

## FRIDAY, JUNE 8 - 21

### 388IN COMMITTEE OF THE WHOLE

389On a reconsideration of the clause giving the Natl. Legislature a negative on such laws of the States as might be contrary to the articles of Union, or Treaties with foreign nations,

390Mr. PINKNEY moved "that the National Legislature shd. have authority to negative all laws which they shd. judge to be improper." He urged that such a universality of the power was indispensably necessary to render it effectual; that the States must be kept in due subordination to the nation; that if the States were left to act of themselves in any case, it wd. be impossible to defend the national prerogatives, however extensive they might be on paper; that the acts of Congress had been defeated by this means; nor had foreign treaties escaped repeated violations; that this universal negative was in fact the corner stone of an efficient national Govt.; that under the British Govt. the negative of the Crown had been found beneficial, and the States are more one nation now, than the Colonies were then.

391Mr. MADISON seconded the motion. He could not but regard an indefinite power to negative legislative acts of the States as absolutely necessary to a perfect system. Experience had evinced a constant tendency in the States to encroach on the federal authority; to violate national Treaties; to infringe the rights & interests of each other; to oppress the weaker party within their respective jurisdictions. A negative was the mildest expedient that could be devised for preventing these mischiefs. The existence of such a check would prevent attempts to commit them.

392Should no such precaution be engrafted, the only remedy wd. be in an appeal to coercion. Was such a remedy eligible? was it practicable? Could the national resources, if exerted to the utmost enforce a national decree agst. Massts. abetted perhaps by several of her neighbours? It wd. not be possible. A small proportion of the Community, in a compact situation, acting on the defensive, and at one of its extremities might at any time bid defiance to the National authority. Any Govt. for the U. States formed on the supposed practicability of using force agst. the unconstitutional proceedings of the States, wd. prove as visionary & fallacious as the Govt. of Congs. The negative wd. render the use of force unnecessary. The States cd. of themselves pass no operative act, any more than one branch of a Legislature where there are two branches, can proceed without the other. 1

393But in order to give the negative this efficacy, it must extend to all cases. A discrimination wd. only be a fresh source of contention between the two authorities. In a word, to recur to the illustrations borrowed from the planetary system. This prerogative of the General Govt. is the great pervading principle that must controul the centrifugal tendency of the States; which, without it, will continually fly out of their proper orbits and destroy the order & harmony of the political System.

394Mr. WILLIAMSON was agst. giving a power that might restrain the States from regulating their internal police.

395Mr. GERRY cd. not see the extent of such a power, and was agst. every power that was not necessary. He thought a remonstrance agst. unreasonable acts of the States wd. restrain them If it shd. not force might be resorted to. He had no objection to authorize a negative to paper money and similar measures. When the confederation was depending before Congress, Massachussetts was then for inserting the power of emitting paper money amg. the exclusive powers of Congress. He observed that the proposed negative wd. extend to the regulations of the Militia, a matter on which the existence of the State might depend. The Natl. Legislature with such a power may enslave the States. Such an idea as this will never be acceded to. It has never been suggested or conceived among the people. No speculative projector, and there are eno' of that character among us, in politics as well as in other things, has in any pamphlet or newspaper thrown out the idea. The States too have different interests

and are ignorant of each other's interests. The negative therefore will be abused. New States too having separate views from the old States will never come into the Union. They may even be under some foreign influence; are they in such case to participate in the negative on the will of the other States?

396Mr. SHERMAN thought the cases in which the negative ought to be exercised, might be defined. He wished the point might not be decided till a trial at least shd. be made for that purpose.

397Mr. WILSON would not say what modifications of the proposed power might be practicable or expedient. But however novel it might appear the principle of it when viewed with a close & steady eye, is right. There is no instance in which the laws say that the individual shd. be bound in one case, & at liberty to judge whether he will obey or disobey in another. The cases are parallel. Abuses of the power over the individual person may happen as well as over the individual States. Federal liberty is to the States, what civil liberty, is to private individuals. And States are not more unwilling to purchase it, by the necessary concession of their political sovereignty, than the savage is to purchase civil liberty by the surrender of the personal sovereignty, which he enjoys in a State of nature. A definition of the cases in which the Negative should be exercised, is impracticable. A discretion must be left on one side or the other. Will it not be most safely lodged on the side of the Natl. Govt.?

398Among the first sentiments expressed in the first Congs. one was that Virga. is no more, that Mass. is no more, that Pa. is no more &c. We are now one nation of brethren. We must bury all local interests & distinctions. This language continued for some time. The tables at length began to turn. No sooner were the State Govts. formed than their jealousy & ambition began to display themselves. Each endeavoured to cut a slice from the common loaf, to add to its own morsel, till at length the confederation became frittered down to the impotent condition in which it now stands. Review the progress of the articles of Confederation thro' Congress & compare the first & last draught of it. To correct its vices is the business of this convention. One of its vices is the want of an effectual controul in the whole over its parts. What danger is there that the whole will unnecessarily sacrifice a part? But reverse the case, and leave the whole at the mercy of each part, and will not the general interest be continually sacrificed to local interests?

399Mr. DICKENSON deemed it impossible to draw a line between the cases proper & improper for the exercise of the negative. We must take our choice of two things. We must either subject the States to the danger of being injured by the power of the Natl. Govt. or the latter to the danger of being injured by that of the States. He thought the danger greater from the States. To leave the power doubtful, would be opening another spring of discord, and he was for shutting as many of them as possible.

400Mr. BEDFORD. In answer to his colleague's question where wd. be the danger to the States from this power, would refer him to the smallness of his own State which may be injured at pleasure without redress. It was meant he found to strip the small States of their equal right of suffrage. In this case Delaware would have about 1/90 for its share in the General Councils, whilst Pa. & Va. would possess 1/3 of the whole. Is there no difference of interests, no rivalry of commerce, of manufactures? Will not these large States crush the small ones whenever they stand in the way of their ambitious or interested views. This shews the impossibility of adopting such a system as that on the table, or any other founded on a change in the principle of representation. And after all, if a State does not obey the law of the new System, must not force be resorted to as the only ultimate remedy, in this as in any other system. It seems as if Pa. & Va. by the conduct of their deputies wished to provide a system in which they would have an enormous & monstrous influence. Besides, How can it be thought that the proposed negative can be exercised? are the laws of the States to be suspended in the most urgent cases until they can be sent seven or eight hundred miles, and undergo the deliberation of a body who may be incapable of Judging of them? Is the National Legislature too to sit continually in order to revise the laws of the States?

401Mr. MADISON observed that the difficulties which had been started were worthy of attention and ought to be answered before the question was put. The case of laws of urgent necessity must be provided for by some emanation of the power from the Natl. Govt. into each State so far as to give a temporary assent at least. This was the practice in Royal Colonies before the Revolution and would not have been inconvenient, if the supreme power of negating had been faithful to the American interest, and had possessed the necessary information. He supposed that the negative might be very properly lodged in the senate alone, and that the more numerous & expensive branch therefore might not be obliged to sit constantly.

402He asked Mr. B. what would be the consequence to the small States of a dissolution of the Union wch. seemed likely to happen if no effectual substitute was made for the defective System existing, and he did not conceive any effectual system could be substituted on any other basis than that of a proportional suffrage? If the large States possessed the avarice & ambition with which they were charged, would the small ones in their neighbourhood, be more secure when all controul of a Genl. Govt. was withdrawn.

403Mr. BUTLER was vehement agst. the Negative in the proposed extent, as cutting off all hope of equal justice to the distant States. The people there would not he was sure give it a hearing.

404On the question for extending the negative power to all cases as proposd. by (Mr. P. & Mr. M): Massachusetts, Pennsylvania, Virginia, (Mr. Randolph and Mr. Mason, no; Mr. Blair, Doctor McClurg and Mr. Madison, aye; General Washington not consulted), aye-3; Connecticut, New York, New Jersey, Maryland, North Carolina, South Carolina, Georgia, no-7; Delaware, divided (Mr. Read and Mr. Dickinson, aye; Mr. Bedford and Mr. Basset, no).

405On motion of Mr. GERRY and Mr. KING tomorrow was assigned for reconsidering the mode of appointing the National Executive: the reconsideration being voted for by all the States except Connecticut & N. Carolina.

406Mr. PINKNEY and Mr. RUTLEDGE moved to add to the fourth Resolution agreed to by the Come. the following, viz. "that the States be divided into three classes, the 1ST. class to have 3 members, the 2d. two. & the 3d. one member each; that an estimate be taken of the comparative importance of each State at fixed periods, so as to ascertain the number of members they may from time to time be entitled to"

407The Committee then rose and the House adjourned.

## **408SATURDAY, JUNE 9**

409MR. LUTHER MARTIN FROM MARYLAND TOOK HIS SEAT IN COMMITTEE OF THE WHOLE

410Mr. GERRY, according to previous notice given by him, moved "that the National Executive should be elected by the Executives of the States whose proportion of votes should be the same with that allowed to the States in the election of the Senate." If the appointmt. should be made by the Natl. Legislature, it would lessen that independence of the Executive which ought to prevail, would give birth to intrigue and corruption between the Executive & Legislature previous to the election, and to partiality in the Executive afterwards to the friends who promoted him. Some other mode therefore appeared to him necessary. He proposed that of appointing by the State Executives as most analogous to the principle observed in electing the other branches of the Natl. Govt.; the first branch being chosen by the people of the States, & the 2d. by the Legislatures of the States; he did not see any objection agst. letting the Executive be appointed by the Executives of the States. He supposed the Executives

would be most likely to select the fittest men, and that it would be their interest to support the man of their own choice.<sup>1</sup>

411 Mr. Randolph, urged strongly the inexpediency of Mr. Gerry's mode of appointing the Natl. Executive. The confidence of the people would not be secured by it to the Natl. magistrate. The small States would lose all chance of an appointmt. from within themselves. Bad appointments would be made; the Executives of the States being little conversant with characters not within their own small spheres. The State Executives too notwithstanding their constitutional independence, being in fact dependent on the State Legislatures will generally be guided by the views of the latter, and prefer either favorites within the States, or such as it may be expected will be most partial to the interests of the State. A Natl. Executive thus chosen will not be likely to defend with becoming vigilance & firmness the National rights agst. State encroachments. Vacancies also must happen. How can these be filled? He could not suppose either that the Executives would feel the interest in supporting the Natl. Executive which had been imagined. They will not cherish the great Oak which is to reduce them to paltry shrubs.<sup>1</sup>

412 On the question for referring the appointment of the Natl. Executive to the State Executives as propd. by Mr. Gerry: Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, South Carolina, Georgia, no; Delaware divided.

