes not so much as a security for the small States; as for the State Govts. which could not be preserved unless they were represented & had a negative in the Genl. Government. He had no objection to the members in the 2d. b. voting per capita, as had been suggested by (Mr. Gerry)

1339Mr. MADISON concurred in this motion of Mr. Pinkney as a reasonable compromise.

1340Mr. GERRY said he should like the motion, but could see no hope of success. An accomodation must take place, and it was apparent from what had been seen that it could not do so on the ground of the motion. He was utterly against a partial confederacy, leaving other States to accede or not accede; as had been intimated.

1341Mr. KING said it was always with regret that he differed from his colleagues, but it was his duty to differ from (Mr. Gerry) on this occasion. He considered the proposed Government as substantially and formally, a General and National Government over the people of America. There never will be a case in which it will act as a federal Government on the States and not on the individual Citizens. And is it not a clear principle that in a free Govt. those who are to be the objects of a Govt. ought to influence the operations of it? What reason can be assigned why the same rule of representation sd.. not prevail in the second, as in the first, branch? He could conceive none. On the contrary, every view of the subject that presented itself, seemed to require it. Two objections had been raised agst. it: drawn first from the terms of the existing compact, Secondly from a supposed danger to the smaller States.

1342As to the first objection he thought it inapplicable. According to the existing confederation, the rule by which the public burdens is to be apportioned is fixed, and must be pursued. In the proposed Governmt. it can not be fixed, because indirect taxation is to be substituted. The Legislature therefore will have full discretion to impose taxes in such modes & proportions as they may judge expedient. As to the 2d. objection, he thought it of as little weight. The Genl. Governmt. can never wish to intrude on the State Governmts. There could be no temptation. None had been pointed out. In order to prevent the interference of measures which seemed most likely to happen, he would have no objection to throwing all the State debts into the federal debt, making one aggregate debt of about 70,000,000 of dollars, and leaving it to be discharged by the Genl. Govt.

1343According to the idea of securing the State Govts. there ought to be three distinct legislative branches. The 2d. was admitted to be necessary, and was actually meant, to check the 1st. branch, to give more wisdom, system, & stability to the Govt. and ought clearly as it was to operate on the people to be proportioned to them. For the third purpose of securing the States, there ought then to be a 3d. branch, representing the States as such, and guarding by equal votes their rights & dignities. He would not pretend to be as thoroughly acquainted with his immediate Constituents as his colleagues, but it was his firm belief that Masts. would never be prevailed on to yield to an equality of votes. In N. York (he was sorry to be obliged to say any thing relative to that State in the absence of its representatives, but the occasion required, it), in N. York he had seen that the most powerful argument used by the considerate opponents to the grant of the Impost to Congress, was pointed agst. the vicious constitution of Congs. with regard to representation & suffrage. He was sure that no Govt. would last that was not founded on just principles. He prefer'd the doing of nothing, to an allowance of an equal vote to all the States. It would be better he thought to submit to a little more confusion & convulsion, than to submit to such an evil. It was difficult to say what the views of different Gentlemen might be. Perhaps there might be some who thought no Governmt. co-extensive with the U. States could be established with a hope of its answering the purpose. Perhaps there might be other fixed opinions incompatible with the object we are pursuing. If there were, he thought it but candid that Gentlemen should speak out that we might understand one another.

1344Mr. STRONG. The Convention had been much divided in opinion. In order to avoid the consequences of it, an accomodation had been proposed. A committee had been appointed: and though some of the members of it were averse to an equality of votes, a Report had been made in favor of it. It is agreed on all hands that Congress are nearly at an end. If no Accomodation takes place, the Union itself must soon be dissolved. It has been suggested that if we can not come to any general agreement, the principal States may form & recommend a scheme of Government. But will the small States in that case ever accede to it. Is it probable that the large States themselves will under such circumstances embrace and ratify it. He thought the small States had made a considerable concession in the article of money bills; and that they might naturally expect some concessions on the other side. From this view of the matter he was compelled to give his vote for the Report taken all together.

1345Mr. MADISON expressed his apprehensions that if the proper foundation of Govenmt was destroyed, by substituting an equality in place of a proportional Representation, no proper superstructure would be raised. If the small States really wish for a Government armed with the powers necessary to secure their liberties, and to enforce obedience on the larger members as well as themselves he could not help thinking them extremely mistaken in the means. He reminded them of the consequences of laying the existing confederation on improper principles. All the principal parties to its compilation, joined immediately in mutilating & fettering the Governmt. in such a manner that it has disappointed every hope placed on it.

1346He appealed to the doctrine & arguments used by themselves on a former occasion. It had been very properly observed by (Mr. Patterson) that Representation was an expedient by which the meeting

of the people themselves was rendered unnecessary; and that the representatives ought therefore to bear a proportion to the votes which their constituents if convened, would respectively have. Was not this remark as applicable to one branch of the Representation as to the other? But it had been said that the Govern^t. would in its operation be partly federal, partly national; that altho' in the latter respect the Representatives of the people ought to be in proportion to the people: yet in the former it ought to be according to the number of States. If there was any solidity in this distinction he was ready to abide by it, if there was none it ought to be abandoned. In all cases where the Genl. Government. is to act on the people, let the people be represented and the votes be proportional. In all cases where the Govern^t. is to act on the States as such, in like manner as Cong^s. now act on them, let the States be represented & the votes be equal.

1347This was the true ground of compromise if there was any ground at all. But he denied that there was any ground. He called for a single instance in which the Genl. Govt. was not to operate on the people individually. The practicability of making laws, with coercive sanctions, for the States as Political bodies, had been exploded on all hands. He observed that the people of the large States would in some way or other secure to themselves a weight proportioned to the importance accruing from their superior numbers. If they could not effect it by a proportional representation in the Govt. they would probably accede to no Govt. which did not in a great measure depend for its efficacy on their voluntary cooperation; in which case they would indirectly secure their object.

1348The existing confederacy proved that where the Acts of the Genl. Govt. were to be executed by the particular Govts. the latter had a weight in proportion to their importance. No one would say that either in Cong^s. or out of Cong^s. Delaware had equal weight with Pennsylva. If the latter was to supply ten times as much money as the former, and no compulsion could be used, it was of ten times more importance, that she should voluntarily furnish the supply. In the Dutch confederacy the votes of the Provinces were equal. But Holland which supplies about half the money, governed the whole republic.

1349He enumerated the objections agst. an equality of votes in the 2d. branch, notwithstanding the proportional representation in the first. 1. the minority could negative the will of the majority of the people. 2. they could extort measures by making them a condition of their assent to other necessary measures. 3. they could obtrude measures on the majority by virtue of the peculiar powers which would be vested in the Senate. 4. the evil instead of being cured by time, would increase with every new State that should be admitted, as they must all be admitted on the principle of equality. 5. the perpetuity it would give to the preponderance of the Northn. agst. the Southn. Scale was a serious consideration. It seemed now to be pretty well understood that the real difference of interests lay, not between the large & small but between the N. & Southn States. The institution of slavery & its consequences formed the line of discrimination. There were 5 States on the Southern, 8 on the Northn. side of this line. Should a proportl. representation take place it was true, the N. would still outnumber the other; but not in the same degree, at this time; and every day would tend towards an equilibrium.

1350Mr. WILSON would add a few words only. If equality in the 2d. branch was an error that time would correct, he should be less anxious to exclude it being sensible that perfection was unattainable in any plan; but being a fundamental and a perpetual error, it ought by all means to be avoided. A vice in the Representation, like an error in the first concoction, must be followed by disease, convulsions, and finally death itself. The justice of the general principle of proportional representation has not in argument at least been yet contradicted. But it is said that a departure from it so far as to give the States an equal vote in one branch of the Legislature is essential to their preservation. He had considered this position maturely, but could not see its application. That the States ought to be preserved he admitted. But does it follow that an equality of votes is necessary for the purpose? Is there any reason to suppose that if their preservation should depend more on the large than on the small States the security of the States agst. the Genl. Government would be diminished? Are the large States less attached to their

existence, more likely to commit suicide, than the small?

1351An equal vote then is not necessary as far as he can conceive: and is liable among other objections to this insuperable one: The great fault of the existing confederacy is its inactivity. It has never been a complaint agst. Congs. that they governed overmuch. The complaint has been that they have governed too little. To remedy this defect we were sent here. Shall we effect the cure by establishing an equality of votes as is proposed? no: this very equality carries us directly to Congress: to the system which it is our duty to rectify. The small States cannot indeed act, by virtue of this equality, but they may controul the Govt. as they have done in Congs. This very measure is here prosecuted by a minority of the people of America. Is then the object of the Convention likely to be accomplished in this way? Will not our Constituents say? we sent you to form an efficient Govt. and you have given us one more complex indeed, but having all the weakness of the former Governnt. He was anxious for uniting all the States under one Governnt. He knew there were some respectable men who preferred three confederacies, united by offensive & defensive alliances. Many things may be plausibly said, some things may be justly said, in favor of such a project. He could not however concur in it himself; but he thought nothing so pernicious as bad first principles.

1352Mr. ELSEWORTH asked two questions one of Mr. Wilson, whether he had ever seen a good measure fail in Congs. for want of a majority of States in its favor? He had himself never known such an instance: the other of Mr. Madison whether a negative lodged with the majority of the States even the smallest, could be more dangerous than the qualified negative proposed to be lodged in a single Executive Magistrate, who must be taken from some one State?

1353Mr. SHERMAN, signified that his expectation was that the Genl. Legislature would in some cases act on the federal principle, of requiring quotas. But he thought it ought to be empowered to carry their own plans into execution, if the States should fail to supply their respective quotas.

1354On the question for agreeing to Mr. Pinkney's motion for allowing N. H. 2. Mas. 4. &c-it passed in the negative: Pennsylvania, Maryland, Virginia, South Carolina, aye-4; Massachusetts, (Mr. King, aye, Mr. Gorham, absent), Connecticut, New Jersey, Delaware, North Carolina, Georgia, no-6.

1355Adjourned

1356[The delegates did not convene on Sunday, July 15.]

1357MONDAY, JULY 16

1358IN CONVENTION

1359On the question for agreeing to the whole Report as amended & including the equality of votes in the 2d. branch. it passed in the Affirmative. Connecticut, New Jersey, Delaware, Maryland, North Carolina (Mr. Spaight, no), aye-5; Pennsylvania, Virginia, South Carolina, Georgia, no-4; Massachusetts, divided, (Mr. Gerry, Mr. Strong, aye; Mr. King, Mr. Gorham, no.).1

1360The whole, thus passed is in the words following viz

1361"Resolved that in the original formation of the Legislature of the U. S. the first branch thereof shall consist of sixty five members, of which number N. Hampshire shall send 3. Massts. 8. Rh. I. 1. Connt. 5. N. Y. 6. N. J. 4. Pena. 8. Del. 1. Maryd. 6. Virga. 10. N. C. 5. S. C. 5. Geo. 3.

