

May 17 – June 7
James Madison's Notes of Debates in the Federal Convention of 1787
Edited by Gordon Lloyd • September 5, 2013

1 MONDAY, MAY 14 and FRIDAY, MAY 254

2Monday May 14th 1787 was the day fixed for the meeting of the deputies in Convention for revising the federal system of Government. On that day a small number only had assembled. Seven States were not convened till,4

3Friday 25 of May , when the following members appeared: From Massachusetts Rufus King. N. York Robert Yates, and Alexr. Hamilton. N. Jersey, David Brearly, William Churchill Houston, and William Patterson. Pennsylvania, Robert Morris, Thomas Fitzsimmons, James Wilson, and Gouverneur Morris. Delaware, George Read, Richard Basset, and Jacob Broome. Virginia, George Washington, Edmund Randolph, John Blair, James Madison, George Mason, George Wythe, and James Mc.Clurg. N. Carolina, Alexander Martin, William Richardson Davie, Richard Dobbs Spaight, and Hugh Williamson. S. Carolina, John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, and Pierce Butler. Georgia, William Few.2

4Mr. ROBERT MORRIS informed the members assembled that by the instruction & in behalf, of the deputation of Pena. he proposed George Washington Esqr. late Commander in chief for president of the Convention. * Mr. Rutledge seconded the motion; expressing his confidence that the choice would be unanimous, and observing that the presence of Genl. Washington forbade any observations on the occasion which might otherwise be proper.2

5General WASHINGTON was accordingly unanimously elected by ballot, and conducted to the Chair by Mr. R. Morris and Mr. Rutledge; from which in a very emphatic manner he thanked the Convention for the honor they had conferred on him, reminded them of the novelty of the scene of business in which he was to act, lamented his want of better qualifications, and claimed the indulgence of the House towards the involuntary errors which his inexperience might occasion.1

6Mr. WILSON moved that a Secretary be appointed, and nominated Mr. Temple Franklin.2

7Col HAMILTON nominated Major Jackson.1

8On the ballot Majr. Jackson had 5 votes & Mr. Franklin 2 votes. On reading the credentials of the deputies it was noticed that those from Delaware were prohibited from changing the article in the Confederation establishing an equality of votes among the States.1

9The appointment of a Committee, on the motion of Mr. C. PINCKNEY, consisting of Messrs. Wythe, Hamilton & C. Pinckney, to prepare standing rules & orders was the only remaining step taken on this day.

10 _____

11* The nomination came with particular grace from Penna. as Docr. Franklin alone could have been thought of as a competitor. The Docr. was himself to have made the nomination of General Washington, but the state of the weather and of his health confined him to his house.1

12 MONDAY, MAY 28

13In Convention.

14From Massts. Nat: Gorham & Caleb Strong. From Connecticut Oliver Elseworth. From Delaware, Gunning Bedford. From Maryland James McHenry. From Penna. B. Franklin, George Clymer, Ths. Mifflin & Jared Ingersol took their seats.1

15Mr. Wythe from the Committee for preparing rules made a report which employed the deliberations

of this day.

16Mr. KING objected to one of the rules in the Report authorising any member to call for the yeas & nays and have them entered on the minutes. He urged that as the acts of the Convention were not to bind the Constituents, it was unnecessary to exhibit this evidence of the votes; and improper as changes of opinion would be frequent in the course of the business & would fill the minutes with contradictions.

17Col. MASON seconded the objection; adding that such a record of the opinions of members would be an obstacle to a change of them on conviction; and in case of its being hereafter promulgated must furnish handles to the adversaries of the Result of the Meeting.¹

18The proposed rule was rejected nem. contradicente. The standing rules agreed to were as follow:

19Rules²

20A House to do business shall consist of the Deputies of not less than seven States; and all questions shall be decided by the greater number of these which shall be fully represented: but a less number than seven may adjourn from day to day.

21Immediately after the President shall have taken the chair, and the members their seats, the minutes of the preceding day shall be read by the Secretary.

22Every member, rising to speak, shall address the President; and whilst he shall be speaking, none shall pass between them, or hold discourse with another, or read a book, pamphlet or paper, printed or manuscript-and of two members rising to speak at the same time, the President shall name him who shall be first heard.

23A member shall not speak oftener than twice, without special leave, upon the same question; and not the second time, before every other, who had been silent, shall have been heard, if he choose to speak upon the subject.

24A motion made and seconded, shall be repeated, and if written, as it shall be when any member shall so require, read aloud by the Secretary, before it shall be debated; and may be withdrawn at any time, before the vote upon it shall have been declared.

25Orders of the day shall be read next after the minutes, and either discussed or postponed, before any other business shall be introduced.

26When a debate shall arise upon a question, no motion, other than to amend the question, to commit it, or to postpone the debate shall be received.

27A question which is complicated, shall, at the request of any member, be divided, and put separately upon the propositions, of which it is compounded.

28The determination of a question, altho' fully debated, shall be postponed, if the deputies of any State desire it until the next day.