413 Mr. PATTERSON moves that the Committee resume the clause relating to the rule of suffrage in the Natl. Legislature.

414 Mr. BREARLY seconds him. He was sorry he said that any question on this point was brought into view. It had been much agitated in Congs. at the time of forming the Confederation, and was then rightly settled by allowing to each sovereign State an equal vote. Otherwise the smaller States must have been destroyed instead of being saved. The substitution of a ratio, he admitted carried fairness on the face of it; but on a deeper examination was unfair and unjust. Judging of the disparity of the States by the quota of Congs. Virga. would have 16 votes, and Georgia but one. A like proportion to the others will make the whole number ninety. There will be 3. large states, and 10 small ones. The large States by which he meant Massts. Pena. & Virga. will carry every thing before them. It had been admitted, and was known to him from facts within N. Jersey that where large & small counties were united into a district for electing representatives for the district, the large counties always carried their point, and Consequently the large States would do so. Virga. with her sixteen votes will be a solid column indeed, a formidable phalanx. While Georgia with her Solitary vote, and the other little States will be obliged to throw themselves constantly into the scale of some large one, in order to have any weight at all. He had come to the convention with a view of being as useful as he could in giving energy and stability to the federal Government. When the proposition for destroying the equality of votes came forward, he was astonished, he was alarmed. Is it fair then it will be asked that Georgia should have an equal vote with Virga.? He would not say it was. What remedy then? One only, that a map of the U. S. be spread out, that all the existing boundaries be erased, and that a new partition of the whole be made into 13 equal parts.

415 Mr. PATTERSON considered the proposition for a proportional representation as striking at the existence of the lesser States. He wd. premise however to an investigation of this question some remarks on the nature structure and powers of the Convention.

416 The Convention he said was formed in pursuance of an Act of Congs. that this act was recited in several of the Commissions, particularly that of Massts. which he required to be read: that the amendment of the confederacy was the object of all the laws and commissions on the subject; that the articles of the Confederation were therefore the proper basis of all the proceedings of the Convention. That we ought to keep within its limits, or we should be charged by our Constituents with usurpation,

that the people of America were sharp-sighted and not to be deceived. But the Commissions under which we acted were not only the measure of our power, they denoted also the sentiments of the States on the subject of our deliberation.

417 The idea of a national Govt. as contradistinguished from a federal one, never entered into the mind of any of them, and to the public mind we must accommodate ourselves. We have no power to go beyond the federal scheme, and if we had the people are not ripe for any other. We must follow the people; the people will not follow us. – The proposition could not be maintained whether considered in reference to us as a nation, or as a confederacy. A confederacy supposes sovereignty in the members composing it & sovereignty supposes equality. If we are to be considered as a nation, all State distinctions must be abolished, the whole must be thrown into hotchpot, and when an equal division is made, then there may be fairly an equality of representation.

418 He held up Virga. Massts. & Pa. as the three large States, and the other ten as small ones; repeating the calculations of Mr. Brearly as to the disparity of votes which wd. take place, and affirming that the small States would never agree to it. He said there was no more reason that a great individual State contributing much, should have more votes than a small one contributing little, than that a rich individual citizen should have more votes than an indigent one. If the rateable property of A was to that of B as 40 to 1, ought A for that reason to have 40 times as many votes as B. Such a principle would never be admitted, and if it were admitted would put B entirely at the mercy of A. As A. has more to be protected than B so he ought to contribute more for the common protection. The same may be said of a large State wch. has more to be protected than a small one. Give the large States an influence in proportion to their magnitude, and what will be the consequence? Their ambition will be proportionally increased, and the small States will have every thing to fear.

419 It was once proposed by Galloway & some others that America should be represented in the British Parl. and then be bound by its laws. America could not have been entitled to more than 1/3 of the Representatives which would fall to the share of G. B. Would American rights & interests have been safe under an authority thus constituted? It has been said that if a Natl. Govt. is to be formed so as to operate on the people and not on the States, the representatives ought to be drawn from the people. But why so? May not a Legislature filled by the State Legislatures operate on the people who chuse the State Legislatures? or may not a practicable coercion be found. He admitted that there was none such in the existing System.

420 He was attached strongly to the plan of the existing confederacy, in which the people chuse their Legislative representatives; and the Legislatures their federal representatives. No other amendments were wanting than to mark the orbits of the States with due precision, and provide for the use of coercion, which was the great point. He alluded to the hint thrown out heretofore by Mr. Wilson of the necessity to which the large States might be reduced of confederating among themselves, by a refusal of the others to concur. Let them unite if they please, but let them remember that they have no authority to compel the others to unite. N. Jersey will never confederate on the plan before the Committee. She would be swallowed up. He had rather submit to a monarch, to a despot, than to such a fate. He would not only oppose the plan here but on his return home do every thing in his power to defeat it there.

421 Mr. WILSON hoped if the Confederacy should be dissolved, that a majority, that a minority of the States would unite for their safety. He entered elaborately into the defence of a proportional representation, stating for his first position that as all authority was derived from the people, equal numbers of people ought to have an equal no. of representatives, and different numbers of people different numbers of representatives. This principle had been improperly violated in the Confederation, owing to the urgent circumstances of the time.

422 As to the case of A. & B, stated by Mr. Patterson, he observed that in districts as large as the States,

the number of people was the best measure of their comparative wealth. Whether therefore wealth or numbers was to form the ratio it would be the same. Mr. P. admitted persons, not property to be the measure of suffrage. Are not the Citizens of Penna. equal to those of N. Jersey? does it require 150 of the former to balance 50 of the latter? Representatives of different districts ought clearly to hold the same proportion to each other, as their respective Constituents hold to each other. If the small States will not confederate on this plan, Penna. & he presumed some other States, would not confederate on any other.

423 We have been told that each State being sovereign, all are equal. So each man is naturally a sovereign over himself, and all men are therefore naturally equal. Can he retain this equality when he becomes a member of Civil Government? He can not. As little can a Sovereign State, when it becomes a member of a federal Govern. If N. J. will not part with her Sovereignty it is in vain to talk of Govt. A new partition of the States is desirable, but evidently & totally impracticable.

424 Mr. WILLIAMSON, illustrated the cases by a comparison of the different States, to Counties of different sizes within the same State; observing that proportional representation was admitted to be just in the latter case, and could not therefore be fairly contested in the former.

425 The Question being about to be put Mr. PATTERSON hoped that as so much depended on it, it might be thought best to postpone the decision till tomorrow, which was done nem. con.

426 The Come. rose & the House adjourned.

427 [The delegates did not convene on Sunday, June 10]

## **428 MONDAY, JUNE 11**

429 MR. ABRAHAM BALDWIN FROM GEORGIA TOOK HIS SEAT IN COMMITTEE OF THE WHOLE

430 The clause concerning the rule of suffrage in the natl. Legislature postponed on Saturday was resumed.

431 Mr. SHARMAN proposed that the proportion of suffrage in the 1st. branch should be according to the respective numbers of free inhabitants; and that in the second branch or Senate, each State should have one vote and no more. He said as the States would remain possessed of certain individual rights, each State ought to be able to protect itself: otherwise a few large States will rule the rest. The House of Lords in England he observed had certain particular rights under the Constitution, and hence they have an equal vote with the House of Commons that they may be able to defend their rights.

432 Mr. RUTLIDGE proposed that the proportion of suffrage in the 1st. branch should be according to the quotas of contribution. The justice of this rule he said could not be contested. Mr. BUTLER urged the same idea: adding that money was power; and that the States ought to have weight in the Govt. in proportion to their wealth.

433 Mr. KING & Mr. WILSON,\* in order to bring the question to a point moved "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." The clause so far as it related to suffrage in the first branch was postponed in order to consider this motion.

434 Mr. DICKENSON contended for the actual contributions of the States as the rule of their representation & suffrage in the first branch. By thus connecting the interests of the States with their duty, the latter would be sure to be performed.

435 Mr. KING remarked that it was uncertain what mode might be used in levying a national revenue; but that it was probable, imposts would be one source of it. If the actual contributions were to be the

rule the non-importing States, as Cont. & N. Jersey, wd. be in a bad situation indeed. It might so happen that they wd. have no representation. This situation of particular States had been always one powerful argument in favor of the 5 Per Ct. impost.

436The question being abt. to be put Doctr. FRANKLIN sd. he had thrown his ideas of the matter on a paper wch. Mr. Wilson read to the Committee in the words following:

437Mr. CHAIRMAN,

438It has given me great pleasure to observe that till this point, the proportion of representation, came before us, our debates were carried on with great coolness & temper. If any thing of a contrary kind, has on this occasion appeared, I hope it will not be repeated; for we are sent here to consult, not to contend, with each

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440\* In the printed Journal Mr. Rutledge is named as the seconder of the motion.

441other; and declarations of a fixed opinion, and of determined resolution, never to change it, neither enlighten nor convince us. Positiveness and warmth on one side, naturally beget their like on the other; and tend to create and augment discord & division in a great concern, wherein harmony & Union are extremely necessary to give weight to our Councils, and render them effectual in promoting & securing the common good.1

442I must own that I was originally of opinion it would be better if every member of Congress, or our national Council, were to consider himself rather as a representative of the whole, than as an Agent for the interests of a particular State; in which case the proportion of members for each State would be of less consequence, & it would not be very material whether they voted by States or individually. But as I find this is not to be expected, I now think the number of Representatives should bear some proportion to the number of the Represented; and that the decisions shd. be by the majority of members, not by the majority of the States. This is objected to from an apprehension that the greater States would then swallow up the smaller. I do not at present clearly see what advantage the greater States could propose to themselves by swallowing up the smaller, and therefore do not apprehend they would attempt it. I recollect that in the beginning of this Century, when the Union was proposed of the two Kingdoms, England & Scotland, the Scotch Patriots were full of fears, that unless they had an equal number of Representatives in Parliament, they should be ruined by the superiority of the English. They finally agreed however that the different proportions of importance in the Union, of the two Nations should be attended to, whereby they were to have only forty members in the House of Commons, and only sixteen in the House of Lords; A very great inferiority of numbers! And yet to this day I do not recollect that any thing has been done in the Parliament of Great Britain to the prejudice of Scotland; and whoever looks over the lists of public officers, Civil & military of that nation will find I believe that the North Britons enjoy at least their full proportion of emolument.