1362But as the present situation of the States may probably alter in the number of their inhabitants, the Legislature of the U. S. shall be authorized from time to time to apportion the number of Reps.; and in case any of the States shall hereafter be divided, or enlarged by, addition of territory, or any two or more States united, or any new States created within the limits of the U. S. the Legislature of the U. S.

shall possess authority to regulate the number of Reps. in any of the foregoing cases, upon the principle of their number of inhabitants, according to the provisions hereafter mentioned – provided always that representation ought to be proportioned according to direct taxation; and in order to ascertain the alteration in the direct taxation, which may be required from time to time by the changes in the relative circumstances of the States-

1363Resolved, that a Census be taken within six years from the 1st. meeting of the Legislature of the U. S. and once within the term of every 10 years afterwards of all the inhabitants of the U. S. in the manner and according to the ratio recommended by Congress in their Resolution of the eighteenth day of April, 1783, and that the Legislature of the U. S. shall proportion the direct taxation accordingly-

1364"Resolved, that all bills for raising or appropriating money, and for fixing the salaries of officers of the Govt. of the U. S. shall originate in the first branch of the Legislature of the U. S. and shall not be altered or amended in the 2d. branch: and that no money shall be drawn from the public Treasury, but in pursuance of appropriations to be originated in the 1st. branch.

1365"Resolvd. that in the 2d. branch of the Legislature of the U. S. each State shall have an equal vote."

1366The 6th. Resol: in the Report from the Come. of the whole House, which had been postponed in order to consider the 7 & 8th. Resolns.: was now resumed. see the Resoln.

1367"That the Natl. Legislature ought to possess the Legislative Rights vested in Congs. by the Confederation." was agreed to nem. Con.

1368"And moreover to legislate in all cases to which the separate States are incompetent; or in which the harmony of the U. S. may be interrupted by the exercise of individual legislation," being read for a question.

1369Mr. BUTLER calls for some explanation of the extent of this power: particularly of the word incompetent. The vagueness of the terms rendered it impossible for any precise judgment to be formed.

1370Mr. GHORUM. The vagueness of the terms constitutes the propriety of them. We are now establishing general principles, to be extended hereafter into details which will be precise & explicit.

1371Mr. RUTLIDGE, urged the objection started by Mr. Butler and moved that the clause should be committed to the end that a specification of the powers comprised in the general terms, might be reported.

1372On the question for commitment, the votes were equally divided. Connecticut, Maryland, Virginia, South Carolina, Georgia, aye-5; Massachusetts, New Jersey, Pennsylvania, Delaware, North Carolina, no-5. So it was lost.

1373Mr. Randolph. The vote of this morning (involving an equality of suffrage in 2d. branch) had embarrassed the business extremely. All the powers given in the Report from the Come. of the whole, were founded on the supposition that a Proportional representation was to prevail in both branches of the Legislature. When he came here this morning his purpose was to have offered some propositions that might if possible have united a great majority of votes, and particularly might provide agst. the danger suspected on the part of the smaller States, by enumerating the cases in which it might lie, and allowing an equality of votes in such cases.* But finding from the preceding vote that they persist in demanding an equal vote in all cases, that they have succeeded in obtaining it, and that N. York if present would probably be on the same side, he could not but think we were unprepared to discuss this subject further. It will probably be in vain to come to any final decision with a bare majority on either side. For these reasons he wished the Convention to adjourn, that the large States might consider the steps proper to be taken in the present solemn crisis of the business, and that the small States might also

deliberate on the means of conciliation.¹

1374Mr. PATTERSON, thought with Mr. R. that it was high time for the Convention to adjourn that the rule of secrecy ought to be rescinded, and that our Constituents should be consulted. No conciliation could be admissible on the part of the smaller States on any other ground than that of an equality of votes in the 2d. branch. If Mr. Randolph would reduce to form his motion for an adjournment sine die, he would second it with all his heart.

1375Genl. PINKNEY wished to know of Mr. R. whether he meant an adjournment sine die, or only an adjournment for the day. If the former was meant, it differed much from his idea. He could not think of going to S. Carolina and returning again to this place. Besides it was chimerical to suppose that the States if consulted would ever accord separately, and beforehand.

1376Mr. Randolph, had never entertained an idea of an adjournment sine die; &

1377_____

1378* See the paper in the appendix communicated by Mr. R. to J.M. July 10. No.-1

1379was sorry that his meaning had been so readily & strangely misinterpreted. He had in view merely an adjournment till tomorrow, in order that some conciliatory experiment might if possible be devised, and that in case the smaller States should continue to hold back, the larger might then take such measures, he would not say what, as might be necessary.

1380Mr. PATTERSON seconded the adjournment till tomorrow, as an opportunity seemed to be wished by the larger States to deliberate further on conciliatory expedients.

1381On the question for adjourning till tomorrow, the States were equally divided. New Jersey, Pennsylvania, Maryland, Virginia, North Carolina aye-5; Massachusetts, Connecticut, Delaware, South Carolina, Georgia, no-5. So it was lost.

1382Mr. BROOME thought it his duty to declare his opinion agst. an adjournment sine die, as had been urged by Mr. Patterson. Such a measure he thought would be fatal. Something must be done by the Convention, tho' it should be by a bare majority.

1383Mr. GERRY observed that Masts. was opposed to an adjournment, because they saw no new ground of compromise. But as it seemed to be the opinion of so many States that a trial shd-be made, the State would now concur in the adjournmt.

1384Mr. RUTLIDGE could see no need of an adjournmt. because he could see no chance of a compromise. The little States were fixt. They had repeatedly & solemnly declared themselves to be so. All that the large States then had to do, was to decide whether they would yield or not. For his part he conceived that altho' we could not do what we thought best, in itself, we ought to do something. Had we not better keep the Govt. up a little longer, hoping that another Convention will supply our omissions, than abandon every thing to hazard. Our Constituents will be very little satisfied with us if we take the latter course.

1385Mr. Randolph & Mr. KING renewed the motion to adjourn till tomorrow.

1386On the question. Massachusetts, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, aye-7; Connecticut, Delaware, no-2; Georgia, divided.

1387Adjourned

1388On the morning following before the hour of the convention a number of the members from the larger States by common agreement met for the purpose of consulting on the proper steps to be taken in consequence of the vote in favor of an equal Representation in the 2d. branch, and the apparent

inflexibility of the smaller States on that point. Several members from the latter States also attended. The time was wasted in vague conversation on the subject, without any specific proposition or agreement. It appeared indeed that the opinions of the members who disliked the equality of votes differed much as to the importance of that point, and as to the policy of risking a failure of any general act of the Convention, by inflexibly opposing it. Several of them supposing that no good Government could or would be built on that foundation, and that as a division of the Convention into two opinions was unavoidable; it would be better that the side comprising the principal States, and a majority of the people of America, should propose a scheme of Govt. to the States, than that a scheme should be proposed on the other side, would have concurred in a firm opposition to the smaller States, and in a separate recommendation, if eventually necessary. Others seemed inclined to yield to the smaller States, and to concur in such an act however imperfect & exceptionable, as might be agreed on by the Convention as a body, tho' decided by a bare majority of States and by a minority of the people of the U. States. It is probable that the result of this consultation satisfied the smaller States that they had nothing to apprehend from a union of the larger, in any plan whatever agst. the equality of votes in the 2d. branch.¹

1389 TUESDAY, JULY 17

1390 IN CONVENTION

1391 Mr. GOVERNOR MORRIS. moved to reconsider the whole Resolution agreed to yesterday concerning the constitution of the 2 branches of the Legislature. His object was to bring the House to a consideration in the abstract of the powers necessary to be vested in the general Government. It had been said, Let us know how the Govt. is to be modelled, and then we can determine what powers can be properly given to it. He thought the most eligible course was, first to determine on the necessary powers, and then so to modify the Government as that it might be justly & properly enabled to administer them. He feared if we proceeded to a consideration of the powers, whilst the vote of yesterday including an equality of the States in the 2d. branch, remained in force, a reference to it, either mental or expressed, would mix itself with the merits of every question concerning the powers.- this motion was not seconded. (It was probably approved by several members, who either despaired of success, or were apprehensive that the attempt would inflame the jealousies of the smaller States.)

1392 The 6th. Resoln. in the Report of the Com. of the Whole relating to the powers, which had been postponed in order to consider the 7 & 8th. relating to the constitution of the Natl. Legislature, was now resumed.

1393 Mr. SHERMAN observed that it would be difficult to draw the line between the powers of the Genl. Legislatures, and those to be left with the States; that he did not like the definition contained in the Resolution, and proposed in its place to the words "individual Legislation" inclusive, to insert "to make laws binding on the people of the United States in all cases which may concern the common interests of the Union; but not to interfere with the Government of the individual States in any matters of internal police which respect the Govt. of such States only, and wherein the general welfare of the U. States is not concerned."

1394 Mr. WILSON 2d. ded. the amendment as better expressing the general principle.

1395 Mr. Govr. MORRIS opposed it. The internal police, as it would be called & understood by the States ought to be infringed in many cases, as in the case of paper money & other tricks by which Citizens of other States may be affected.

1396 Mr. SHERMAN, in explanation of his idea read an enumeration of powers, including the power of levying taxes on trade, but not the power of direct taxation.

1397Mr. Govr. MORRIS remarked the omission, and inferred that for the deficiencies of taxes on consumption, it must have been the meaning of Mr. Sherman, that the Genl. Govt. should recur to quotas & requisitions, which are subversive of the idea of Govt.

1398Mr. SHERMAN acknowledged that his enumeration did not include direct taxation. Some provision he supposed must be made for supplying the deficiency of other taxation, but he had not formed any.

1399On the question of Mr. Sherman's motion, it passed in the negative: Connecticut, Maryland, aye-2; Massachusetts, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, no-8.

1400Mr. BEDFORD moved that the 2d. member of the sixth Resolution be so altered as to read "and moreover to legislate in all cases for the general interests of the Union, and also in those to which the States are severally incompetent," or in which the harmony of the U. States may be interrupted by the exercise of individual Legislation."

1401Mr. Govr. MORRIS 2ds. the motion

1402Mr. Randolph. This is a formidable idea indeed. It involves the power of violating all the laws and constitutions of the States, and of intermeddling with their police. The last member of the sentence is also superfluous, being included in the first.

1403Mr. BEDFORD. It is not more extensive or formidable than the clause as it stands: no State being separately competent to legislate for the general interest of the Union.

1404On the question for agreeing to Mr. Bedford's motion, it passed in the affirmative. Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, aye-6; Connecticut, Virginia, South Carolina, Georgia, no-4.

1405On the sentence as amended, it passed in the affirmative. Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, aye-8; South Carolina, Georgia, no-2.

1406The next clause "To negative all laws passed by the several States contravening in the opinion of the Nat: Legislature the articles of Union, or any treaties subsisting under the authority of ye. Union" was then taken up.

1407Mr. Govr. MORRIS opposed this power as likely to be terrible to the States, and not necessary, if sufficient Legislative authority should be given to the Genl. Government.

1408Mr. SHERMAN thought it unnecessary, as the Courts of the States would not consider as valid any law contravening the Authority of the Union, and which the legislature would wish to be negated.¹

1409Mr. L. MARTIN considered the power as improper & inadmissible. Shall all the laws of the States be sent up to the Genl. Legislature before they shall be permitted to operate?