29A writing which contains any matter brought on to be considered, shall be read once throughout for information, then by paragraphs to be debated, and again, with the amendments, if any, made on the second reading; and afterwards, the question shall be put upon the whole, amended, or approved in its original form, as the case shall be.

30That Committees shall be appointed by ballot; and that the members who have the greatest number of ballots, altho' not a majority of the votes present, be the Committee- When two or more members have an equal number of votes, the member standing first on the list in the order of taking down the ballots, shall be preferred.

31A member may be called to order by any other member, as well as by the President; and may be allowed to explain his conduct or expressions supposed to be reprehensible.- And all questions of order shall be decided by the President without appeal or debate.

32Upon a question to adjourn for the day, which may be made at any time, if it be seconded, the

question shall be put without a debate.

33When the House shall adjourn, every member shall stand in his place, until the President pass him.
†

34A letter from sundry persons of the State of Rho. Island addressed to The Chairman of the General Convention was presented to the Chair by Mr. Govr. MORRIS, and being read, was ordered to lie on the table for further consideration.

35Mr. BUTLER moved that the House provide agst. interruption of business by absence of members, and against licentious publications of their proceedings-to which was added by-Mr. SPAIGHT-a motion to provide that on the one hand the House might not be precluded by a vote upon any question, from revising the subject matter of it when they see cause, nor, on the other hand, be led too hastily to rescind a decision, which was the result of mature discussion. - Whereupon it was ordered that these motions be referred for the consideration of the Committee appointed to draw up the standing rules and that the Committee make report thereon.1

36Adj. till tomorrow at 10. O'clock.

37_____

38† Previous to the arrival of a majority of the States, the rule by which they ought to vote in the Convention had been made a subject of conversation among the members present. It was pressed by Gouverneur Morris and others from Pennsylvania, that the large States should unite in firmly refusing to the small states an equal vote, as unreasonable, and as enabling the small States to negative every good system of Government, which must in the nature of things, be founded on a violation of that equality. The members from Virginia, conceiving that such an attempt might beget fatal altercations between the large & small States, and that it would be easier to prevail on the latter, in the course of the deliberations, to give up their equality for the sake of an effective Government, than on taking the field of discussion to disarm themselves of the right & thereby throw themselves on the mercy of the large States, discountenanced & stifled the project.

39TUESDAY, MAY 29

40In convention.

41John Dickenson, and Elbridge Gerry, the former from Delaware, the latter from Massts. took their seats.

42The following rules were added, on the report of Mr. Wythe from the Committee-

43That no member be absent from the House, so as to interrupt the representation of the State, without leave.

44That Committees do not sit whilst the House shall be or ought to be, sitting.

45That no copy be taken of any entry on the journal during the sitting of the House without leave of the House.

46That members only be permitted to inspect the journal.

47That nothing spoken in the House be printed, or otherwise published or communicated without leave.3

48That a motion to reconsider a matter which has been determined by a majority, may be made, with leave unanimously given, on the same day on which the vote passed; but otherwise not without one day's previous notice: in which last case, if the House agree to the reconsideration, some future day shall be assigned for that purpose.

49Mr. C. PINKNEY moved that a Committee be appointed to superintend the Minutes.

50Mr. Govr. MORRIS objected to it. The entry of the proceedings of the Convention belonged to the

Secretary as their impartial officer. A committee might have an interest & bias in moulding the entry according to their opinions and wishes.

51The motion was negatived, 5 noes, 4 ays.

52Mr. Randolph then opened the main business.¹

53He expressed his regret, that it should fall to him, rather than those, who were of longer standing in life and political experience, to open the great subject of their mission. But, as the convention had originated from Virginia, and his colleagues supposed that some proposition was expected from them, they had imposed this task on him. He then commented on the difficulty of the crisis, and the necessity of preventing the fulfilment of the prophecies of the American downfall. He observed that in revising the foederal system we ought to inquire first, into the properties, which such a government ought to possess, secondly, the defects of the confederation, thirdly, the danger of our situation & fourthly the remedy.

541. The Character of such a government ought to secure first against foreign invasion; secondly, against dissensions between members of the Union, or seditious in particular states; thirdly, to procure to the several States, various blessings, of which an isolated situation was incapable; fourthly, it should be able to defend itself against incroachment; & fifthly, to be paramount to the state constitutions.

552. In speaking of the defects of the confederation he professed a high respect for its authors, and considered them, as having done all that patriots could do, in the then infancy of the science, of constitutions, & of confederacies – when the inefficiency of requisitions was unknown-no commercial discord had arisen among any states – no rebellion had appeared as in Massts. – foreign debts had not become urgent – the havoc of paper money had not been foreseen-treaties had not been violated – and perhaps nothing better could be obtained from the jealousy of the states with regard to their sovereignty.¹

56He then proceeded to enumerate the defects:

57First, that the confederation produced no security against foreign invasion, congress not being permitted to prevent a war nor to support it by their own authority. Of this he cited many examples, most of which tended to shew, that they could not cause infractions of treaties or of the law of nations, to be punished; that particular states might by their conduct provoke war without controul; and that neither militia nor draughts being fit for defence on such occasions, inlistments only could be successful, and these could not be executed without money.