443But, Sir, in the present mode of voting by States, it is equally in the power of the lesser States to swallow up the greater; and this is mathematically demonstrable. Suppose for example, that 7 smaller States had each 3 members in the House, and the 6 larger to have one with another 6 members; and that upon a question, two members of each smaller State should be in the affirmative and one in the Negative; they would make

444Affirmatives ..... 14 ..... Negatives 7

445And that all the larger States should be unanimously in the Negative, they would make .....  
Negatives 36

446In all ..... . 43

447It is then apparent that the 14 carry the question against the 43, and the minority overpowers the majority, contrary to the common practice of Assemblies in all Countries and Ages. The greater States Sir are naturally as unwilling to have their property left in the disposition of the smaller, as the smaller are to have theirs in the disposition of the greater. An honorable gentleman has, to avoid this difficulty, hinted a proposition of equalizing the States. It appears to me an equitable one, and I should, for my own part, not be against such a measure, if it might be found practicable. Formerly, indeed, when almost every province had a different Constitution, some with greater others with fewer privileges, it was of importance to the borderers when their boundaries were contested, whether by running the division lines, they were placed on one side or the other. At present when such differences are done away, it is less material. The Interest of a State is made up of the interests of its individual members. If they are not injured, the State is not injured. Small States are more easily well & happily governed than large ones. If therefore in such an equal division, it should be found necessary to diminish Pennsylvania, I should not be averse to the giving a part of it to N. Jersey, and another to Delaware. But as there would probably be considerable difficulties in adjusting such a division; and however equally made at first, it would be continually varying by the augmentation of inhabitants in some States, and their more fixed proportion in others; and thence frequent occasion for new divisions, I beg leave to propose for the consideration of the Committee another mode, which appears to me, to be as equitable, more easily carried into practice, and more permanent in its nature.

448Let the weakest State say what proportion of money or force it is able and willing to furnish for the general purposes of the Union.

449Let all the others oblige themselves to furnish each an equal proportion.

450The whole of these joint supplies to be absolutely in the disposition of Congress.

451The Congress in this case to be composed of an equal number of Delegates from each State.

452And their decisions to be by the Majority of individual members voting.

453If these joint and equal supplies should on particular occasions not be sufficient, Let Congress make requisitions on the richer and more powerful States for farther aids, to be voluntarily afforded, leaving to each State the right of considering the necessity and utility of the aid desired, and of giving more or less as it should be found proper.

454This mode is not new, it was formerly practised with success by the British Government with respect to Ireland and the Colonies. We sometimes gave even more than they expected, or thought just to accept; and in the last war carried on while we were united, they gave us back in 5 years a million Sterling. We should probably have continued such voluntary contributions, whenever the occasions appeared to require them for the common good of the Empire. It was not till they chose to force us, and to deprive us of the merit and pleasure of voluntary contributions that we refused & resisted. These contributions however were to be disposed of at the pleasure of a Government in which we had no representative. I am therefore persuaded, that they will not be refused to one in which the Representation shall be equal My learned Colleague (Mr. Wilson) has already mentioned that the present method of voting by States, was submitted to originally by Congress, under a conviction of its impropriety, inequality, and injustice. This appears in the words of their Resolution. It is of Sepr. 6. 1774. The words are "Resolved that in determining questions in this Congs. each Colony or province shall have one vote: The Congs. not being possessed of or at present able to procure materials for ascertaining the importance of each Colony."

455On the question for agreeing to Mr. Kings and Mr. Wilsons motion it passed in the affirmative: Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye-7; New York, New Jersey, Delaware, no-3; Maryland divided.

456It was then moved by Mr. RUTLIDGE 2ded. by Mr. BUTLER to add to the words "equitable ratio of representation" at the end of the motion just agreed to, the words "according to the quotas of contribution." On motion of Mr. WILSON seconded by Mr. C. PINCKNEY, this was postponed; in order to add, after, after the words "equitable ratio of representation" the words following "in proportion to the whole number of white & other free Citizens & inhabitants of every age sex & 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," this being the rule in the Act of Congress agreed to by eleven States, for apportioning quotas of revenue on the States, and requiring a Census only every 5-7, or 10 years.

457Mr. GERRY thought property not the rule of representation. Why then shd. the blacks, who were property in the South, be in the rule of representation more than the Cattle & horses of the North.1

458On the question,-Mass: Con: N. Y. Pen: Maryd. Virga. N. C. S. C. & Geo: aye – 9: N. J. & Del: no – 2.1

459Mr. SHARMAN moved that a question be taken whether each State shall have one vote in the 2d. branch. Every thing he said depended on this. The smaller States would never agree to the plan on any other principle than an equality of suffrage in this branch. Mr. ELSWORTH seconded the motion.

460On the question for allowing each State one vote in the 2d. branch. Connecticut, New York, New Jersey, Delaware, Maryland, aye-5; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no-6.

461Mr. WILSON & Mr. HAMILTON moved that the right of suffrage in the 2d. branch ought to be according to the same rule as in the 1st. branch. On this question for making the ratio of representation the same in the 2d. as in the 1st. branch it passed in the affirmative: Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye; Connecticut, New York, New Jersey, Delaware, Maryland, no.1

462The eleventh Resolution for guarantying Republican Govt. & territory to each State being considered: the words "or partition" were, on motion of Mr. MADISON, added, after the words "voluntary junction:"

463Mas. N. Y. P. Va. N. C. S. C. G. ay – 7. Con. N.J. Del. Md. no – 4.

464Mr. READ disliked the idea of guarantying territory. It abetted the idea of distinct States wch. would be a perpetual source of discord. There can be no cure for this evil but in doing away States altogether and uniting them all into one great Society. Alterations having been made in the Resolution, making it read "that a republican Constitution & its existing laws ought to be guaranteed to each State by the U. States" the whole was agreed to nem. con.

465The thirteenth Resolution, for amending the national Constitution hereafter without consent of the Natl. Legislature being considered, several members did not see the necessity of the Resolution at all, nor the propriety of making the consent of the Natl. Legisl. unnecessary.

466Col. MASON urged the necessity of such a provision. The plan now to be formed will certainly be defective, as the Confederation has been found on trial to be. Amendments therefore will be necessary, and it will be better to provide for them, in an easy, regular and Constitutional way than to trust to chance and violence. It would be improper to require the consent of the Natl. Legislature, because they may abuse their power, and refuse their assent on that very account. The opportunity for such an abuse, may be the fault of the Constitution calling for amendmt.

467Mr. Randolph enforced these arguments. The words, "without requiring the consent of the Natl. Legislature" were postponed. The other provision in the clause passed nem. con.

468The fourteenth Resolution, requiring oaths from the members of the State Govts. to observe the Natl. Constitution & laws, being considered.

469Mr. SHARMAN opposed it as unnecessarily intruding into the State jurisdictions.

470Mr. Randolph considered it necessary to prevent that competition between the National Constitution & laws & those of the particular States, which had already been felt. The officers of the States are already under oath to the States. To preserve a due impartiality they ought to be equally bound to the Natl. Govt. The Natl. authority needs every support we can give it. The Executive & Judiciary of the States, notwithstanding their nominal independence on the State Legislatures are in fact, so dependent on them, that unless they be brought under some tie to the Natl. System, they will always lean too much to the State systems, whenever a contest arises between the two.<sup>1</sup>

471Mr. GERRY did not like the clause. He thought there was as much reason for requiring an oath of fidelity to the States, from Natl. officers, as vice. versa.

472Mr. LUTHER MARTIN moved to strike out the words requiring such an oath from the State officers, viz "within the several States" observing that if the new oath should be contrary to that already taken by them it would be improper; if coincident the oaths already taken will be sufficient.

473On the question for striking out as proposed by Mr. L. Martin: Connecticut, New Jersey, Delaware, Maryland, aye-4; Massachusetts, New York, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no-7.

474Question on the whole Resolution as proposed by Mr. Randolph: Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye-6; Connecticut, New York, New Jersey, Delaware, Maryland, no-5.

475The Come. rose & the House adjd.

## **476TUESDAY, JUNE 12**

477IN COMMITTEE OF THE WHOLE

478The Question was taken on the fifteenth Resolution, to wit, referring the new system to the people of the United States for ratification it passed in the affirmative: Massachusetts, Pennsylvania,\* Virginia, North Carolina, South Carolina, Georgia, aye-6; Connecticut, New York, New Jersey, no-3; Delaware, Maryland, divided.

479Mr. SHARMAN & Mr. ELSEWORTH moved to fill the blank left in the 4th. Resolution for the periods of electing the members of the first branch with the words, "every year." Mr. SHARMAN observing that he did it in order to bring on some question.

480Mr. RUTLIDGE proposed "every two years."

481Mr. JENNIFER propd. "every three years," observing that the too great frequency of elections rendered the people indifferent to them, and made the best men unwilling to engage in so precarious a service.

482Mr. MADISON seconded the motion for three years. Instability is one of the great vices of our republics, to be remedied. Three years will be necessary, in a Government so extensive, for members to form any knowledge of the various interests of the States to which they do not belong, and of which they can know but little from the situation and affairs of their own. One year will be almost consumed in preparing for and travelling to & from the seat of national business.

483Mr. GERRY. The people of New England will never give up the point of annual elections, they

know of the transition made in England from triennial to septennial elections, and will consider such an innovation here as the prelude to a like usurpation. He considered annual elections as the only defence of the people agst. tyranny. He was as much agst. a triennial House as agst. a hereditary Executive.

484Mr. MADISON, observed that if the opinions of the people were to be our guide, it wd. be difficult to say what course we ought to take. No member of the Convention could say what the opinions of his Constituents were at this time; much less could he say what they would think if possessed of the information & lights possessed by the members here; & still less what would be their way of thinking 6 or 12 months hence. We ought to consider what was right & necessary in itself for the attainment of a proper Governmt. A plan adjusted to this idea will recommend itself – The respectability of this convention will give weight to their recommendation of it. Experience will be constantly urging the adoption of it, and all the most enlightened & respectable citizens will be its advocates. Should we fall short of the necessary & proper point, this influential class of Citizens will be turned against the plan, and little support in opposition to them can be gained to it from the unreflecting multitude.

485Mr. GERRY repeated his opinion that it was necessary to consider what the people would approve. This had been the policy of all Legislators. If the reasoning of Mr. Madison were just, and we supposed a limited Monarchy the best form in itself, we ought to recommend it, tho' the genius of the people was decidedly adverse to it, and having no

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487\* Pennsylvania omitted in the printed Journal. The vote is there entered as of June 11th.

488hereditary distinctions among us, we were destitute of the essential materials for such an innovation.

489On the question for the triennial election of the 1st. branch: New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, aye-7; Massachusetts (Mr. King, aye, Mr. Gorham, wavering) Connecticut, North Carolina, South Carolina, no-4.

490The words requiring members of ye. 1st. branch to be of the age of years were struck out Maryland alone, no. The words "liberal compensation for members" being consid. Mr. MADISON moves to insert the words, "& fixt." He observed that it would be improper to leave the members of the Natl. legislature to be provided for by the State Legisls. because it would create an improper dependence; and to leave them to regulate their own wages, was an indecent thing, and might in time prove a dangerous one. He thought wheat or some other article of which the average price throughout a reasonable period preceding might be settled in some convenient mode, would form a proper standard.