1410Mr. MADISON, considered the negative on the laws of the States as essential to the efficacy & security of the Genl. Govt. The necessity of a general Govt. proceeds from the propensity of the States to pursue their particular interests in opposition to the general interest. This propensity will continue to disturb the system, unless effectually controuled. Nothing short of a negative on their laws will controul it. They will pass laws which will accomplish their injurious objects before they can be repealed by the Genl. Legislr. or set aside by the National Tribunals. Confidence can not be put in the State Tribunals as guardians of the National authority and interests. In all the States these are more or less dependt. on the Legislatures. In Georgia they are appointed annually by the Legislature. In R. Island the Judges who refused to execute an unconstitutional law were displaced, and others

substituted, by the Legislature who would be the willing instruments of the wicked & arbitrary plans of their masters. A power of negating the improper laws of the States is at once the most mild & certain means of preserving the harmony of the system. Its utility is sufficiently displayed in the British System. Nothing could maintain the harmony & subordination of the various parts of the empire, but the prerogative by which the Crown, stifles in the birth every Act of every part tending to discord or encroachment. It is true the prerogative is sometimes misapplied thro' ignorance or a partiality to one particular part of ye. empire; but we have not the same reason to fear such misapplications in our System. As to the sending all laws up to the Natl. Legisl: that might be rendered unnecessary by some emanation of the power into the States, so far at least, as to give a temporary effect to laws of immediate necessity.

1411Mr. Govr. MORRIS was more & more opposed to the negative. The proposal of it would disgust all the States. A law that ought to be negated will be set aside in the Judiciary departmt. and if that security should fail; may be repealed by a Nationl. law.

1412Mr. SHERMAN. Such a power involves a wrong principle, to wit, that a law of a State contrary to the articles of the Union, would if not negated, be valid & operative.

1413Mr. PINKNEY urged the necessity of the Negative.

1414On the question for agreeing to the power of negating laws of States &c" it passed in the negative. Massachusetts, Virginia, North Carolina, aye-3; Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, no-7.

1415Mr. LUTHER MARTIN moved the following resolution "that the Legislative acts of the U.S. made by virtue & in pursuance of the articles of Union, and all Treaties made & ratified under the authority of the U. S. shall be the supreme law of the respective States, as far as those acts or treaties shall relate to the said States, or their Citizens and inhabitants-& that the Judiciaries of the several States shall be bound thereby in their decisions, any thing in the respective laws of the individual States to the contrary notwithstanding" which was agreed to nem. con.

1416The ninth Resolution being taken up, the first clause, 'That a National Executive be instituted, to consist of a single person,' was agreed to, nem. con.

1417The next clause "To be chosen by the National Legisl." being considered.

1418Mr. GOVERNOR. MORRIS was pointedly agst. his being so chosen. He will be the mere creature of the Legisl: if appointed & impeachable by that body. He ought to be elected by the people at large, by the freeholders of the Country. That difficulties attend this mode, he admits. But they have been found superable in N. Y. & in Cont. and would he believed be found so, in the case of an Executive for the U. States. If the people should elect, they will never fail to prefer some man of distinguished character, or services; some man, if he might so speak, of continental reputation. -If the Legislature elect, it will be the work of intrigue, of cabal, and of faction; it will be like the election of a pope by a conclave of cardinals; real merit will rarely be the title to the appointment. He moved to strike out "National Legislature" & insert "citizens of the U.S."

1419Mr. SHERMAN thought that the sense of the Nation would be better expressed by the Legislature, than by the people at large. The latter will never be sufficiently informed of characters, and besides will never give a majority of votes to any one man. They will generally vote for some man in their own State, and the largest State will have the best chance for the appointment. If the choice be made by the Legislre. A majority of voices may be made necessary to constitute an election.

1420Mr. WILSON. two arguments have been urged agnt. an election of the Executive Magistrate by the people. The first is the example of Poland where an Election of the supreme Magistrate is attended

with the most dangerous commotions. The cases he observed were totally dissimilar. The Polish nobles have resources & dependents which enable them to appear in force, and to threaten the Republic as well as each other. In the next place the electors all assemble at one place: which would not be the case with us. The 2d. argt. is that a majority of the people would never concur. It might be answered that the concurrence of a majority of the people is not a necessary principle of election, nor required as such in any of the States. But allowing the objection all its force, it may be obviated by the expedient used in Mass. where the Legislature by a majority of voices, decide in case a majority of people do not concur in favor of one of the candidates. This would restrain the choice to a good nomination at least, and prevent in a great degree intrigue & cabal. A particular objection with him agst. an absolute election by the Legislatre. was that the Exec: in that case would be too dependent to stand the mediator between the intrigues & sinister views of the Representatives and the general liberties & interests of the people.

1421Mr. PINKNEY did not expect this question would again have been brought forward; An Election by the people being liable to the most obvious & striking objections. They will be led by a few active & designing men. The most populous States by combining in favor of the same individual will be able to carry their points. The Natl. Legislature being most immediately interested in the laws made by themselves, will be most attentive to the choice of a fit man to carry them properly into execution.

1422Mr. Govr. MORRIS. It is said that in case of an election by the people the populous States will combine & elect whom they please. Just the reverse. The people of such States cannot combine. If their be any combination it must be among their representatives in the Legislature. It is said the people will be led by a few designing men. This might happen in a small district. It can never happen throughout the continent. In the election of a Govr. of N. York, it sometimes is the case in particular spots, that the activity & intrigues of little partizans are successful, but the general voice of the State is never influenced by such artifices. It is said the multitude will be uninformed. It is true they would be uninformed of what passed in the Legislative Conclave, if the election were to be made there; but they will not be uninformed of those great & illustrious characters which have merited their esteem & confidence. If the Executive be chosen by the Natl. Legislature, he will not be independent of it; and if not independent, usurpation & tyranny on the part of the Legislature will be the consequence. This was the case in England in the last Century. It has been the case in Holland, where their Senates have engrossed all power. It has been the case every where. He was surprised that an election by the people at large should ever have been likened to the polish election of the first Magistrate. An election by the Legislature will bear a real likeness to the election by the Diet of Poland. The great must be the electors in both cases, and the corruption & cabal wch. are known to characterise the one would soon find their way into the other. Appointments made by numerous bodies, are always worse than those made by single responsible individuals, or by the people at large.

1423Col. MASON. It is curious to remark the different language held at different times. At one moment we are told that the Legislature is entitled to thorough confidence, and to indefinite power. At another, that it will be governed by intrigue & corruption, and cannot be trusted at all. But not to dwell on this inconsistency he would observe that a Government which is to last ought at least to be practicable. Would this be the case if the proposed election should be left to the people at large. He conceived it would be as unnatural to refer the choice of a proper character for chief Magistrate to the people, as it would, to refer a trial of colours to a blind man. The extent of the Country renders it impossible that the people can have the requisite capacity to judge of the respective pretensions of the Candidates.

1424Mr. WILSON. could not see the contrariety stated (by Col. Mason) The Legislatre. might deserve confidence in some respects, and distrust in others. In acts which were to affect them & yr. Constituents precisely alike confidence was due. In others jealousy was warranted. The appointment to great offices, where the Legislatre. might feel many motives, not common to the public confidence was surely

misplaced. This branch of business it was notorious was the most corruptly managed of any that had been committed to legislative bodies.

1425Mr. WILLIAMSON, conceived that there was the same difference between an election in this case, by the people and by the legislature, as between an appt. by lot, and by choice. There are at present distinguished characters, who are known perhaps to almost every man. This will not always be the case. The people will be sure to vote for some man in their own State, and the largest State will be sure to succeed. This will not be Virga. however. Her slaves will have no suffrage. As the Salary of the Executive will be fixed, and he will not be eligible a 2d. time, there will not be such a dependence on the Legislature as has been imagined.

1426On the question on an election by the people instead of the Legislature; it passed in the negative. Pennsylvania, aye-1; Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no-9.

1427Mr. L. MARTIN moved that the Executive be chosen by Electors appointed by the several Legislatures of the individual States.

1428Mr. BROOME 2ds.

1429On the Question, it passed in the negative. Delaware, Maryland, aye-2; Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no-8.

1430On the question on the words "to be chosen by the Nationl. Legislature" it passed unanimously in the affirmative.

1431"For the term of seven years"-postponed nem. con. on motion of Mr. Houston & Mr. Gov. Morris.

1432"to carry into execution the nationl. laws"-agreed to nem. con.

1433"to appoint to offices in cases not otherwise provided for."- agreed to nem.con.

1434"to be ineligible a second time"-

1435Mr. HOUSTON moved to strike out this clause.

1436Mr. SHERMAN 2ds. the motion.

1437Mr. Govr. MORRIS espoused the motion. The ineligibility proposed by the clause as it stood tended to destroy the great motive to good behavior, the hope of being rewarded by a re-appointment. It was saying to him, make hay while the sun shines.

1438On the question for striking out as moved by Mr. Houston, it passed in the affirmative: Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Georgia, aye-6; Delaware, Virginia, North Carolina, South Carolina, no-4.

1439The clause "For the term of 7 years" being resumed.

1440Mr. BROOM was for a shorter term since the Executive Magistrate was now to be re-eligible. Had he remained ineligible a 2d. time, he should have preferred a longer term.

1441Docr. Mc.CLURG moved* to strike out 7 years, and insert "during good

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1443* The probable object of this motion was merely to enforce the argument against the re-eligibility of the Executive Magistrate, by holding out a tenure during good behaviour as the alternative for keeping him independent of the Legislature.

1444behavior." By striking out the words declaring him not re-eligible, he was put into a situation that

would keep him dependent for ever on the Legislature; and he conceived the independence of the Executive to be equally essential with that of the Judiciary department.¹

1445Mr. Govr. MORRIS 2ded. the motion. He expressed great pleasure in hearing it. This was the way to get a good Government. His fear that so valuable an ingredient would not be attained had led him to take the part he had done. He was indifferent how the Executive should be chosen, provided he held his place by this tenure.

1446Mr. BROOME highly approved the motion. It obviated all his difficulties.

1447Mr. SHERMAN considered such a tenure as by no means safe or admissible. As the Executive Magistrate is now re-eligible, he will be on good behavior as far as will be necessary. If he behaves well he will be continued; if otherwise, displaced, on a succeeding election.

1448Mr. MADISON † If it be essential to the preservation of liberty that the Legisl: Execut: & Judiciary powers be separate, it is essential to a maintenance of the separation, that they should be independent of each other. The Executive could not be independent of the Legislature, if dependent on the pleasure of that branch for a reappointment. Why was it determined that the Judges should not hold their places by such a tenure? Because they might be tempted to cultivate the Legislature, by an undue complaisance, and thus render the Legislature the virtual expositor, as well as the maker of the laws. In like manner a dependence of the Executive on the Legislature, would render it the Executor as well as the maker of laws; & then according to the observation of Montesquieu, tyrannical laws may be made that they may be executed in a tyrannical manner. There was an analogy between the Executive & Judiciary departments in several respects. The latter executed the laws in certain cases as the former did in others. The former expounded & applied them for certain purposes, as the latter did for others. The difference between them seemed to consist chiefly in two circumstances – First, the collective interest & security were much more in the power belonging to the Executive than to the Judiciary department. Secondly, in the administration of the former much greater latitude is left to opinion and discretion than in the administration of the latter. But if the 2d. consideration proves that it will be more difficult to establish a rule sufficiently precise for trying the Execut: than the Judges, & forms an objection to the same tenure of office, both considerations prove that it might be more dangerous to suffer a union between the Executive & Legisl: powers, than between the Judiciary & Legislative powers. He conceived it to be absolutely necessary to a well constituted Republic that the two first shd. be kept distinct & independent of each other. Whether the plan proposed by the 2

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1450† The view here taken of the subject was meant to aid in parrying the animadversions likely to fall on the motion of Dr. McClurg, for whom J.M. had a particular regard. The Doctr. though possessing talents of the highest order, was modest & unaccustomed to exert them in public debate.

1451motion was a proper one was another question, as it depended on the practicability of instituting a tribunal for impeachmts. as certain & as adequate in the one case as in the other. On the other hand, respect for the mover entitled his proposition to a fair hearing & discussion, until a less objectionable expedient should be applied for guarding agst. a dangerous union of the Legislative & Executive departments.

1452Col. MASON. This motion was made some time ago, & negatived by a very large majority. He trusted that it wd.. be again negatived. It Wd.. be impossible to define the misbehaviour in such a manner as to subject it to a proper trial; and perhaps still more impossible to compel so high an offender holding his office by such a tenure to submit to a trial. He considered an Executive during good behavior as a softer name only for an Executive for life. And that the next would be an easy step to hereditary Monarchy. If the motion should finally succeed, he might himself live to see such a

Revolution. If he did not it was probable his children or grand children would. He trusted there were few men in that House who wished for it. No state he was sure had so far revolted from Republican principles as to have the least bias in its favor.

1453Mr. MADISON, was not apprehensive of being thought to favor any step towards monarchy. The real object with him was to prevent its introduction. Experience had proved a tendency in our governments to throw all power into the Legislative vortex. The Executives of the States are in general little more than Cyphers; the legislatures omnipotent. If no effectual check be devised for restraining the instability & encroachments of the latter, a revolution of some kind or other would be inevitable. The preservation of Republican Govt. therefore required some expedient for the purpose, but required evidently at the same time that in devising it, the genuine principles of that form should be kept in view.

1454Mr. Govr. MORRIS was as little a friend to monarchy as any gentleman. He concurred in the opinion that the way to keep out monarchical Govt. was to establish such a Repub. Govt. as Wd.. make the people happy and prevent a desire of change.

1455Docr. Mc. CLURG was not so much afraid of the shadow of monarchy as to be unwilling to approach it; nor so wedded to Republican Govt. as not to be sensible of the tyrannies that had been & may be exercised under that form. It was an essential object with him to make the Executive independent of the Legislature; and the only mode left for effecting it, after the vote destroying his ineligibility a second time, was to appoint him during good behavior.1

1456On the question for inserting "during good behavior" in place of 7 years (with a re-eligibility) it passed in the negative. New Jersey, Pennsylvania, Delaware, Virginia,

1457aye-4; Massachusetts, Connecticut, Maryland, North Carolina, South Carolina, Georgia, no-6. **

1458On the motion for inserting "to strike out seven years" it passed in the negative. 'Massachusetts, Pennsylvania, Delaware, North Carolina, aye--4; Connecticut, New Jersey, Maryland, Virginia, South Carolina, Georgia, no--6. ††

1459It was now unanimously agreed that the vote which had struck out the words "to be ineligible a second time" should be reconsidered to-morrow.

1460Adj.

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1462** This vote is not to be considered as any certain index of opinion, as a number in the affirmative probably had it chiefly in view to alarm those attached to a dependence of the Executive on the Legislature, & thereby facilitate some final arrangement of a contrary tendency. The avowed friends of an Executive, "during good behaviour" were not more than three or four, nor is it certain they would have adhered to such a tenure. An independence of the three great departments of each other, as far as possible, and the responsibility of all to the will of the community seemed to be generally admitted as the true basis of a well constructed government.

1463†† There was no debate on this motion the apparent object of many in the affirmative was to secure the re-eligibility by shortening the term and of many in the negative to embarrass the plan of referring the appointment & dependence of the Executive to the Legislature.

1464WEDNESDAY, JULY 18

1465IN CONVENTION

1466 On motion of Mr. L. Martin to fix tomorrow for reconsidering the vote concerning "the ineligibility of the Executive. a 2d. time" it passed in the affirmative. Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, aye-8; New Jersey, Georgia, absent.

1467 The residue of the ninth Resolution concerning the Executive was postpd. till tomorrow.

1468 The tenth Resolution that Executive shd. have a right to negative legislative acts not afterwards passed by 2/3 of each branch was agreed to nem. con.

1469 The eleventh Resolution "that a Natl. Judiciary shall be estabd. to consist of one supreme tribunal." agd. to nem. con.

1470 On the clause "The Judges of which to be appointd. by the 2d. branch of the Natl. Legislature."

1471 Mr. GHORUM, Wd.. prefer an appointment by the 2d. branch to an appointmt. by the whole Legislature; but he thought even that branch too numerous, and too little personally responsible, to ensure a good choice. He suggested that the Judges be appointed by the Executive. with the advice & consent of the 2d. branch, in the mode prescribed by the constitution of Mass. This mode had been long practised in that country, & was found to answer perfectly well.

1472 Mr. WILSON would still prefer an appointmt. by the Executive; but if that could not be attained, wd.. prefer in the next place, the mode suggested by Mr. Ghorum. He thought it his duty however to move in the first instance "that the Judges be appointed by the Executive." Mr. Govr. MORRIS 2ded. the motion.

1473 Mr. L. MARTIN was strenuous for an appt. by the 2d. branch. Being taken from all the States it wd.. be best informed of characters & most capable of making a fit choice.

1474 Mr. SHERMAN concurred in the observations of Mr. Martin, adding that the Judges ought to be diffused, which would be more likely to be attended to by the 2d. branch, than by the Executive.

1475 Mr. MASON. The mode of appointing the Judges may depend in some degree on the mode of trying impeachments of the Executive. If the Judges were to form a tribunal for that purpose, they surely ought not to be appointed by the Executive. There were insuperable objections besides agst. referring the appointment to the Executive. He mentioned as one, that as the Seat of Govt. must be in some one State, and as the Executive would remain in office for a considerable time, for 4, 5, or 6 years at least, he would insensibly form local & personal attachments within the particular State that would deprive equal merit elsewhere, of an equal chance of promotion.

1476 Mr. GHORUM. As the Executive will be responsible in point of character at least, for a judicious and faithful discharge of his trust, he will be careful to look through all the States for proper characters. The Senators will be as likely to form their attachments at the seat of Govt. where they reside, as the Executive. If they can not get the man of the particular State to which they may respectively belong, they will be indifferent to the rest. Public bodies feel no personal responsibility, and give full play to intrigue & cabal. Rh. Island is a full illustration of the insensibility to character, produced by a participation of numbers, in dishonorable measures, and of the length to which a public body may carry wickedness & cabal.1

1477 Mr. Govr. MORRIS supposed it would be improper for an impeachmt. of the Executive to be tried before the Judges. The latter would in such case be drawn into intrigues with the Legislature and an impartial trial would be frustrated. As they wd.. be much about the Seat of Govt. they might even be previously consulted & arrangements might be made for a prosecution of the Executive. He thought therefore that no argument could be drawn from the probability of such a plan of impeachments agst. the motion before the House.

1478Mr. MADISON, suggested that the Judges might be appointed by the Executive with the concurrence of 1/3 at least, of the 2d. branch. This would unite the advantage of responsibility in the Executive with the security afforded in the 2d. branch agst. any incautious or corrupt nomination by the Executive.

1479Mr. SHERMAN, was clearly for an election by the Senate. It would be composed of men nearly equal to the Executive, and would of course have on the whole more wisdom. They would bring into their deliberations a more diffusive knowledge of characters. It would be less easy for candidates to intrigue with them, than with the Executive Magistrate. For these reasons he thought there would be a better security for a proper choice in the Senate than in the Executive.

1480Mr. Randolph. It is true that when the appt. of the Judges was vested in the 2d. branch an equality of votes had not been given to it. Yet he had rather leave the appointmt. there than give it to the Executive. He thought the advantage of personal responsibility might be gained in the Senate by requiring the respective votes of the members to be entered on the Journal. He thought too that the hope of receiving appts. would be more diffusive if they depended on the Senate, the members of which wd.. be diffusively known, than if they depended on a single man who could not be personally known to a very great extent; and consequently that opposition to the System, would be so far weakened.

1481Mr. BEDFORD thought there were solid reasons agst. leaving the appointment to the Executive. He must trust more to information than the Senate. It would put it in his power to gain over the larger States, by gratifying them with a preference of their Citizens. The responsibility of the Executive so much talked of was chimerical. He could not be punished for mistakes.

1482Mr. GHORUM remarked that the Senate could have no better information than the Executive. They must like him, trust to information from the members belonging to the particular State where the Candidates resided. The Executive would certainly be more answerable for a good appointment, as the whole blame of a bad one would fall on him alone. He did not mean that he would be answerable under any other penalty than that of public censure, which with honorable minds was a sufficient one.

1483On the question for referring the appointment of the Judges to the Executive, instead of the 2d. branch: Massachusetts, Pennsylvania, aye-2; Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina, no- 6; Georgia, absent.

1484Mr. GHORUM moved "that the Judges be nominated and appointed by the Executive by & with the advice & consent of the 2d. branch & every such nomination shall be made at least days prior to such appointment." This mode he said had been ratified by the experience of 140 years in Massachussts. If the appt. should be left to either branch of the Legislature, it will be a mere piece of jobbing.

1485Mr. Govr. MORRIS 2ded. & supported the motion.

1486Mr. SHERMAN thought it less objectionable than an absolute appointment by the Executive; but disliked it as too much fettering the Senate.

1487On the question on Mr. Ghorum's motion: Massachusetts, Pennsylvania, Maryland, Virginia, aye-4; Connecticut, Delaware, North Carolina, South Carolina, no- 4; Georgia, absent.

1488Mr. MADISON moved that the Judges should be nominated by the Executive, & such nomination should become an appointment if not disagreed to within days by 2/3 of the 2d. branch Mr. Govr. MORRIS 2ded. the motion. By common consent the consideration of it was postponed till tomorrow.

1489"To hold their offices during good behavior" & "to receive fixed salaries" agreed to nem: con:

1490"In which (salaries of Judges) no increase or diminution shall be made so as to affect the persons

actually in office at the time."

1491Mr. Govr. MORRIS moved to strike out "or increase." He thought the Legislature ought to be at liberty to increase salaries as circumstances might require, and that this would not create any improper dependence in the Judges.

1492Docr. FRANKLIN was in favor of the motion. Money may not only become plentier, but the business of the department may increase as the Country becomes more populous.

1493Mr. MADISON. The dependence will be less if the increase alone should be permitted, but it will be improper even so far to permit a dependence Whenever an increase is wished by the Judges, or may be in agitation in the legislature, an undue complaisance in the former may be felt towards the latter. If at such a crisis there should be in Court suits, to which leading members of the Legislature may be parties, the Judges will be in a situation which ought not to be suffered, if it can be prevented. The variations in the value of money, may be guarded agst. by taking for a standard wheat or some other thing of permanent value. The increase of business will be provided for by an increase of the number who are to do it. An increase of salaries may be easily so contrived as not to affect persons in office.

1494Mr. Govr. MORRIS. The value of money may not only alter but the State of Society may alter. In this event the same quantity of wheat, the same value would not be the same compensation. The Amount of salaries must always be regulated by the manners & the style of living in a Country. The increase of business can not, be provided for in the supreme tribunal in the way that has been mentioned. All the business of a certain description whether more or less must be done in that single tribunal. Additional labor alone in the Judges can provide for additional business. Additional compensation therefore ought not to be prohibited.

1495On the question for striking out "or increase" – Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, South Carolina, aye-6; Virginia, North Carolina, no-2; Georgia, absent.

1496The whole clause as amended was then agreed to nem: con:

1497The twelfth Resolution: "that the Natl. Legislature be empowered to appoint inferior tribunals" being taken up.

1498Mr. BUTLER could see no necessity for such tribunals. The State Tribunals might do the business.¹

1499Mr. L. MARTIN concurred. They will create jealousies & oppositions in the State tribunals, with the jurisdiction of which they will interfere.