491Col. MASON seconded the motion; adding that it would be improper for other reasons to leave the wages to be regulated by the States. First, the different States would make different provision for their representatives, and an inequality would be felt among them, whereas he thought they ought to be in all respects equal. Secondly, the parsimony of the States might reduce the provision so low that as had already happened in choosing delegates to Congress, the question would be not who were most fit to be chosen, but who were most willing to serve.

492On the question for inserting the words "and fixt." New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, aye-8; Massachusetts, Connecticut, South Carolina, no-3.

493Doctr. FRANKLYN said he approved of the amendment just made for rendering the salaries as fixed as possible; but disliked the word "liberal." he would prefer the word moderate if it was necessary to substitute any other. He remarked the tendency of abuses in every case, to grow of themselves when once begun, and related very pleasantly the progression in ecclesiastical benefices, from the first departure from the gratuitous provision for the Apostles, to the establishment of the papal system. The

word "liberal" was struck out nem. con.

494On the motion of Mr. PIERCE, that the wages should be paid out of the National Treasury, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, aye-8; Connecticut, New York, South Carolina, no-3.

495Question on the clause relating to term of service & compensation of the 1st. branch: Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, aye-8; Connecticut, New York, South Carolina, no-3.

496On a question for striking out the "ineligibility of members of the Natl. Legis: to State offices." Connecticut, New York, North Carolina, South Carolina, aye-4; New Jersey, Pennsylvania, Delaware, Virginia, Georgia, no-5; Massachusetts, Maryland, divided.

497On the question for agreeing to the clause as amended: Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye-10; Connecticut, no-1.

498On a question for making Members of the Natl. legislature ineligible to any office under the Natl. Govt. for the term of 3 years after ceasing to be members. Maryland, aye-1; Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, no-10.

499On the question for such ineligibility for one year: Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, aye- 8; New York, Georgia, no-2; Maryland, divided.

500On the question moved by Mr. PINCKNEY for striking out "incapable of re- election into the 1st. branch of the Natl. Legisl. for years, and subject to recall" agd. to nem. con.

501On the question for striking out from the fifth Resolution the words requiring members of the senatorial branch to be of the age of years at least – Connecticut, New Jersey, Pennsylvania, aye-3; Massachusetts, New York, Delaware, Maryland, Virginia, South Carolina, no-6; North Carolina, Georgia, divided.

502On the question for filling the blank with 30 years as the qualification; it was agreed to: Massachusetts, New York, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, aye-7; Connecticut, New Jersey, Delaware, Georgia, no-4.

503Mr. SPAIGHT moved to fill the blank for the duration of the appointmts. to the 2d. branch of the National Legislature with the words "7 years.

504Mr. SHERMAN, thought 7 years too long. He grounded his opposition he said on the principle that if they did their duty well, they would be reelected. And if they acted amiss, an earlier opportunity should be allowed for getting rid of them. He preferred 5 years which wd. be between the terms of the 1st. branch & of the executive

505Mr. PIERCE proposed 3 years. 7 years would raise an alarm. Great mischiefs have arisen in England from their septennial act which was reprobated by most of their patriotic Statesmen.

506Mr. Randolph was for the term of 7 years. The democratic licentiousness of the State Legislatures proved the necessity of a firm Senate. The object of this 2d. branch is to controul the democratic branch of the Natl. Legislature. If it be not a firm body, the other branch being more numerous, and coming immediately from the people, will overwhelm it. The Senate of Maryland constituted on like principles had been scarcely able to stem the popular torrent. No mischief can be apprehended, as the concurrence of the other branch, and in some measure, of the Executive, will in all cases be necessary. A firmness &

independence may be the more necessary also in this branch, as it ought to guard the Constitution agst. encroachments of the Executive who will be apt to form combinations with the demagogues of the popular branch.<sup>1</sup>

507Mr. MADISON, considered 7 years as a term by no means too long. What we wished was to give to the Govt. that stability which was every where called for, and which the Enemies of the Republican form alledged to be inconsistent with its nature. He was not afraid of giving too much stability by the term of Seven years. His fear was that the popular branch would still be too great an overmatch for it. It was to be much lamented that we had so little direct experience to guide us. The Constitution of Maryland was the only one that bore any analogy to this part of the plan. In no instance had the Senate of Maryd. created just suspicions of danger from it. In some instances perhaps it may have erred by yielding to the H. of Delegates. In every instance of their opposition to the measures of the H. of D. they had had with them the suffrages of the most enlightened and impartial people of the other States as well as of their own. In the States where the Senates were chosen in the same manner as the other branches, of the Legislature, and held their seats for 4 years, the institution was found to be no check whatever agst. the instabilities of the other branches. He conceived it to be of great importance that a stable & firm Govt. organized in the republican form should be held out to the people. If this be not done, and the people be left to judge of this species of Govt. by ye. operations of the defective systems under which they now live, it is much to be feared the time is not distant when, in universal disgust, they will renounce the blessing which they have purchased at so dear a rate, and be ready for any change that may be proposed to them.

508On the question for "seven years" as the term for the 2d. branch: New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye-8; Connecticut, no-1; Massachusetts (Mr. Gorham and Mr. King, aye; Mr. Gerry and Mr. Strong, no) New York, Divided.

509Mr. BUTLER & Mr. RUTLIDGE proposed that the members of the 2d. branch should be entitled to no salary or compensation for their services

510On the question, † Connecticut, Delaware, South Carolina, aye-3; New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, Georgia, no-7; Massachusetts, divided.

511It was then moved & agreed that the clauses respecting the stipends & ineligibility of the 2d. branch be the same as, of the 1st branch: Con: disagreeing to the ineligibility.

512It was moved & 2ded. to alter the ninth Resolution so as to read "that the jurisdiction of the supreme tribunal shall be to hear & determine in the dernier resort, all piracies, felonies &c."

513It was moved & 2ded. to strike out "all piracies & felonies on the high seas," which was agreed to.

514It was moved & agreed to strike out "all captures from an enemy."<sup>1</sup>

515It was moved & agreed to strike out "other States" and insert "two distinct States of the Union"

516It was moved & agreed to postpone the consideration of the ninth Resolution, relating to the Judiciary:

517The Come. then rose & the House adjourned

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519† It is probable ye. votes here turned chiefly on the idea that if the salaries were not here provided for the members would be paid by their respective States

## 520 WEDNESDAY, JUNE 13

521 IN COMMITTEE OF THE WHOLE

522 The ninth Resolution being resumed

523 The latter parts of the clause relating to the jurisdiction of the Natil. tribunals, was struck out nem. con in order to leave full room for their organization.

524 Mr. Randolph & Mr. MADISON, then moved the following resolution respecting a National Judiciary, viz "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" which was agreed to.1

525 Mr. PINKNEY & Mr. SHERMAN moved to insert after the words "one supreme tribunal" the words "the Judges of which to be appointed by the national Legislature."

526 Mr. MADISON, objected to an appt. by the whole Legislature. Many of them are incompetent Judges of the requisite qualifications. They were too much influenced by their partialities. The candidate who was present, who had displayed a talent for business in the legislative field, who had perhaps assisted ignorant members in business of their own, or of their Constituents, or used other winning means, would without any of the essential qualifications for an expositor of the laws prevail over a competitor not having these recommendations, but possessed of every necessary accomplishment. He proposed that the appointment should be made by the Senate, which as a less numerous & more select body, would be more competent judges, and which was sufficiently numerous to justify such a confidence in them.

527 Mr. SHARMAN & Mr. PINKNEY withdrew their motion, and the appt. by the Senate was agd. to nem. con.

528 Mr. GERRY. moved to restrain the Senatorial branch from originating money bills. The other branch was more immediately the representatives of the people, and it was a maxim that the people ought to hold the purse-strings. If the Senate should be allowed to originate such bills, they wd. repeat the experiment, till chance should furnish a sett of representatives in the other branch who will fall into their snares.

529 Mr. BUTLER saw no reason for such a discrimination. We were always following the British Constitution when the reason of it did not apply. There was no analogy between the H. of Lords and the body proposed to be established. If the Senate should be degraded by any such discriminations, the best men would be apt to decline serving in it in favor of the other branch. And it will lead the latter into the practice of tacking other clauses to money bills.

530 Mr. MADISON observed that the Commentators on the Brit: Const: had not yet agreed on the reason of the restriction on the H. of L. in money bills. Certain it was there could be no similar reason in the case before us. The Senate would be the representatives of the people as well as the 1st. branch. If they sd. have any dangerous influence over it, they would easily prevail on some member of the latter to originate the bill they wished to be passed. As the Senate would be generally a more capable sett of men, it wd. be wrong to disable them from any preparation of the business, especially of that which was most important, and in our republics, worse prepared than any other. The Gentleman in pursuance of his principle ought to carry the restraint to the amendment, as well as the originating of money bills, since, an addition of a given sum wd. be equivalent to a distinct proposition of it.

531 Mr. KING differed from Mr. GERRY, and concurred in the objections to the proposition.

532 Mr. READ favored the proposition, but would not extend the restraint to the case of amendments.

533Mr. PINKNEY thinks the question premature. If the Senate shd. be formed on the same proportional representation as it stands at present, they sd have equal power, otherwise if a different principle sd. be introduced.

534Mr. SHERMAN. As both branches must concur, there can be no danger whichever way the Senate may be formed. We establish two branches in order to get more wisdom, which is particularly needed in the finance business-The Senate bear their share of the taxes, and are also the representatives of the people. What a man does by another, he does by himself is a maxim. In Cont. both branches can originate in all cases, and it has been found safe & convenient. Whatever might have been the reason of the rule as to The H. of Lords, it is clear that no good arises from it now even there.

535Genl. PINKNEY. This distinction prevails in S. C. & has been a source of pernicious disputes between ye. 2 branches. The Constitution is now evaded, by informal schedules of amendments handed from ye. Senate to the other House.

536Mr. WILLIAMSON wishes for a question chiefly to prevent re-discussion. The restriction will have one advantage, it will oblige some member in the lower branch to move, & people can then mark him.

537On the question for excepting money bills as propd. by Mr. Gerry, New York, Delaware, Virginia, aye-3; Massachusetts, Connecticut, New Jersey, Maryland, North Carolina, South Carolina, Georgia no-7.

538The Committee rose & Mr. GHORUM made report, which was postponed till tomorrow, to give an opportunity for other plans to be proposed. The report was in the words following:

5391. Resd. that it is the opinion of this Committee that a National Governmt. ought to be established, consisting of a supreme Legislative, Executive & Judiciary.

5402. Resold. that the National Legislature ought to consist of two branches.

5413. Resd. 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 the 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 U. 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 its expiration.

5424. Resd. that the members of the second branch of the Natl. Legislature ought to be chosen by the individual Legislatures, to be of the age of 30 years at least, to hold their offices for a term sufficient to ensure their independence, namely, seven years, to receive fixed stipends by which they may be compensated for the devotion of their time to the 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 U. States, (except those peculiarly belonging to the functions of the second branch) during the term of service, and under the Natl. Govt. for the space of one year after its expiration.

5435. Resd. that each branch ought to possess the right of originating Acts

5446. Resd. that the Natl. Legislature ought to be empowered to enjoy the Legislative rights vested in Congs. by the Confederation, 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; 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.

5457. Resd. that the rights of suffrage in the 1st. 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 & other free citizens & inhabitants, of every age sex and condition, including those bound to servitude for a term of years, & three fifths of all other persons, not comprehended in the foregoing description, except Indians not paying taxes in each State:

5468. Resolved that the right of suffrage in the 2d. branch of the National Legislature ought to be according to the rule established for the first.

5479. Resolved that a National Executive be instituted to consist of a single person, to be chosen by the Natl. 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, & to be removeable on impeachment and conviction of malpractices or neglect of duty-to receive a fixed stipend by which he may be compensated for the devotion of his time to the public service to be paid out of the national Treasury.

54810. Resold. that the Natl. Executive shall have a right to negative any Legislative Act, which shall not be afterwards passed by two thirds of each branch of the National Legislature.1

54911. Resold. that a Natl. Judiciary be established, to consist of one supreme tribunal, the Judges of which shall be appointed by the 2d. branch of the Natl. Legislature, to hold their offices during good behaviour, & to receive punctually at stated times a fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution.

55012. Resold. that the Natl. Legislature be empowered to appoint inferior Tribunals.

55113. Resd. that the jurisdiction of the Natl. Judiciary shall extend to all cases which respect the collection of the Natl. revenue, impeachments of any Natl. Officers, and questions which involve the national peace & harmony.

55214. Resd. that provision ought to be made for the admission of States lawfully arising within the limits of the U. States, whether from a voluntary junction of Government & territory or otherwise, with the consent of a number of voices in the Natl. Legislature less than the whole.

55315. Resd. that provision ought to be made for the continuance of Congress and their authorities and privileges untill a given day after the reform of the articles of Union shall be adopted and for the completion of all their engagements.1

55416. Resd. that a Republican Constitution & its existing laws ought to be guaranteed to each State by the U. States.

55517. Resd. that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary.

55618. Resd. that the Legislative, Executive & Judiciary powers within the several States ought to be bound by oath to support the articles of Union.

55719. Resd. that the amendments which shall be offered to the confederation by the Convention ought at a proper time or times after the approbation of Congs. to be submitted to an Assembly or Assemblies recommended by the several Legislatures to be expressly chosen by the people to consider and decide thereon.

## **558THURSDAY, JUNE 14**

559Mr. PATTERSON, observed to the Convention that it was the wish of several deputations,

particularly that of N. Jersey, that further time might be allowed them to contemplate the plan reported from the Committee of the Whole, and to digest one purely federal, and contradistinguished from the reported plan. He said they hoped to have such an one ready by tomorrow to be laid before the Convention: And the Convention adjourned that leisure might be given for the purpose.

## 560FRIDAY, JUNE 15

561IN CONVENTION

562Mr. PATTERSON, laid before the Convention the plan which he said several of the deputations wished to be substituted in place of that proposed by Mr. Randolph. After some little discussion of the most proper mode of giving it a fair deliberation it was agreed that it should be referred to a Committee of the whole, and that in order to place the two plans in due comparison, the other should be recommitted. At the earnest request of Mr. Lansing & some other gentlemen, it was also agreed that the Convention should not go into Committee of the whole on the subject till tomorrow, by which delay the friends of the plan proposed by Mr. Patterson wd. be better prepared to explain & support it, and all would have an oportuy. of taking copies.\*

563The propositions from N. Jersey moved by Mr. Patterson were in the words following:

5641. Resd. that the articles of Confederation ought to be so revised, corrected & enlarged, as to render the federal Constitution adequate to the exigencies of Government, & the preservation of the Union.1

5652. Resd. that in addition to the powers vested in the U. States in Congress, by the present existing articles of Confederation, they be authorized to pass acts for raising a revenue, by levying a duty or duties on all goods or merchandizes of foreign growth or manufacture, imported into any part of the U. States, by Stamps on paper, vellum or parchment, and by a postage on all letters or packages passing through the general post-office, to be applied to such federal purposes as they shall deem proper & expedient; to make rules & regulations for the collection thereof; and the same from time to time, to alter & amend in such manner as they shall think proper: to pass Acts for the regulation of trade & commerce as well with foreign nations as with each other: provided that all punishments, fines,

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567\* This plan had been concerted among the deputations or members thereof, from Cont. N.Y.N. J Del. and perhaps Mr. Martin from Maryd who made with them a common cause though on different principles Cont. & N.Y. were agst. a departure from the principle of the Confederation, wishing rather to add a few new powers to Congs. than to substitute a National Govt. The States of N.J. & Del. were opposed to a National Govt. because its patrons considered a proportional representation of the States as the basis of it. The eagourness displayed by the members opposed to a Natl. Govt. from these different motives began now to produce serious anxiety for the result of the Convention. Mr. Dickenson said to Mr. Madison – You see the consequence of pushing things too far. Some of the members from the small States wish for two branches in the General Legislature, and are friends to a good National Government; But we would sooner submit to a foreign power than submit to be deprived, in both branches of the legislature of an equality of suffrage, and thereby be thrown under the domination of the large States.1

568forfeitures & penalties to be incurred for contravening such acts rules and

569regulations shall be adjudged by the Common law Judiciaries of the State in

570which any offence contrary to the true intent & meaning of such Acts rules &

571regulations shall have been committed or perpetrated, with liberty of commencing in the first

instance all suits & prosecutions for that purpose in the superior common law Judiciary in such State, subject nevertheless, for the correction of all errors, both in law & fact in rendering Judgment, to an appeal to the Judiciary of the U. States.<sup>1</sup>

5723. Resd. that whenever requisitions shall be necessary, instead of the rule for making requisitions mentioned in the articles of Confederation, the United States in Congs. be authorized to make such requisitions in proportion to the whole number of white & other free citizens & inhabitants of every age sex and condition including those bound to servitude for a term of years & three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes; that if such requisitions be not complied with, in the time specified therein, to direct the collection thereof in the non complying States & for that purpose to devise and pass acts directing & authorizing the same; provided that none of the powers hereby vested in the U. States in Congs. shall be exercised without the consent of at least ----- States, and in that proportion if the number of Confederated States should hereafter be increased or diminished.

5734. Resd. that the U. States in Congs. be authorized to elect a federal Executive to consist of ----- persons, to continue in office for the term of ----- years, to receive punctually at stated times a fixed compensation for their services, in which no increase or diminution shall be made so as to affect the persons composing the Executive at the time of such increase or diminution, to be paid out of the federal treasury; to be incapable of holding any other office or appointment during their time of service and for ----- years thereafter; to be ineligible a second time, & removeable by Congs. on application by a majority of the Executives of the several States; that the Executive besides their general authority to execute the federal acts ought to appoint all federal officers not otherwise provided for, & to direct all military operations; provided that none of the persons composing the federal Executive shall on any occasion take command of any troops, so as personally to conduct any military enterprise as General or in other capacity.<sup>1</sup>

5745. Resd. that a federal Judiciary be established to consist of a supreme Tribunal the Judges of which to be appointed by the Executive, & to hold their offices during good behaviour, to receive punctually at stated times a fixed compensation for their services in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution; that the Judiciary so established shall have authority to hear & determine in the first instance on all impeachments of federal officers, & by way of appeal in the dernier resort in all cases touching the rights of Ambassadors, in all cases of captures from an enemy, in all cases of piracies & felonies on the high Seas, in all cases in which foreigners may be interested, in the construction of any treaty or treaties, or which may arise on any of the Acts for the regulation of trade, or the collection of the federal Revenue: that none of the Judiciary shall during the time they remain in office be capable of receiving or holding any other office or appointment during their term of service, or for ----- thereafter.

5756. Resd. that all Acts of the U. States in Congs. made by virtue & in pursuance of the powers hereby & by the articles of Confederation vested in them, and all Treaties made & ratified under the authority of the U. States shall be the supreme law of the respective States so far forth as those Acts or Treaties shall relate to the said States or their Citizens, and that the Judiciary 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; and that if any State, or any body of men in any State shall oppose or prevent yd. carrying into execution such acts or treaties, the federal Executive shall be authorized to call forth ye. power of the Confederated States, or so much thereof as may be necessary to enforce and compel an obedience to such Acts, or an observance of such Treaties.

5767. Resd. that provision be made for the admission of new States into the Union.

5778. Resd. that the rule for naturalization ought to be the same in every State.

5789. Resd. that a Citizen of one State committing an offense in another State of the Union, shall be deemed guilty of the same offense as if it had been committed by a Citizen of the State in which the offense was committed.†

579Adjourned.

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581† This copy of Mr. Patterson's propositions varies in a few clauses from that in the printed Journal furnished from the papers of Mr. Brearley a Colleague of Mr. Patterson. A confidence is felt, notwithstanding, in its accuracy. That the copy in the Journal is not entirely correct is shewn by the ensuing speech of Mr. Wilson (June 16) in which he refers to the mode of removing the Executive by impeachment & conviction as a feature in the Virga plan forming one of its contrasts to that of Mr. Patterson, which proposed a removal on the application of a majority of the Executives of the States. In the copy printed in the Journal, the two modes are combined in the same clause; whether through inadvertence, or as a contemplated amendment does not appear.

## 582SATURDAY, JUNE 16

583IN COMMITTEE OF THE WHOLE ON THE RESOLUTIONS PROPOSD. BY MR. P. & MR. R

584Mr. LANSING called for the reading of the 1st. resolution of each plan, which he considered as involving principles directly in contrast; that of Mr. Patterson says he sustains the sovereignty of the respective States, that of Mr. Randolph distroys it: the latter requires a negative on all the laws of the particular States; the former, only certain general powers for the general good. The plan of Mr. R. in short absorbs all power except what may be exercised in the little local matters of the States which are not objects worthy of the supreme cognizance. He grounded his preference of Mr. P.'s plan, chiefly on two objections to that of Mr. R. First, want of power in the Convention to discuss & propose it. Secondly, the improbability of its being adopted.1

5851. He was decidedly of opinion that the power of the Convention was restrained to amendments of a federal nature, and having for their basis the Confederacy in being. The Act of Congress The tenor of the Acts of the States, the Commissions produced by the several deputations all proved this. And this limitation of the power to an amendment of the Confederacy, marked the opinion of the States, that it was unnecessary & improper to go farther. He was sure that this was the case with his State. N. York would never have concurred in sending deputies to the convention, if she had supposed the deliberations were to turn on a consolidation of the States, and a National Government.