1500Mr. GHORUM. There are in the States already federal Courts with jurisdiction for trial of piracies &c. committed on the Seas. No complaints have been made by the States or the Courts of the States. Inferior tribunals are essential to render the authority of the Natl. Legislature effectual

1501Mr. Randolph observed that the Courts of the States can not be trusted with the administration of the National laws. The objects of jurisdiction are such as will often place the General & local policy at variance.

1502Mr. Govr. MORRIS urged also the necessity of such a provision

1503Mr. SHERMAN was willing to give the power to the Legislature but wished them to make use of the State Tribunals whenever it could be done, with safety to the general interest.

1504Col. MASON thought many circumstances might arise not now to be foreseen, which might render such a power absolutely necessary.

1505On the question for agreeing to the twelfth Resolution empowering the National Legislature to

appoint "inferior tribunals." It was agd. to nem. con.

1506The clause of 'Impeachments of national officers,' was struck out, on motion for the purpose.

1507The thirteenth Resolution, 'The jurisdiction of the National Judiciary, &c.' being then taken up, several criticisms having been made on the definition; it was proposed by Mr. Madison so to alter it as to read thus-"that the jurisdiction shall extend to all cases arising under the Natl. laws: And to such other questions as may involve the Natl. peace & harmony," which was agreed to nem. con.

1508The fourteenth Resolution providing for the admission of new States was agreed to nem. con.

1509The fifteenth Resolution that provision ought to be made for the continuance of Congs. &c. & for the completion of their engagements being considered.

1510Mr. Govr. MORRIS thought the assumption of their engagements might as well be omitted; and that Congs. ought not to be continued till all the States should adopt the reform; since it may become expedient to give effect to it whenever a certain number of States shall adopt it.

1511Mr. MADISON the clause can mean nothing more than that provision ought to be made for preventing an interregnum; which must exist in the interval between the adoption of the New Govt. and the commencement of its operation, if the old Govt. should cease on the first of these events.

1512Mr. WILSON did not entirely approve of the manner in which the clause relating to the engagements of Congs. was expressed; but he thought some provision on the subject would be proper in order to prevent any suspicion that the obligations of the Confederacy might be dissolved along with the Govern. under which they were contracted.

1513On the question on the 1st. part-relating to the continuance of Congs." Virginia,

1514North Carolina, South Carolina,* aye-3; Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Georgia, no-6.

1515The 2d. part as to the completion of their engagements, was disagd. to. nem. con.

1516The sixteenth Resolution "That a Republican Constitution & its. existing laws ought to be guarantied to each State by the U. States" being considered.

1517Mr. Govr. MORRIS-thought the Resol: very objectionable. He should be very unwilling that such laws as exist in R. Island should be guaranteid.

1518Mr. WILSON. The object is merely to secure the States agst. dangerous commotions, insurrections and rebellions.

1519Col. MASON. If the Genl. Govt. should have no right to suppress rebellions agst. particular States, it will be in a bad situation indeed. As Rebellions agst. itself originate in & agst. individual States, it must remain a passive Spectator of its own subversion.

1520Mr. Randolph. The Resoln. has 2. objects. First to secure Republican Government. Secondly to suppress domestic commotions. He urged the necessity of both these provisions.

1521Mr MADISON moved to substitute "that the Constitutional authority of the States shall be guarantied to them respectively agst. domestic as well as foreign violence."

1522Docr. Mc.CLURG seconded the motion.

1523Mr. HOUSTON was afraid of perpetuating the existing Constitutions of the States. That of Georgia was a very bad one, and he hoped would be revised & amended. It may also be difficult for the Genl. Govt. to decide between contending parties each of which claim the sanction of the Constitution.

1524Mr. L. MARTIN was for leaving the States to suppress Rebellions themselves.

1525Mr. GHORUM thought it strange that a Rebellion should be known to exist in the Empire, and the Genl. Govt. shd. be restrained from interposing to subdue it. At this rate an enterprising Citizen might erect the standard of Monarchy in a particular State, might gather together partizans from all quarters, might extend his views from State to State, and threaten to establish a tyranny over the whole & the Genl. Govt. be compelled to remain an inactive witness of its own destruction. With regard to different parties in a State; as long as they confine their disputes to words, they will be harmless to the Genl. Govt. & to each other. If they appeal to the sword, it will then be necessary for the Genl. Govt., however difficult it may be to decide on the merits of their contest, to interpose & put an end to it.

1526Mr. CARROL. Some such provision is essential. Every State ought to wish for it. It has been doubted whether it is a casus federis at present. And no room ought to be left for such a doubt hereafter.

1527Mr. Randolph moved to add as an amendt. to the motion; "and that no

1528State be at liberty to form any other than a Republican Govt.

1529Mr. MADISON seconded the motion

1530Mr. RUTLIDGE thought it unnecessary to insert any guarantee. No doubt could be entertained but that Congs. had the authority if they had the means to co-operate with

1531_____

1532* In the printed Journal, S. Carolina no.

1533any State in subduing a rebellion. It was & would be involved in the nature of the thing.

1534Mr. WILSON moved as a better expression of the idea, "that a Republican form of Governmt. shall be guarantied to each State & that each State shall be protected agst. foreign & domestic violence.

1535This seeming to be well received, Mr. MADISON & Mr. Randolph withdrew their propositions & on the Question for agreeing to Mr. Wilson's motion, it passed nem. con.

1536Adj.

1537THURSDAY, JULY 19

1538IN CONVENTION

1539On reconsideration of the vote rendering the Executive re-eligible a 2d. time, Mr. MARTIN moved to reinstate the words, "to be ineligible a 2d. time."

1540Mr. GOUVERNEUR MORRIS. It is necessary to take into one view all that relates to the establishment of the Executive; on the due formation of which must depend the efficacy & utility of the Union among the present and future States. It has been a maxim in Political Science that Republican Government is not adapted to a large extent of Country, because the energy of the Executive Magistracy can not reach the extreme parts of it. Our Country is an extensive one. We must either then renounce the blessings of the Union, or provide an Executive with sufficient vigor to pervade every part of it. This subject was of so much importance that he hoped to be indulged in an extensive view of it.

1541One great object of the Executive is to controul the Legislature. The Legislature will continually seek to aggrandize & perpetuate themselves; and will seize those critical moments produced by war, invasion or convulsion for that purpose. It is necessary then that the Executive Magistrate should be the guardian of the people, even of the lower classes, agst. Legislative tyranny, against the Great & the

wealthy who in the course of things will necessarily compose the Legislative body. Wealth tends to corrupt the mind, to nourish its love of power, and to stimulate it to oppression. History proves this to be the spirit of the opulent. The check provided in the 2d. branch was not meant as a check on Legislative usurpations of power, but on the abuse of lawful powers, on the propensity of the 1st. branch to legislate too much to run into projects of paper money & similar expedients. It is no check on Legislative tyranny. On the contrary it may favor it, and if the 1st. branch can be seduced may find the means of success. The Executive therefore ought to be so constituted as to be the great protector of the Mass of the people. -It is the duty of the Executive to appoint the officers & to command the forces of the Republic: to appoint first ministerial officers for the administration of public affairs, secondly officers for the dispensation of Justice. Who will be the best Judges whether these appointments be well made? The people at large, who will know, will see, will feel the effects of them. Again who can judge so well of the discharge of military duties for the protection & security of the people, as the people themselves who are to be protected & secured? -He finds too that the Executive is not to be re-eligible. What effect will this have?

1542In the first place it will destroy the great incitement to merit public esteem by taking away the hope of being rewarded with a reappointment. It may give a dangerous turn to one of the strongest passions in the human breast. The love of fame is the great spring to noble & illustrious actions. Shut the Civil road to Glory & he may be compelled to seek it by the sword.

1543In the second place it will tempt him to make the most of the short space of time allotted him, to accumulate wealth and provide for his friends.

1544In the third place it will produce violations of the very constitution it is meant to secure. In moments of pressing danger the tried abilities and established character of a favorite Magistrate will prevail over respect for the forms of the Constitution. The Executive is also to be impeachable. This is a dangerous part of the plan. It will hold him in such dependence that he will be no check on the Legislature, will not be a firm guardian of the people and of the public interest. He will be the tool of a faction, of some leading demagogue in the Legislature. These then are the faults of the Executive establishment as now proposed. Can no better establishmt. be devised? If he is to be the Guardian of the people let him be appointed by the people? If he is to be a check on the Legislature let him not be impeachable. Let him be of short duration, that he may with propriety be re-eligible. It has been said that the candidates for this office will not be known to the people. If they be known to the Legislature, they must have such a notoriety and eminence of Character, that they can not possibly be unknown to the people at large. It cannot be possible that a man shall have sufficiently distinguished himself to merit this high trust without having his character proclaimed by fame throughout the Empire.

1545As to the danger from an unimpeachable magistrate he could not regard it as formidable. There must be certain great officers of State; a minister of finance, of war, of foreign affairs &c. These he presumes will exercise their functions in subordination to the Executive, and will be amenable by impeachment to the public Justice. Without these ministers the Executive can do nothing of consequence. He suggested a biennial election of the Executive at the time of electing the 1st. branch, and the Executive to hold over, so as to prevent any interregnum in the administration. An election by the people at large throughout so great an extent of country could not be influenced, by those little combinations and those momentary lies which often decide popular elections within a narrow sphere.

1546It will probably, be objected that the election will be influenced by the members of the Legislature; particularly of the 1st. branch, and that it will be nearly the same thing with an election by the Legislature itself. It could not be denied that such an influence would exist. But it might be answered that as the Legislature or the candidates for it would be divided, the enmity of one part would counteract the friendship of another: that if the administration of the Executive were good, it would be unpopular to oppose his reelection, if bad it ought to be opposed & a reappointmt. prevented; and lastly

that in every view this indirect dependence on the favor of the Legislature could not be so mischievous as a direct dependence for his appointment. He saw no alternative for making the Executive independent of the Legislature but either to give him his office for life, or make him eligible by the people.

1547 Again, it might be objected that two years would be too short a duration. But he believes that as long as he should behave himself well, he would be continued in his place. The extent of the Country would secure his re-election agst. the factions & discontents of particular States. It deserved consideration also that such an ingredient in the plan would render it extremely palatable to the people. These were the general ideas which occurred to him on the subject, and which led him to wish & move that the whole constitution of the Executive might undergo reconsideration.

1548 Mr. Randolph urged the motion of Mr. L. Martin for restoring the words making the Executive ineligible a 2d. time. If he ought to be independent, he should not be left under a temptation to court a re-appointment. If he should be re-appointable by the Legislature, he will be no check on it. His revisionary power will be of no avail. He had always thought & contended as he still did that the danger apprehended by the little States was chimerical; but those who thought otherwise ought to be peculiarly anxious for the motion. If the Executive be appointed, as has been determined, by the Legislature, he will probably be appointed either by joint ballot of both houses, or be nominated by the 1st. and appointed by the 2d. branch. In either case the large States will preponderate. If he is to court the same influence for his re-appointment, will he not make his revisionary power, and all the other functions of his administration subservient to the views of the large States. Besides, is there not great reason to apprehend that in case he should be re-eligible, a false complaisance in the Legislature might lead them to continue an unfit man in office in preference to a fit one. It has been said that a constitutional bar to reappointment will inspire unconstitutional endeavours to perpetuate himself. It may be answered that his endeavours can have no effect unless the people be corrupt to such a degree as to render all precautions hopeless: to which may be added that this argument supposes him to be more powerful & dangerous, than other arguments which have been used, admit, and consequently calls for stronger fetters on his authority. He thought an election by the Legislature with an incapacity to be elected a second time would be more acceptable to the people than the plan suggested by Mr. Govr. Morris.