5862. Was it probable that the States would adopt & ratify a scheme, which they had never authorized us to propose? and which so far exceeded what they regarded as sufficient? We see by their several Acts particularly in relation to the plan of revenue proposed by Cong. in 1783, not authorized by the Articles of Confederation, what were the ideas they then entertained. Can so great a change be supposed to have already taken place. To rely on any change which is hereafter to take place in the sentiments of the people would be trusting to too great an uncertainty. We know only what their present sentiments are. And it is in vain to propose what will not accord with these. The States will never feel a sufficient confidence in a general Government to give it a negative on their laws. The Scheme is itself totally novel. There is no parallel to it to be found. The authority of Congress is familiar to the people, and an augmentation of the powers of Congress will be readily approved by them.

587Mr. PATTERSON, said as he had on a former occasion given his sentiments on the plan proposed by Mr. R. he would now avoiding repetition as much as possible give his reasons in favor of that proposed by himself. He preferred it because it accorded first with the powers of the Convention,

secondly with the sentiments of the people. If the confederacy was radically wrong, let us return to our States, and obtain larger powers, not assume them of ourselves. I came here not to speak my own sentiments, but the sentiments of those who sent me. Our object is not such a Governmt. as may be best in itself, but such a one as our Constituents have authorized us to prepare, and as they will approve.

588If we argue the matter on the supposition that no Confederacy at present exists, it can not be denied that all the States stand on the footing of equal sovereignty. All therefore must concur before any can be bound. If a proportional representation be right, why do we not vote so here? If we argue on the fact that a federal compact actually exists, and consult the articles of it we still find an equal Sovereignty to be the basis of it.

589He reads the 5th. art: of the Confederation giving each State a vote- & the 13th. declaring that no alteration shall be made without unanimous consent. This is the nature of all treaties. What is unanimously done, must be unanimously undone. It was observed (by Mr. Wilson) that the larger States gave up the point, not because it was right, but because the circumstances of the moment urged the concession. Be it so. Are they for that reason at liberty to take it back. Can the donor resume his gift without the consent of the donee. This doctrine may be convenient, but it is a doctrine that will sacrifice the lesser States. The large States acceded readily to the confederacy. It was the small ones that came in reluctantly and slowly. N. Jersey & Maryland were the two last, the former objecting to the want of power in Congress over trade: both of them to the want of power to appropriate the vacant territory to the benefit of the whole.

590If the sovereignty of the States is to be maintained, the Representatives must be drawn immediately from the States, not from the people: and we have no power to vary the idea of equal sovereignty. The only expedient that will cure the difficulty, is that of throwing the States into Hotchpot. To say that this is impracticable, will not make it so. Let it be tried, and we shall see whether the Citizens of Massts. Pena. & Va. accede to it.

591It will be objected that Coercion will be impracticable. But will it be more so in one plan than the other? Its efficacy will depend on the quantum of power collected, not on its being drawn from the States, or from the individuals; and according to his plan it may be exerted on individuals as well as according to that of Mr. R.

592A distinct executive & Judiciary also were equally provided by his plan. It is urged that two branches in the Legislature are necessary. Why? for the purpose of a check. But the reason for the precaution is not applicable to this case. Within a particular State, where party heats prevail, such a check may be necessary. In such a body as Congress it is less necessary, and besides, the delegations of the different States are checks on each other. Do the people at large complain of Congs.? No, what they wish is that Congs. may have more power. If the power now proposed be not eno', the people hereafter will make additions to it. With proper powers Congs. will act with more energy & wisdom than the proposed Natl. Legislature; being fewer in number, and more secreted & refined by the mode of election.

593The plan of Mr. R. will also be enormously expensive. Allowing Georgia & Del. two representatives each in the popular branch the aggregate number of that branch will be 180. Add to it half as many for the other branch and you have 270 members coming once at least a year from the most distant as well as the most central parts of the republic. In the present deranged state of our finances can so expensive a system be seriously thought of? By enlarging the powers of Congs. the greatest part of this expence will be saved, and all purposes will be answered. At least a trial ought to be made.

594Mr. WILSON entered into a contrast of the principal points of the two plans so far he said as there had been time to examine the one last proposed. These points were 1. in the Virga. plan there are 2 & in some degree 3 branches in the Legislature; in the plan from N. J. there is to be a single legislature only.

– 2. Representation of the people at large is the basis of one; the State Legislatures, the pillars of the other. – 3. proportional representation prevails in one; equality of suffrage in the other. – 4. A single Executive Magistrate is at the head of the one; a plurality is held out in the other. – 5. in the one a majority of the people of the U. S. must prevail; in the other a minority may prevail. – 6. the Natl. Legislature is to make laws in all cases to which the separate States are incompetent &; in place of this Congs. are to have additional power in a few cases only. – 7. A negative on the laws of the States; in place of this coercion to be substituted. – 8. The Executive to be removeable on impeachment & conviction in one plan; in the other to be removeable at the instance of a majority of the Executives of the States. – 9. Revision of the laws provided for in one; no such check in the other. – 10. inferior national tribunals in one; none such in the other. – 11. In ye. one jurisdiction of Natl. tribunals to extend &c-; an appellate jurisdiction only allowed in the other. – 12. Here the jurisdiction is to extend to all cases affecting the Nationl. peace & harmony; there, a few cases only are marked out. – 13. finally ye. ratification is in this to be by the people themselves; in that by the legislative authorities according to the 13th article of the Confederation.

595 With regard to the power of the Convention, he conceived himself authorized to conclude nothing, but to be at liberty to propose any thing. In this particular he felt himself perfectly indifferent to the two plans.

596 With regard to the sentiments of the people, he conceived it difficult to know precisely what they are. Those of the particular circle in which one moved, were commonly mistaken for the general voice. He could not persuade himself that the State Govts. & Sovereignties were so much the idols of the people, nor a Natl. Govt. so obnoxious to them, as some supposed. Why sd. a Natl. Govt. be unpopular? Has it less dignity? will each Citizen enjoy under it less liberty or protection? Will a Citizen of Delaware be degraded by becoming a Citizen of the United States? Where do the people look at present for relief from the evils of which they complain? Is it from an internal reform of their Govts.? No, Sir. It is from the Natl. Councils that relief is expected. For these reasons he did not fear, that the people would not follow us into a national Govt. and it will be a further recommendation of Mr. R.'s plan that it is to be submitted to them, and not to the Legislatures, for ratification.

597 Proceeding now to the 1st point on which he had contrasted the two plans, he observed that anxious as he was for some augmentation of the federal powers, it would be with extreme reluctance indeed that he could ever consent to give powers to Congs. He had two reasons either of wh. was sufficient. First, Congs. as a Legislative body does not stand on the people. Secondly, it is a single body.

598 1. He would not repeat the remarks he had formerly made on the principles of Representation. he would only say that an inequality in it, has ever been a poison contaminating every branch of Govt. In G. Britain where this poison has had a full operation, the security of private rights is owing entirely to the purity of Her tribunals of Justice, the Judges of which are neither appointed nor paid, by a venal Parliament. The political liberty of that Nation, owing to the inequality of representation is at the mercy of its rulers. He means not to insinuate that there is any parallel between the situation of that Country & ours at present. But it is a lesson we ought not to disregard, that the smallest bodies in G. B. are notoriously the most corrupt. Every other source of influence must also be stronger in small than in large bodies of men. When Lord Chesterfield had told us that one of the Dutch provinces had been seduced into the views of France, he need not have added, that it was not Holland, but one of the smallest of them. There are facts among ourselves which are known to all. Passing over others, we will only remark that the Impost, so anxiously wished for by the public was defeated not by any of the larger States in the Union.

599 2. Congress is a single Legislature. Despotism comes on Mankind in different Shapes, sometimes in an Executive, sometimes in a Military, one. Is there no danger of a Legislative despotism? Theory & practice both proclaim it. If the Legislative authority be not restrained, there can be neither liberty nor

stability; and it can only be restrained by dividing it within itself, into distinct and independent branches. In a single House there is no check, but the inadequate one, of the virtue & good sense of those who compose it.

600 On another great point, the contrast was equally favorable to the plan reported by the Committee of the whole. It vested the Executive powers in a single Magistrate. The plan of N. Jersey, vested them in a plurality. In order to controul the Legislative authority, you must divide it. In order to controul the Executive you must unite it. One man will be more responsible than three. Three will contend among themselves till one becomes the master of his colleagues. In the triumvirates of Rome first Caesar, then Augustus, are witnesses of this truth. The Kings of Sparta, & the Consuls of Rome prove also the factious consequences of dividing the Executive Magistracy. Having already taken up so much time he wd. not he sd. proceed to any of the other points. Those on which he had dwelt, are sufficient of themselves: and on a decision of them, the fate of the others will depend.<sup>1</sup>

601 Mr. PINKNEY, the whole comes to this, as he conceived. Give N. Jersey an equal vote, and she will dismiss her scruples, and concur in the Natl. system. He thought the Convention authorized to go any length in recommending, which they found necessary to remedy the evils which produced this Convention.

602 Mr. ELSEWORTH proposed as a more distinctive form of collecting the mind of the Committee on the subject, "that the Legislative power of the U. S. should remain in Congs." This was not seconded though it seemed better calculated for the purpose than the 1st. proposition of Mr. Patterson in place of which Mr. E. wished to substitute it.

603 Mr. Randolph, was not scrupulous on the point of power. When the salvation of the Republic was at stake, it would be treason to our trust, not to propose what we found necessary. He painted in strong colours, the imbecility of the existing Confederacy, & the danger of delaying a substantial reform. In answer to the objection drawn from the sense of our Constituents as denoted by their acts relating to the Convention and the objects of their deliberation, he observed that as each State acted separately in the case, it would have been indecent for it to have charged the existing Constitution with all the vices which it might have perceived in it. The first State that set on foot this experiment would not have been justified in going so far, ignorant as it was of the opinion of others, and sensible as it must have been of the uncertainty of a successful issue to the experiment. There are seasons certainly of a peculiar nature where the ordinary cautions must be dispensed with; and this is certainly one of them. He wd. not as far as depended on him leave any thing that seemed necessary, undone. The present moment is favorable, and is probably the last that will offer.<sup>1</sup>

604 The true question is whether we shall adhere to the federal plan, or introduce the national plan. The insufficiency of the former has been fully displayed by the trial already made.

605 There are but two modes, by which the end of a Genl. Govt. can be attained: the 1st. by coercion as proposed by Mr. P.'s plan, the second by real legislation as propd. by the other plan. Coercion he pronounced to be impracticable, expensive, cruel to individuals. It tended also to habituate the instruments of it to shed the blood & riot in the spoils of their fellow Citizens, and consequently trained them up for the service of ambition. We must resort therefor to a National Legislation over individuals, for which Congs. are unfit. To vest such power in them, would be blending the Legislative with the Executive, contrary to the recd. maxim on this subject: If the Union of these powers heretofore in Congs. has been safe, it has been owing to the general impotency of that body. Congs. are moreover not elected by the people, but by the Legislatures who retain even a power of recall. They have therefore no will of their own, they are a mere diplomatic body, and are always obsequious to the views of the States, who are always encroaching on the authority of the U. States. A provision for harmony among the States, as in trade, naturalization &c.-for crushing rebellion whenever it may rear its crest-and for

certain other general benefits, must be made. The powers for these purposes, can never be given to a body, inadequate as Congress are in point of representation, elected in the mode in which they are, and possessing no more confidence than they do: for notwithstanding what has been said to the contrary, his own experience satisfied him that a rooted distrust of Congress pretty generally prevailed. A Natl. Govt. alone, properly constituted, will answer the purpose; and he begged it to be considered that the present is the last moment for establishing one. After this select experiment, the people will yield to despair.

606The Committee rose & the House adjourned.

607[The delegates did not convene on Sunday, June 17.]

## **608MONDAY, JUNE 18**

609IN COMMITTEE OF THE WHOLE ON THE PROPOSITIONS OF Mr. PATTERSON & Mr. Randolph

610On motion of Mr. DICKINSON to postpone the 1st. Resolution in Mr. Patterson's plan, in order to take up the following viz-"that the Articles of Confederation ought to be revised and amended, so as to render the Government of the U.S. adequate to the exigences, the preservation and the prosperity of the Union" the postponement was agreed to by 10 States, Pen: divided.

611Mr. HAMILTON, had been hitherto silent on the business before the Convention, partly from respect to others whose superior abilities age & experience rendered him unwilling to bring forward ideas dissimilar to theirs, and partly from his delicate situation with respect to his own State, to whose sentiments as expressed by his Colleagues, he could by no means accede. The crisis however which now marked our affairs, was too serious to permit any scruples whatever to prevail over the duty imposed on every man to contribute his efforts for the public safety & happiness. He was obliged therefore to declare himself unfriendly to both plans. He was particularly opposed to that from N. Jersey, being fully convinced, that no amendment of the Confederation, leaving the States in possession of their Sovereignty could possibly answer the purpose. On the other hand he confessed he was much discouraged by the amazing extent of Country in expecting the desired blessings from any general sovereignty that could be substituted.<sup>1</sup>

612As to the powers of the Convention, he thought the doubts started on that subject had arisen from distinctions & reasonings too subtle. A federal Govt. he conceived to mean an association of independent Communities into one. Different Confederacies have different powers, and exercise them in different ways. In some instances the powers are exercised over collective bodies; in others over individuals, as in the German Diet-& among ourselves in cases of piracy. Great latitude therefore must be given to the signification of the term. The plan last proposed departs itself from the federal idea, as understood by some, since it is to operate eventually on individuals.

613He agreed moreover with the Honble gentleman from Va. (Mr. R.) that we owed it to our Country, to do on this emergency whatever we should deem essential to its happiness. The States sent us here to provide for the exigences of the Union. To rely on & propose any plan not adequate to these exigences, merely because it was not clearly within our powers, would be to sacrifice the means to the end. It may be said that the States can not ratify a plan not within the purview of the article of the Confederation providing for alterations & amendments. But may not the States themselves in which no constitutional authority equal to this purpose exists in the Legislatures, have had in view a reference to the people at large. In the Senate of N. York, a proviso was moved, that no act of the Convention should be binding untill it should be referred to the people & ratified; and the motion was lost by a single voice only, the reason assigned agst. it being, that it might possibly be found an inconvenient shackle.

614The great question is what provision shall we make for the happiness of our Country? He would first make a comparative examination of the two plans-prove that there were essential defects in both-and point out such changes as might render a national one, efficacious.<sup>1</sup>

615The great & essential principles necessary for the support of Government are 1. an active & constant interest in supporting it. This principle does not exist in the States in favor of the federal Govt. They have evidently in a high degree, the esprit de corps. They constantly pursue internal interests adverse to those of the whole. They have their particular debts-their particular plans of finance &c. All these when opposed to, invariably prevail over the requisitions & plans of Congress.<sup>1</sup>

6162. The love of power. Men love power. The same remarks are applicable to this principle. The States have constantly shewn a disposition rather to regain the powers delegated by them than to part with more, or to give effect to what they had parted with. The ambition of their demagogues is known to hate the controul of the Genl. Government. It may be remarked too that the Citizens have not that anxiety to prevent a dissolution of the Genl. Govt. as of the particular Govts. A dissolution of the latter would be fatal; of the former would still leave the purposes of Govt. attainable to a considerable degree. Consider what such a State as Virga. will be in a few years, a few compared with the life of nations. How strongly will it feel its importance & self-sufficiency?<sup>1</sup>

6173. An habitual attachment of the people. The whole force of this tie is on the side of the State Govt. Its sovereignty is immediately before the eyes of the people: its protection is immediately enjoyed by them. From its hand distributive justice, and all those acts which familiarize & endear a Govt. to a people, are dispensed to them.<sup>1</sup>

6184. Force by which may be understood a coercion of laws or coercion of arms. Congs. have not the former except in few cases. In particular States, this coercion is nearly sufficient; tho' he held it in most cases, not entirely so. A certain portion of military force is absolutely necessary in large communities. Masss. is now feeling this necessity & making provision for it. But how can this force be exerted on the States collectively. It is impossible. It amounts to a war between the parties. Foreign powers also will not be idle spectators. They will interpose, the confusion will increase, and a dissolution of the Union ensue.<sup>1</sup>

6195. Influence. He did not mean corruption, but a dispensation of those regular honors & emoluments, which produce an attachment to the Govt. Almost all the weight of these is on the side of the States; and must continue so as long as the States continue to exist.

620All the passions then we see, of avarice, ambition, interest, which govern most individuals, and all public bodies, fall into the current of the States, and do not flow in the stream of the Genl. Govt. The former therefore will generally be an overmatch for the Genl. Govt. and render any confederacy, in its very nature precarious. Theory is in this case fully confirmed by experience. The Amphycionian Council had it would seem ample powers for general purposes. It had in particular the power of fining and using force agst. delinquent members. What was the consequence. Their decrees were mere signals of war. The Phocian war is a striking example of it. Philip at length taking advantage of their disunion, and insinuating himself into their Councils, made himself master of their fortunes. The German Confederacy affords another lesson. The authority of Charlemagne seemed to be as great as could be necessary. The great feudal chiefs however, exercising their local sovereignties, soon felt the spirit & found the means of, encroachments, which reduced the imperial authority to a nominal sovereignty. The Diet has succeeded, which tho' aided by a Prince at its head, of great authority independently of his imperial attributes, is a striking illustration of the weakness of Confederated Governments. Other examples instruct us in the same truth. The Swiss cantons have scarce any Union at all, and have been more than once at war with one another.

621How then are all these evils to be avoided? only by such a compleat sovereignty in the general

Government. as will turn all the strong principles & passions above mentioned on its side. Does the scheme of N. Jersey produce this effect? does it afford any substantial remedy whatever? On the contrary it labors under great defects, and the defect of some of its provisions will destroy the efficacy of others. It gives a direct revenue to Congress. but this will not be sufficient. The balance can only be supplied by requisitions: which experience proves can not be relied on. If States are to deliberate on the mode, they will also deliberate on the object of the supplies, and will grant or not grant as they approve or disapprove of it. The delinquency of one will invite and countenance it in others. Quotas too must in the nature of things be so unequal as to produce the same evil. To what standard will you resort? Land is a fallacious one. Compare Holland with Russia: France or England. with other countries of Europe. Pennsylvania. with N. Carolina. will the relative pecuniary abilities in those instances, correspond with the relative value of land. Take numbers of inhabitants for the rule and make like comparison of different countries, and you will find it to be equally unjust. The different degrees of industry and improvement in different Countries render the first object a precarious measure of wealth. Much depends too on situation. Connecticut. N. Jersey & N. Carolina, not being commercial States & contributing to the wealth of the commercial ones, can never bear quotas assessed by the ordinary rules of proportion. They will & must fail in their duty, their example will be followed, and the Union itself be dissolved. Whence then is the national revenue to be drawn? from Commerce? even from exports which notwithstanding the common opinion are fit objects of moderate taxation, from excise, &c &c. These tho' not equal, are less unequal than quotas.

622 Another destructive ingredient in the plan, is that equality of suffrage which is so much desired by the small States. It is not in human nature that Virginia. & the large States should consent to it, or if they did that they should long abide by it. It shocks too much all ideas of Justice, and every human feeling. Bad principles in a Government. tho' slow are sure in their operation and will gradually destroy it.

623 A doubt has been raised whether Congress. at present have a right to keep Ships or troops in time of peace. He leans to the negative. Mr. Paine's plan provides no remedy. -If the powers proposed were adequate, the organization of Congress. is such that they could never be properly & effectually exercised. The members of Congress. being chosen by the States & subject to recall, represent all the local prejudices. Should the powers be found effectual, they will from time to time be heaped on them, till a tyrannic sway shall be established. The general power whatever be its form if it preserves itself, must swallow up the State powers. Otherwise it will be swallowed up by them. It is against all the principles of a good Government to vest the requisite powers in such a body as Congress. Two Sovereignties can not co-exist within the same limits. Giving powers to Congress. must eventuate in a bad Government. or in no Government. The plan of N. Jersey therefore will not do.

624 What then is to be done? Here he was embarrassed. The extent of the Country to be governed, discouraged him. The expence of a general Government was also formidable; unless there were such a diminution of expence on the side of the State Governments. as the case would admit. If they were extinguished, he was persuaded that great oeconomy might be obtained by substituting a general Government. He did not mean however to shock the public opinion by proposing such a measure. On the other hand he saw no other necessity for declining it. They are not necessary for any of the great purposes of commerce, revenue, or agriculture. Subordinate authorities he was aware would be necessary. There must be district tribunals: corporations for local purposes. But cui bono, the vast & expensive apparatus now appertaining to the States.<sup>1</sup>

625 The only difficulty of a serious nature which occurred to him, was that of drawing representatives from the extremes to the center of the Community. What inducements can be offered that will suffice? The moderate wages for the 1st. branch could only be a bait to little demagogues. Three dollars or thereabouts he supposed would be the utmost. The Senate he feared from a similar cause, would be filled by certain undertakers who wish for particular offices under the Government.