1549 Mr. KING. did not like the ineligibility. He thought there was great force in the remarks of Mr. Sherman, that he who has proved himself most fit for an Office, ought not to be excluded by the constitution from holding it. He would therefore prefer any other reasonable plan that could be substituted. He was much disposed to think that in such cases the people at large would chuse wisely. There was indeed some difficulty arising from the improbability of a general concurrence of the people in favor of any one man. On the whole he was of opinion that an appointment by electors chosen by the people for the purpose, would be liable to fewest objections.

1550 Mr. PATTERSON's ideas nearly coincided he said with those of Mr. King. He proposed that the Executive should be appointed by Electors to be chosen by the States in a ratio that would allow one elector to the smallest and three to the largest States. Mr. WILSON. It seems to be the unanimous sense that the Executive should not be appointed by the Legislature, unless he be rendered in-eligible a 2d. time: he perceived with pleasure that the idea was gaining ground, of an election mediately or immediately by the people.

1551 Mr. MADISON. If it be a fundamental principle of free Govt. that the Legislative, Executive & Judiciary powers should be separately exercised, it is equally so that they be independently exercised. There is the same & perhaps greater reason why the Executive shd. be independent of the Legislature, than why the Judiciary should: A coalition of the two former powers would be more immediately & certainly dangerous to public liberty. It is essential then that the appointment of the Executive should

either be drawn from some source, or held by some tenure, that will give him a free agency with regard to the Legislature. This could not be if he was to be appointable from time to time by the Legislature. It was not clear that an appointment in the 1st. instance even with an eligibility afterwards would not establish an improper connection between the two departments. Certain it was that the appointment would be attended with intrigues and contentions that ought not to be unnecessarily admitted. He was disposed for these reasons to refer the appointment to some other source. The people at large was in his opinion the fittest in itself. It would be as likely as any that could be devised to produce an Executive Magistrate of distinguished Character. The people generally could only know & vote for some Citizen whose merits had rendered him an object of general attention & esteem. There was one difficulty however of a serious nature attending an immediate choice by the people. The right of suffrage was much more diffusive in the Northern than the Southern States; and the latter could have no influence in the election on the score of the Negroes. The substitution of electors obviated this difficulty and seemed on the whole to be liable to fewest objections.

1552Mr. GERRY. If the Executive is to be elected by the Legislature he certainly ought not to be re-eligible. This would make him absolutely dependent. He was agst. a popular election. The people are uninformed, and would be misled by a few designing men. He urged the expediency of an appointment of the Executive by Electors to be chosen by the State Executives. The people of the States will then choose the 1st. branch: The legislatures of the States the 2d. branch of the National Legislature, and the Executives of the States, the National Executive. This he thought would form a strong attachnt. in the States to the National System. The popular mode of electing the chief Magistrate would certainly be the worst of all. If he should be so elected & should do his duty, he will be turned out for it like Govr. Bowdoin in Massts. & President Sullivan in N. Hamshire.

1553On the question on Mr. Govr. Morris motion to reconsider generally the constitution of the Executive. Massachusetts, Connecticut, New Jersey, and all the others, aye.

1554Mr. ELSEWORTH moved to strike out the appointmt. by the Natl. Legislature, and to insert "to be chosen by electors appointed, by the Legislatures of the States in the following ratio; towit-one for each State not exceeding 200,000 inhabts. two for each above yt. number & not exceeding 300,000. and three for each State exceeding 300,000.

1555Mr. BROOME 2ded. the motion

1556Mr. RUTLIDGE was opposed to all the modes except the appointmt. by the Natl. Legislature. He will be sufficiently independent, if he be not re-eligible.

1557Mr. GERRY preferred the motion of Mr. Elseworth to an appointmt. by the Natl. Legislature, or by the people; tho' not to an appt. by the State Executives. He moved that the electors proposed by Mr. E. should be 25 in number, and allotted in the following proportion. to N. H. 1. to Mas. 3. to R. I. 1. to Cont. 2. to N. Y. 2. to N. J. 2. to Pa. 3. to Del. 1. to Md. 2. to Va. 3. to N. C. 2. to S. C. 2. to Geo. 1.

1558The question as moved by Mr. Elseworth being divided, on the 1st. part shall ye. Natl. Executive be appointed by Electors? Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, aye-6; North Carolina, South Carolina, Georgia, no-3; Massachusetts, divided.

1559On the 2d. part shall the Electors be chosen by the State Legislatures? Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, Georgia, aye-8; Virginia, South Carolina, no-2.

1560The part relating to the ratio in which the States sd. chuse electors was postponed nem. con.

1561Mr. L. MARTIN moved that the Executive be ineligible a 2d. time.

1562Mr. WILLIAMSON 2ds. the motion. He had no great confidence in the Electors to be chosen for

the special purpose. They would not be the most respectable citizens; but persons not occupied in the high offices of Govt. They would be liable to undue influence, which might be more readily practised as some of them will probably be in appointment 6 or 8 months before the object of it comes on.

1563Mr. ELSEWORTH supposed any persons might be appointed Electors, except solely, members of the Natl. Legislature.

1564On the question shall he be ineligible a 2d. time? North Carolina, South Carolina, aye- 2; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, no-8.

1565On the question Shall the Executive continue for 7 years? It passed in the negative Connecticut,* South Carolina, Georgia, aye-3; New Jersey,* Pennsylvania, Delaware, Maryland, Virginia, no-5; Massachusetts, North Carolina, divided.

1566Mr. KING was afraid we shd. shorten the term too much.

1567Mr. Govr. MORRIS was for a short term, in order to avoid impeachts. which wd.. be otherwise necessary.

1568Mr. BUTLER was agst. the frequency of the elections. Geo. & S. C. were too distant to send electors often.

1569Mr. ELSEWORTH was for 6. years. If the elections be too frequent, the Executive will not be firm eno'. There must be duties which will make him unpopular for the moment. There will be outs as well as ins. His administration therefore will be attacked and misrepresented.

1570Mr. WILLIAMSON was for 6 years. The expence will be considerable & ought not to be unnecessarily repeated. If the Elections are too frequent, the best men will not undertake the service and those of an inferior character will be liable to be corrupted.

1571On the question for 6 years? Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye-9; Delaware, no.

1572Adjourned

1573_____

1574* In the printed Journal Cont., no: N. Jersey ay

1575FRIDAY, JULY 20

1576IN CONVENTION

1577The proposed Ratio of Electors for appointing the Executive; to wit 1 for each State whose inhabitants do not exceed 200,000, &c. being taken up.

1578Mr. MADISON observed that this would make in time all or nearly all the States equal. Since there were few that would not in time contain the number of inhabitants intitling them to 3 Electors: that this ratio ought either to be made temporary, or so varied as that it would adjust itself to the growing population of the States.

1579Mr. GERRY moved that in the 1st. instance the Electors should be allotted to the States in the following ratio: to N. H. 1. Mas. 3. R. I. 1. Cont. 2. N. Y. 2. N. J. 2. Pa. 3. Del. 1. Md. 2. Va. 3. N. C. 2. S. C. 2. Geo. 1.

1580On the question to postpone in order to take up this motion of Mr. Gerry. It passed in the

affirmative. Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye-6; Connecticut, New Jersey, Delaware, Maryland, no-4.

1581Mr. ELSEWORTH moved that 2 Electors be allotted to N. H. Some rule ought to be pursued; and N. H. has more than 100,000 inhabitants. He thought it would be proper also to allot 2. to Georgia

1582Mr. BROOM & Mr. MARTIN moved to postpone Mr. Gerry's allotment of Electors, leaving a fit ratio to be reported by the Committee to be appointed for detailing the Resolutions.

1583On this motion. New Jersey, Delaware, Maryland, aye-3; Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no-7.

1584Mr. HOUSTON 2ded. the motion of Mr. Elseworth to add another Elector to N. H. & Georgia.

1585On the Question: Connecticut, South Carolina, Georgia, aye-3; Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no-7.

1586Mr. WILLIAMSON moved as an amendment to Mr. Gerry's allotment of Electors in the 1st. instance that in future elections of the Natl. Executive, the number of Electors to be appointed by the several States shall be regulated by their respective numbers of Representatives in the 1st. branch pursuing as nearly as may be the present proportions.

1587On question on Mr. Gerry's ratio of Electors: Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, aye-6; New Jersey, Delaware, Maryland, Georgia, no-4.

1588On the clause "to be removeable on impeachment and conviction for mal practice or neglect of duty," see the ninth Resolution.

1589Mr. PINKNEY & Mr. Govr. MORRIS moved to strike out this part of the Resolution. Mr. P. observd. he ought not to be impeachable whilst in office

1590Mr. DAVIE. If he be not impeachable whilst in office, he will spare no efforts or means whatever to get himself re-elected. He considered this as an essential security for the good behaviour of the Executive.

1591Mr. WILSON concurred in the necessity of making the Executive impeachable whilst in office.

1592Mr. Govr. MORRIS. He can do no criminal act without Coadjutors who may be punished. In case he should be re-elected, that will be a sufficient proof of his innocence. Besides who is to impeach? Is the impeachment to suspend his functions. If it is not the mischief will go on. If it is the impeachment will be nearly equivalent to a displacement, and will render the Executive dependent on those who are to impeach

1593Col. MASON. No point is of more importance than that the right of impeachment should be continued. Shall any man be above Justice? Above all shall that man be above it, who can commit the most extensive injustice? When great crimes were committed he was for punishing the principal as well as the Coadjutors. There had been much debate & difficulty as to the mode of chusing the Executive. He approved of that which had been adopted at first, namely of referring the appointment to the Natl. Legislature. One objection agst. Electors was the danger of their being corrupted by the Candidates; & this furnished a peculiar reason in favor of impeachments whilst in office. Shall the man who has practised corruption & by that means procured his appointment in the first instance, be suffered to escape punishment, by repeating his guilt?

1594Docr. FRANKLIN was for retaining the clause as favorable to the Executive. History furnishes one example only of a first Magistrate being formally brought to public Justice. Every body cried out agst. this as unconstitutional. What was the practice before this in cases where the chief Magistrate rendered himself obnoxious? Why recourse was had to assassination in wch. he was not only deprived

of his life but of the opportunity of vindicating his character. It wd.. be the best way therefore to provide in the Constitution for the regular punishment of the Executive where his misconduct should deserve it, and for his honorable acquittal where he should be unjustly accused.

1595Mr. Govr. MORRIS admits corruption & some few other offences to be such as ought to be impeachable; but thought the cases ought to be enumerated & defined:

1596Mr. MADISON thought it indispensable that some provision should be made for defending the Community agst. the incapacity, negligence or perfidy of the chief Magistrate. The limitation of the period of his service, was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of speculation or oppression. He might betray his trust to foreign powers. The case of the Executive Magistracy was very distinguishable, from that of the Legislature or of any other public body, holding offices of limited duration. It could not be presumed that all or even a majority of the members of an Assembly would either lose their capacity for discharging, or be bribed to betray, their trust. Besides the restraints of their personal integrity & honor, the difficulty of acting in concert for purposes of corruption was a security to the public. And if one or a few members only should be seduced, the soundness of the remaining members, would maintain the integrity and fidelity of the body. In the case of the Executive Magistracy which was to be administered by a single man, loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic.

1597Mr. PINKNEY did not see the necessity of impeachments. He was sure they ought not to issue from the Legislature who would in that case hold them as a rod over the Executive and by that means effectually destroy his independence. His revisionary power in particular would be rendered altogether insignificant.

1598Mr. GERRY urged the necessity of impeachments. A good magistrate will not fear them. A bad one ought to be kept in fear of them. He hoped the maxim would never be adopted here that the chief magistrate could do no wrong.

1599Mr. KING expressed his apprehensions that an extreme caution in favor of liberty might enervate the Government we were forming. He wished the House to recur to the primitive axiom that the three great departments of Govts. should be separate & independent: that the Executive & Judiciary should be so as well as the Legislative: that the Executive should be so equally with the Judiciary. Would this be the case, if the Executive should be impeachable? It had been said that the Judiciary would be impeachable. But it should have been remembered at the same time that the Judiciary hold their places not for a limited time, but during good behaviour. It is necessary therefore that a forum should be established for trying misbehaviour. Was the Executive to hold his place during good behaviour? The Executive was to hold his place for a limited term like the members of the Legislature: Like them particularly the Senate whose members would continue in appointment the same term of 6 years he would periodically be tried for his behaviour by his electors, who would continue or discontinue him in trust according to the manner in which he had discharged it. Like them therefore, he ought to be subject to no intermediate trial, by impeachment. He ought not to be impeachable unless he held his office during good behaviour, a tenure which would be most agreeable to him; provided an independent and effectual forum could be devised. But under no circumstances ought he to be impeachable by the Legislature. This would be destructive of his independence and of the principles of the Constitution. He relied on the vigor of the Executive as a great security for the public liberties.

1600Mr. Randolph. The propriety of impeachments was a favorite principle with him. Guilt wherever found ought to be punished. The Executive will have great opportunities of abusing his power; particularly in time of war when the military force, and in some respects the public money will be in his hands. Should no regular punishment be provided, it will be irregularly inflicted by tumults &

insurrections. He is aware of the necessity of proceeding with a cautious hand, and of excluding as much as possible the influence of the Legislature from the business. He suggested for consideration an idea which had fallen (from Col Hamilton) of composing a forum out of the Judges belonging to the States: and even of requiring some preliminary inquest whether just ground of impeachment existed.

1601Doctr. FRANKLIN mentioned the case of the Prince of Orange during the late war. An agreement was made between France & Holland; by which their two fleets were to unite at a certain time & place. The Dutch fleet did not appear. Every body began to wonder at it. At length it was suspected that the Statholder was at the bottom of the matter. This suspicion prevailed more & more. Yet as he could not be impeached and no regular examination took place, he remained in his office, and strengthening his own party, as the party opposed to him became formidable, he gave birth to the most violent animosities & contentions. Had he been impeachable, a regular & peaceable enquiry would have taken place and he would if guilty have been duly punished, if innocent restored to the confidence of the public.

1602Mr. KING remarked that the case of the Statholder was not applicable. He held his place for life, and was not periodically elected. In the former case impeachments are proper to secure good behaviour. In the latter they are unnecessary; the periodical responsibility to the electors being an equivalent security.

1603Mr. WILSON observed that if the idea were to be pursued, the Senators who are to hold their places during the same term with the Executive, ought to be subject to impeachment & removal.

1604Mr. PINKNEY apprehended that some gentlemen reasoned on a supposition that the Executive was to have powers which would not be committed to him: He presumed that his powers would be so circumscribed as to render impeachments unnecessary.

1605Mr. Govr. MORRIS'S opinion had been changed by the arguments used in the discussion. He was now sensible of the necessity of impeachments, if the Executive was to continue for any length of time in office. Our Executive was not like a Magistrate having a life interest, much less like one having an hereditary interest in his office. He may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in forign pay, without being able to guard agst. it by displacing him. One would think the King of England well secured agst. bribery. He has as it were a fee simple in the whole Kingdom. Yet Charles II was bribed by Louis XIV. The Executive ought therefore to be impeachable for treachery; Corrupting his electors, and incapacity were other causes of impeachment. For the latter he should be punished not as a man, but as an officer, and punished only by degradation from his office. This Magistrate is not the King but the prime-Minister. The people are the King. When we make him amenable to Justice however we should take care to provide some mode that will not make him dependent on the Legislature.¹

1606It was moved & 2ded. to postpone the question of impeachments which was negatived. Mas. & S. Carolina only being ay. On ye. Question, Shall the Executive be removeable on impeachments &c.? Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, aye-8; Massachusetts, South Carolina, No-2.

1607"The Executive to receive fixed compensation." Agreed to nem. con. "to be paid out of the National Treasury" agreed to, N. Jersey only in the negative.

1608Mr. GERRY & Mr. Govr. MORRIS moved "that the Electors of the Executive shall not be members of the Natl. Legislature, nor officers of the U. States, nor shall the Electors themselves be eligible to the supreme magistracy." Agreed to nem. con.

1609Doctr. Mc.CLURG asked whether it would not be necessary, before a Committee for detailing the Constitution should be appointed, to determine on the means by which the Executive is to carry the

laws into effect, and to resist combinations agst. them. Is he to have a military force for the purpose, or to have the command of the Militia, the only existing force that can be applied to that use? As the Resolutions now stand the Committee will have no determinate directions on this great point.

1610Mr. WILSON thought that some additional directions to the Committee wd.. be necessary.

1611Mr. KING. The Committee are to provide for the end. Their discretionary power to provide for the means is involved according to an established axiom.

1612Adjourned

1613SATURDAY, JULY 21

1614IN CONVENTION

1615Mr. WILLIAMSON moved that the Electors of the Executive should be paid out of the National Treasury for the Service to be performed by them." Justice required this: as it was a national service they were to render. The motion was agreed to Nem. Con.

1616Mr. WILSON moved as an amendment to the tenth Resolution that the supreme Natl. Judiciary should be associated with the Executive in the Revisionary power." This proposition had been before made and failed: but he was so confirmed by reflection in the opinion of its utility, that he thought it incumbent on him to make another effort: The Judiciary ought to have an opportunity of remonstrating agst. projected encroachments on the people as well as on themselves. It had been said that the Judges, as expositors of the Laws would have an opportunity of defending their constitutional rights. There was weight in this observation; but this power of the Judges did not go far enough. Laws may be unjust, may be unwise, may be dangerous, may be destructive; and yet may not be so unconstitutional as to justify the Judges in refusing to give them effect. Let them have a share in the Revisionary power, and they will have an opportunity of taking notice of those characters of a law, and of counteracting, by the weight of their opinions the improper views of the Legislature.-

1617Mr. MADISON 2ded. the motion

1618Mr. GHORUM did not see the advantage of employing the Judges in this way. As Judges they are not to be presumed to possess any peculiar knowledge of the mere policy of public measures. Nor can it be necessary as a security for their constitutional rights. The Judges in England have no such additional provision for their defence, yet their jurisdiction is not invaded. He thought it would be best to let the Executive alone be responsible, and at most to authorize him to call on the Judges for their opinions.

1619Mr. ELSEWORTH approved heartily of the motion. The aid of the Judges will give more wisdom & firmness to the Executive. They will possess a systematic and accurate knowledge of the Laws, which the Executive can not be expected always to possess. The law of Nations also will frequently come into question. Of this the Judges alone will have competent information.

1620Mr. MADISON considered the object of the motion as of great importance to the meditated Constitution. It would be useful to the Judiciary departmt. by giving it an additional opportunity of defending itself agst. Legislative encroachments; It would be useful to the Executive, by inspiring additional confidence & firmness in exerting the revisionary power: It would be useful to the Legislature by the valuable assistance it would give in preserving a consistency, conciseness, perspicuity & technical propriety in the laws, qualities peculiarly necessary; & yet shamefully wanting in our republican Codes. It would moreover be useful to the Community at large as an additional check agst. a pursuit of those unwise & unjust measures which constituted so great a portion of our calamities. If any solid objection could be urged agst. the motion, it must be on the supposition that it

tended to give too much strength either to the Executive or Judiciary. He did not think there was the least ground for this apprehension. It was much more to be apprehended that notwithstanding this cooperation of the two departments, the Legislature would still be an overmatch for them. Experience in all the States had evinced a powerful tendency in the Legislature to absorb all power into its vortex. This was the real source of danger to the American Constitutions; & suggested the necessity of giving every defensive authority to the other departments that was consistent with republican principles.¹

1621Mr. MASON said he had always been a friend to this provision. It would give a confidence to the Executive, which he would not otherwise have, and without which the Revisionary power would be of little avail.

1622Mr. GERRY did not expect to see this point which had undergone full discussion, again revived. The object he conceived of the Revisionary power was merely to secure the Executive department agst. legislative encroachment. The Executive therefore who will best know and be ready to defend his rights ought alone to have the defence of them. The motion was liable to strong objections. It was combining & mixing together the Legislative & the other departments. It was establishing an improper coalition between the Executive & Judiciary departments. It was making Statesmen of the Judges; and setting them up as the guardians of the Rights of the people. He relied for his part on the Representatives of the people as the guardians of their Rights & interests. It was making the Expositors of the Laws, the Legislators which ought never to be done. A better expedient for correcting the laws, would be to appoint as had been done in Pena. a person or persons of proper skill, to draw bills for the Legislature.

1623Mr. STRONG thought with Mr. Gerry that the power of making ought to be kept distinct from that of expounding, the laws. No maxim was better established. The Judges in exercising the function of expositors might be influenced by the part they had taken, in passing the laws.

1624Mr. Govr. MORRIS. Some check being necessary on the Legislature, the question is in what hands it should be lodged. On one side it was contended that the Executive alone ought to exercise it. He did not think that an Executive appointed for 6 years, and impeachable whilst in office wd. be a very effectual check. On the other side it was urged that he ought to be reinforced by the Judiciary department. Agst. this it was objected that Expositors of laws ought to have no hand in making them, and arguments in favor of this had been drawn from England. What weight was due to them might be easily determined by an attention to facts. The truth was that the Judges in England had a great share in ye. Legislation. They are consulted in difficult & doubtful cases. They may be & some of them are members of the Legislature. They are or may be members of the privy Council, and can there advise the Executive as they will do with us if the motion succeeds. The influence the English Judges may have in the latter capacity in strengthening the Executive check can not be ascertained, as the King by his influence in a manner dictates the laws.¹

1625There is one difference in the two Cases however which disconcerts all reasoning from the British to our proposed Constitution. The British Executive has so great an interest in his prerogatives and such powerful means of defending them that he will never yield any part of them. The interest of our Executive is so inconsiderable & so transitory, and his means of defending it so feeble, that there is the justest ground to fear his want of firmness in resisting incroachments. He was extremely apprehensive that the auxiliary firmness & weight of the Judiciary would not supply the deficiency. He concurred in thinking the public liberty in greater danger from Legislative usurpations than from any other source. It had been said that the Legislature ought to be relied on as the proper Guardians of liberty. The answer was short and conclusive. Either bad laws will be pushed or not. On the latter supposition no check will be wanted. On the former a strong check will be necessary: And this is the proper supposition. Emissions of paper money, largesses to the people—a remission of debts and similar measures, will at some times be popular, and will be pushed for that reason At other times such measures will coincide with the interests of the Legislature themselves, & that will be a reason not less cogent for pushing

them. It may be thought that the people will not be deluded and misled in the latter case. But experience teaches another lesson. The press is indeed a great means of diminishing the evil, yet it is found to be unable to prevent it altogether.