626 This view of the subject almost led to him despair that a Republican Govt. could be established over so great an extent. He was sensible at the same time that it would be unwise to propose one of any other form. In his private opinion he had no scruple in declaring, supported as he was by the opinions of so many of the wise & good, that the British Govt. was the best in the world: and that he doubted much whether any thing short of it would do in America. He hoped Gentlemen of different opinions would bear with him in this, and begged them to recollect the change of opinion on this subject which had taken place and was still going on. It was once thought that the power of Congs. was amply sufficient to secure the end of their institution. The error was now seen by every one. The members most tenacious of republicanism, he observed, were as loud as any in declaiming agst. the vices of democracy. This progress of the public mind led him to anticipate the time, when others as well as himself would join in the praise bestowed by Mr. Neckar on the British Constitution, namely, that it is the only Govt. in the world "which unites public strength with individual security."

627 In every community where industry is encouraged, there will be a division of it into the few & the many. Hence separate interests will arise. There will be debtors & creditors &c. Give all power to the many, they will oppress the few. Give all power to the few, they will oppress the many. Both therefore ought to have the power, that each may defend itself agst. the other. To the want of this check we owe our paper money, instalment laws &c. To the proper adjustment of it the British owe the excellence of their Constitution. Their house of Lords is a most noble institution. Having nothing to hope for by a change, and a sufficient interest by means of their property, in being faithful to the national interest, they form a permanent barrier agst. every pernicious innovation, whether attempted on the part of the Crown or of the Commons. No temporary Senate will have firmness eno' to answer the purpose. The Senate (of Maryland) which seems to be so much appealed to, has not yet been sufficiently tried. Had the people been unanimous & eager, in the late appeal to them on the subject of a paper emission they would have yielded to the torrent. Their acquiescing in such an appeal is a proof of it. -Gentlemen differ in their opinions concerning the necessary checks, from the different estimates they form of the human passions. They suppose seven years a sufficient period to give the senate an adequate firmness, from not duly considering the amazing violence & turbulence of the democratic spirit. When a great object of Govt. is pursued, which seizes the popular passions, they spread like wild fire, and become irresistible. He appealed to the gentlemen from the N. England States whether experience had not there verified the remark.

628 As to the Executive, it seemed to be admitted that no good one could be established on Republican principles. Was not this giving up the merits of the question? For can there be a good Govt. without a good Executive? The English model was the only good one on this subject. The Hereditary interest of the King was so interwoven with that of the Nation, and his personal emoluments so great, that he was placed above the danger of being corrupted from abroad – and at the same time was both sufficiently independent and sufficiently controuled, to answer the purpose of the institution at home.

629 One of the weak sides of Republics was their being liable to foreign influence & corruption. Men of little character, acquiring great power become easily the tools of intermedling Neibours. Sweden was a striking instance. The French & English had each their parties during the late Revolution which was effected by the predominant influence of the former. 1

630 What is the inference from all these observations? That we ought to go as far in order to attain stability and permanency, as republican principles will admit. Let one branch of the Legislature hold their places for life or at least during good behaviour. Let the Executive also be for life. He appealed to the feelings of the members present whether a term of seven years, would induce the sacrifices of private affairs which an acceptance of public trust would require, so so as to ensure the services of the best Citizens. On this plan we should have in the Senate a permanent will, a weighty interest, which would answer essential purposes. But is this a Republican Govt., it will be asked? Yes if all the

Magistrates are appointed, and vacancies are filled, by the people, or a process of election originating with the people.

631 He was sensible that an Executive constituted as he proposed would have in fact but little of the power and independence that might be necessary. On the other plan of appointing him for 7 years, he thought the Executive ought to have but little power. He would be ambitious, with the means of making creatures; and as the object of his ambition wd. be to prolong his power, it is probable that in case of war, he would avail himself of the emergency, to evade or refuse a degradation from his place. An Executive for life has not this motive for forgetting his fidelity, and will therefore be a safer depository of power. It will be objected probably, that such an Executive will be an elective Monarch, and will give birth to the tumults which characterize that form of Govt. He wd. reply that Monarch is an indefinite term. It marks not either the degree or duration of power. If this Executive Magistrate wd. be a monarch for life-the other propd. by the Report from the Comtte of the whole, wd. be a monarch for seven years. The circumstance of being elective was also applicable to both. It had been observed by judicious writers that elective monarchies wd. be the best if they could be guarded agst. the tumults excited by the ambition and intrigues of competitors. He was not sure that tumults were an inseparable evil. He rather thought this character of Elective Monarchies had been taken rather from particular cases than from general principles. The election of Roman Emperors was made by the Army. In Poland the election is made by great rival princes with independent power, and ample means, of raising commotions. In the German Empire, the appointment is made by the Electors & Princes, who have equal motives & means, for exciting cabals & parties. Might not such a mode of election be devised among ourselves as will defend the community agst. these effects in any dangerous degree?

632 Having made these observations he would read to the Committee a sketch of a plan which he shd. prefer to either of those under consideration. He was aware that it went beyond the ideas of most members. But will such a plan be adopted out of doors? In return he would ask will the people adopt the other plan? At present they will adopt neither. But he sees the Union dissolving or already dissolved-he sees evils operating in the States which must soon cure the people of their fondness for democracies-he sees that a great progress has been already made & is still going on in the public mind. He thinks therefore that the people will in time be unshackled from their prejudices; and whenever that happens, they will themselves not be satisfied at stopping where the plan of Mr. R. wd. place them, but be ready to go as far at least as he proposes. He did not mean to offer the paper he had sketched as a proposition to the Committee. It was meant only to give a more correct view of his ideas, and to suggest the amendments which he should probably propose to the plan of Mr. R. in the proper stages of its future discussion. He reads his sketch in the words following, to wit:

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

634 II. The Assembly to consist of persons elected by the people to serve for three years. 1

635 III. The Senate to consist of persons elected to serve during good behaviour; their election to be made by electors chosen for that purpose by the people: in order to this the States to be divided into election districts. On the death, removal or resignation of any Senator his place to be filled out of the district from which he came.

636 IV. The supreme Executive authority of the United States to be vested in a Governour to be elected to serve during good behaviour-the election to be made by Electors chosen by the people in the Election Districts aforesaid-The authorities & functions of the Executive to be as follows: to have a negative on all laws about to be passed, and the execution of all laws passed, to have the direction of

war when authorized or begun; to have with the advice and approbation of the Senate the power of making all treaties; to have the sole appointment of the heads or chief officers of the departments of Finance, War and Foreign Affairs; to have the nomination of all other officers (Ambassadors to foreign Nations included) subject to the approbation or rejection of the Senate; to have the power of pardoning all offences except Treason; which he shall not pardon without the approbation of the Senate.<sup>1</sup>

637V. On the death, resignation or removal of the Governour his authorities to be exercised by the President of the Senate till a Successor be appointed.

638VI. The Senate to have the sole power of declaring war, the power of advising and approving all Treaties, the power of approving or rejecting all appointments of officers except the heads or chiefs of the departments of Finance War and foreign affairs.

639VII. The supreme Judicial authority to be vested in Judges to hold their offices during good behaviour with adequate and permanent salaries. This Court to have original jurisdiction in all causes of capture, and an appellative jurisdiction in all causes in which the revenues of the general Government or the Citizens of foreign Nations are concerned.

640VIII. The Legislature of the United States to have power to institute Courts in each State for the determination of all matters of general concern.

641IX. The Governour Senators and all officers of the United States to be liable to impeachment for mal- and corrupt conduct; and upon conviction to be removed from office, & disqualified for holding any place of trust or profit-All impeachments to be tried by a Court to consist of the Chief or Judge of the superior Court of Law of each State, provided such Judge shall hold his place during good behavior, and have a permanent salary.

642X. All laws of the particular States contrary to the Constitution or laws of the United States to be utterly void; and the better to prevent such laws being passed, the Governour or president of each State shall be appointed by the General Government and shall have a negative upon the laws about to be passed in the State of which he is the Governour or President.<sup>1</sup>

643XI. No State to have any forces land or Naval; and the Militia of all the States to be under the sole and exclusive direction of the United States, the officers of which to be appointed and commissioned by them.

644On these several articles he entered into explanatory observations\* corresponding with the principles of his introductory reasoning.

645The Committee rose & the House Adjourned.

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647\* The speech introducing the plan, as above taken down & written out was seen by Mr. Hamilton, who approved its correctness, with one or two verbal changes, which were made as he suggested. The explanatory observations which did not immediately follow, were to have been furnished by Mr. Hamilton who did not find leisure at the time to write them out, and they were not obtained.

648Judge Yates, in his notes, appears to have consolidated the explanatory with the introductory observations of Mr. Hamilton (under date of June 19th, a typographical error). It was in the former, Mr. Madison observed, that Mr. Hamilton, in speaking of popular governments, however modified, made the remark attributed to him by Judge Yates, that they were "but pork still with a little change of sauce."

## 649 TUESDAY, JUNE 19

### 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 Government 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 Congress 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 uncontrolled as ever.<sup>1</sup>

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 ancient and Modern. By the federal articles, transactions with the Indians appertain to Congress. 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 Congress. Yet Virginia & Maryland in one instance-Penn. & 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 Massachusetts, 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 Congress of her intention? In fine-Have we not seen the public land dealt out to Connecticut to bribe her acquiescence in the decree constitutionally awarded against her claim on the territory of Pennsylvania? for no other possible motive can account for the policy of Congress in that measure?<sup>1</sup>

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 Amphictyonic & Achaean confederacies among the ancients, 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. Patterson besides omitting a control 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 Congress 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 pardon. 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 enough has been already seen. He instanced Acts of Virginia & 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.<sup>1</sup>

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 Amphycionic 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.<sup>1</sup>

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.

666 An 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 Amphycionian 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. Randolph's 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.

673. 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.

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

675. 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.

676. 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.

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

678. 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.

679. 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.

680. 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.

681. 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.

682. 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. Massts. & 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.

## 701WEDNESDAY, JUNE 20

702IN CONVENTION

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

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

705Mr. ELSEWORTH 2ded. 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.

706Mr. 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:

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

708Mr. 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.

709It 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

710He 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.

711It 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.

712He 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.

713Col. 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.

714The 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 establishment 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.