1626Mr. L. MARTIN. Considered the association of the Judges with the Executive as a dangerous innovation; as well as one that could not produce the particular advantage expected from it. A knowledge of Mankind, and of Legislative affairs cannot be presumed to belong in a higher degree to the Judges than to the Legislature. And as to the Constitutionality of laws, that point will come before the Judges in their official character. In this character they have a negative on the laws. Join them with the Executive in the Revision and they will have a double negative. It is necessary that the Supreme Judiciary should have the confidence of the people. This will soon be lost, if they are employed in the task of remonstrating agst. popular measures of the Legislature. Besides in what mode & proportion are they to vote in the Council of Revision?1

1627Mr. MADISON could not discover in the proposed association of the Judges with the Executive in the Revisionary check on the Legislature any violation of the maxim which requires the great departments of power to be kept separate & distinct. On the contrary he thought it an auxiliary precaution in favor of the maxim If a Constitutional discrimination of the departments on paper were a sufficient security to each agst. encroachments of the others, all further provisions would indeed be superfluous. But experience had taught us a distrust of that security; and that it is necessary to introduce such a balance of powers and interests, as will guarantee the provisions on paper. Instead therefore of contenting ourselves with laying down the Theory in the Constitution that each department ought to be separate & distinct, it was proposed to add a defensive power to each which should maintain the Theory in practice. In so doing we did not blend the departments together. We erected effectual barriers for keeping them separate. The most regular example of this theory was in the British Constitution. Yet it was not only the practice there to admit the Judges to a seat in the legislature, and in the Executive Councils, and to submit to their previous examination all laws of a certain description, but it was a part of their Constitution that the Executive might negative any law whatever; a part of their Constitution which had been universally regarded as calculated for the preservation of the whole. The objection agst. a union of the Judiciary & Executive branches in the revision of the laws, had either no foundation or was not carried far enough. If such a Union was an improper mixture of powers, or such a Judiciary check on the laws, was inconsistent with the Theory of a free Constitution, it was equally so to admit the Executive to any participation in the making of laws; and the revisionary plan ought to be discarded altogether.

1628Col. MASON Observed that the defence of the Executive was not the sole object of the Revisionary power. He expected even greater advantages from it. Notwithstanding the precautions taken in the Constitution of the Legislature, it would still so much resemble that of the individual States, that it must be expected frequently to pass unjust and pernicious laws. This restraining power was therefore essentially necessary. It would have the effect not only of hindering the final passage of such laws; but would discourage demagogues from attempting to get them passed. It had been said (by Mr. L. Martin) that if the Judges were joined in this check on the laws, they would have a double negative, since in their expository capacity of Judges they would have one negative. He would reply that in this capacity they could impede in one case only, the operation of laws. They could declare an unconstitutional law void. But with regard to every law however unjust oppressive or pernicious, that did not come plainly under this description, they would be under the necessity as Judges to give it a free course. He wished the further use to be made of the Judges, of giving aid in preventing every improper law. Their aid will be the more valuable as they are in the habit and practice of considering laws in their true principles, and in all their consequences.

1629Mr. WILSON. The separation of the departments does not require that they should have separate

objects but that they should act separately tho' on the same objects. It is necessary that the two branches of the Legislature should be separate and distinct, yet they are both to act precisely on the same object.

1630Mr. GERRY had rather give the Executive an absolute negative for its own defence than thus to blend together the Judiciary & Executive departments. It will bind them together in an offensive and defensive alliance agst. the Legislature, and render the latter unwilling to enter into a contest with them.

1631Mr. Govr. MORRIS was surprised that any defensive provision for securing the effectual separation of the departments should be considered as an improper mixture of them. Suppose that the three powers, were to be vested in three persons, by compact among themselves; that one was to have the power of making, another of executing, and a third of judging, the laws. Would it not be very natural for the two latter after having settled the partition on paper, to observe, and would not candor oblige the former to admit, that as a security agst. legislative acts of the former which might easily be so framed as to undermine the powers of the two others, the two others ought to be armed with a veto for their own defence, or at least to have an opportunity of stating their objections agst. acts of encroachment? And would any one pretend that such a right tended to blend & confound powers that ought to be separately exercised? As well might it be said that If three neighbours had three distinct farms, a right in each to defend his farm agst. his neighbours, tended to blend the farms together.

1632Mr. GHORUM. All agree that a check on the Legislature is necessary. But there are two objections agst. admitting the Judges to share in it which no observations on the other side seem to obviate. the 1st. is that the Judges ought to carry into the exposition of the laws no prepossessions with regard to them. The 2d. that as the Judges will outnumber the Executive, the revisionary check would be thrown entirely out of the Executive hands, and instead of enabling him to defend himself, would enable the Judges to sacrifice him.

1633Mr. WILSON. The proposition is certainly not liable to all the objections which have been urged agst. it. According (to Mr. Gerry) it will unite the Executive & Judiciary in an offensive & defensive alliance agst. the Legislature. According to Mr. Ghorum it will lead to a subversion of the Executive by the Judiciary influence. To the first gentleman the answer was obvious; that the joint weight of the two departments was necessary to balance the single weight of the Legislature. To the 1st. objection stated by the other Gentleman it might be answered that supposing the prepossession to mix itself with the exposition, the evil would be overbalanced by the advantages promised by the expedient. To the 2d. objection, that such a rule of voting might be provided in the detail as would guard agst. it.

1634Mr. RUTLIDGE thought the Judges of all men the most unfit to be concerned in the revisionary Council. The Judges ought never to give their opinion on a law till it comes before them. He thought it equally unnecessary. The Executive could advise with the officers of State, as of war, finance &c. and avail himself of their information & opinions.

1635On the question on Mr. Wilson's motion for joining the Judiciary in the Revision of laws it passed in the negative- Connecticut, Maryland, Virginia, aye- 3; Massachusetts, Delaware, North Carolina, South Carolina, no-4; Pennsylvania, Georgia, divided; New Jersey, not present.

1636The tenth Resolution, giving the Executive a qualified veto, requiring two-thirds of each branch of the Legislature to overrule it was then agreed to nem. con. 1

1637The motion made by Mr. Madison on the eighteenth of July & then postponed, "that the Judges shd. be nominated by the Executive & such nominations become appointments unless disagreed to by 2/3 of the 2d. branch of the Legislature," was now resumed.

1638Mr. MADISON stated as his reasons for the motion first that it secured the responsibility of the Executive who would in general be more capable & likely to select fit characters than the Legislature, or even the 2d. b. of it, who might hide their selfish motives under the number concerned in the

appointment. -Secondly that in case of any flagrant partiality or error, in the nomination it might be fairly presumed that 2/3 of the 2d. branch would join in putting a negative on it. Thirdly that as the 2d. b. was very differently constituted when the appointment of the Judges was formerly referred to it, and was now to be composed of equal votes from all the States, the principle of compromise which had prevailed in other instances required in this that their shd. be a concurrence of two authorities, in one of which the people, in the other the States, should be represented. The Executive Magistrate wd.. be considered as a national officer, acting for and equally sympathising with every part of the U. States. If the 2d. branch alone should have this power, the Judges might be appointed by a minority of the people, tho' by a majority, of the States, which could not be justified on any principle as their proceedings were to relate to the people, rather than to the States: and as it would moreover throw the appointments entirely into the hands of ye. Northern States, a perpetual ground of jealousy & discontent would be furnished to the Southern States.

1639Mr. PINKNEY was for placing the appointmt. in the 2d. b. exclusively. The Executive will possess neither the requisite knowledge of characters, nor confidence of the people for so high a trust. 1

1640Mr. Randolph wd.. have preferred the mode of appointmt. proposed formerly by Mr. Ghorum, as adopted in the Constitution of Massts. but thought the motion depending so great an improvement of the clause as it stands, that he anxiously wished it success. He laid great stress on the responsibility of the Executive as a security for fit appointments. Appointments by the Legislatures have generally resulted from cabal, from personal regard, or some other consideration than a title derived from the proper qualifications. The same inconveniencies will proportionally prevail, if the appointments be referred to either branch of the Legislature or to any other authority administered by a number of individuals.

1641Mr. ELSEWORTH would prefer a negative in the Executive on a nomination by the 2d. branch, the negative to be overruled by a concurrence of 2/3 of the 2d. b. to the mode proposed by the motion; but preferred an absolute appointment by the 2d. branch to either. The Executive will be regarded by the people with a jealous eye. Every power for augmenting unnecessarily his influence will be disliked. As he will be stationary it was not to be supposed he could have a better knowledge of characters. He will be more open to caresses & intrigues than the Senate. The right to supersede his nomination will be ideal only. A nomination under such circumstances will be equivalent to an appointment.

1642Mr. Govr. MORRIS supported the motion. First, the States in their corporate capacity will frequently have an interest staked on the determination of the Judges. As in the Senate the States are to vote the Judges ought not to be appointed by the Senate. Next to the impropriety of being Judge in one's own cause, is the appointment of the Judge. Secondly, it had been said the Executive would be uninformed of characters. The reverse was ye. truth. The Senate will be so. They must take the character of candidates from the flattering pictures drawn by their friends. The Executive in the necessary intercourse with every part of the U. S. required by the nature of his administration, will or may have the best possible information. Thirdly, it had been said that a jealousy would be entertained of the Executive. If the Executive can be safely trusted with the command of the army, there cannot surely be any reasonable ground of Jealousy in the present case. He added that if the objections agst. an appointment of the Executive by the Legislature, had the weight that had been allowed there must be some weight in the objection to an appointment of the Judges by the Legislature or by any part of it.

1643Mr. GERRY. The appointment of the Judges like every other part of the Constitution shd. be so modelled as to give satisfaction both to the people and to the States. The mode under consideration will give satisfaction to neither. He could not conceive that the Executive could be as well informed of characters throughout the Union, as the Senate. It appeared to him also a strong objection that 2/3 of the Senate were required to reject a nomination of the Executive. The Senate would be constituted in the same manner as Congress. And the appointments of Congress have been generally good.

1644Mr. MADISON, observed that he was not anxious that 2/3 should be necessary to disagree to a nomination. He had given this form to his motion chiefly to vary it the more clearly from one which had just been rejected. He was content to obviate the objection last made, and accordingly so varied the motion as to let a majority reject.

1645Col. MASON found it his duty to differ from his colleagues in their opinions & reasonings on this subject. Notwithstanding the form of the proposition by which the appointment seemed to be divided between the Executive & Senate, the appointment was substantially vested in the former alone. The false complaisance which usually prevails in such cases will prevent a disagreement to the first nominations. He considered the appointment by the Executive as a dangerous prerogative. It might even give him an influence over the Judiciary department itself. He did not think the difference of interest between the Northern and Southern States could be properly brought into this argument. It would operate & require some precautions in the case of regulating navigation, commerce & imposts; but he could not see that it had any connection with the Judiciary department.

1646On the question, the motion being now that the executive should nominate, & such nominations should become appointments unless disagreed to by the Senate" – Massachusetts, Pennsylvania, Virginia, aye-3; Connecticut, Delaware, Maryland, North Carolina, South Carolina, Georgia, no-6.

1647On the question for agreeing to the clause as it stands by which the Judges are to be appointed by the 2d. branch – Connecticut, Delaware, Maryland, North Carolina, South Carolina, Georgia, aye-6; Massachusetts, Pennsylvania, Virginia, no-3; so it passed in the affirmative.

1648Adjourned

1649[The delegates did not convene on Sunday, July 22.]