58Secondly, that the foederal government could not check the quarrels between states, nor a rebellion in any, not having constitutional power nor means to interpose according to the exigency.¹

59Thirdly, that there were many advantages, which the U. S. might acquire, which were not attainable under the confederation, such as: a productive impost; counteraction of the commercial regulations of other nations; pushing of commerce ad libitum; &c &c.

60Fourthly, that the foederal government could not defend itself against incroachments from the states.

61Fifthly, that it was not even paramount to the state constitutions, ratified as it was in many of the states.

623. He next reviewed the danger of our situation, and appealed to the sense of the best friends of the U.S. – the prospect of anarchy from the laxity of government every where, and to other considerations.

63He proposed as conformable to his ideas the following resolutions, which he explained one by one.¹

641. Resolved, that the Articles of Confederation ought to be so corrected & enlarged as to accomplish the objects proposed by their institution; namely, "common defence, security of liberty and general welfare."

652. Resd. therefore that the rights of suffrage in the National Legislature ought to be proportioned to the Quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem

best in different cases.¹

663. Resd. that the National Legislature ought to consist of two branches.

674. Resd. that the members of the first branch of the National Legislature ought to be elected by the people of the several States every _____ for the term of _____; to be of the age of _____ years at least, to receive liberal stipends by which they may be compensated for the devotion of their time to the public service; 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 for the space of _____ after its expiration; to be incapable of reelection for the space of _____ after the expiration of their term of service, and to be subject to recall.¹

685. Resold. that the members of the second branch of the National Legislature ought to be elected by those of the first, out of a proper number of persons nominated by the individual Legislatures, to be of the age of _____ years at least; to hold their offices for a term sufficient to ensure their independence; to receive liberal stipends, by which they may be compensated for the devotion of their time to the public service; and 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 for the space of _____ after the expiration thereof.

696. Resolved that each branch ought to possess the right of originating Acts; that the National Legislature ought to be empowered to enjoy the Legislative Rights vested in Congress by the Confederation & 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 treaty subsisting under the authority of the Union; and to call forth the force of the Union agst. any member of the Union failing to fulfill its duty under the articles thereof.¹

707. Resd. that a National Executive be instituted; to be chosen by the National Legislature for the term of _____, to receive punctually at stated times, a fixed compensation for the services rendered, in which no increase nor diminution shall be made so as to affect the Magistracy, existing at the time of increase or diminution, and to be ineligible a second time; and that besides a general authority to execute the National laws, it ought to enjoy the Executive rights vested in Congress by the Confederation.¹

718. Resd. that the Executive and a convenient number of the National Judiciary, ought to compose a Council of revision with authority to examine every act of the National Legislature before it shall operate, & every act of a particular Legislature before a Negative thereon shall be final; and that the dissent of the said Council shall amount to a rejection, unless the Act of the National Legislature be again passed, or that of a particular Legislature be again negatived by _____ of the members of each branch.¹

729. Resd. that a National Judiciary be established to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the National Legislature, to hold their offices during good behaviour; and to receive punctually at stated times 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 jurisdiction of the inferior tribunals shall be to hear & determine in the first instance, and of the supreme tribunal to hear and determine in the dernier resort, all piracies & felonies on the high seas, captures from an enemy; cases in which foreigners or citizens of other States applying to such jurisdictions may be interested, or which respect the collection of the National revenue; impeachments of any National officers, and questions which may involve the national peace and harmony.¹

7310. Resolvd. 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 & Territory or otherwise, with the consent of a number of voices in the National legislature less than the whole.

7411. Resd. that a Republican Government & the territory of each State, except in the instance of a voluntary junction of Government & territory, ought to be guarantied by the United States to each State.

7512. Resd. that provision ought to be made for the continuance of Congress and their authorities and privileges, until a given day after the reform of the articles of Union shall be adopted, and for the completion of all their engagements.

7613. Resd. that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary, and that the assent of the National Legislature ought not to be required thereto.

7714. Resd. that the Legislative Executive & Judiciary powers within the several States ought to be bound by oath to support the articles of Union

7815. 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 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 & decide thereon.

79He concluded with an exhortation, not to suffer the present opportunity of establishing general peace, harmony, happiness and liberty in the U. S. to pass away unimproved.*

80It was then Resolved - That the House will tomorrow resolve itself into a Committee of the Whole House to consider of the state of the American Union. - and that the propositions moved by Mr. Randolph be referred to the said Committee. It was then

81_____

82* This Abstract of the speech was furnished to J. M. by Mr. Randolph and is in his handwriting.

83Resolved-That the House will tomorrow resolve itself into a Committee of the Whole House to consider of the state of the American Union. - and that the propositions moved by Mr. Randolph be referred to the said Committee.

84Mr. CHARLES PINKNEY laid before the house the draught of a federal Government which he had prepared, to be agreed upon between the free and independent States of America. - ordered that the same be referred to the Committee of the Whole appointed to consider the state of the American Union.¹

85adjourned.

86WEDNESDAY, MAY 30

87Roger Sherman (from Connecticut) took his seat.

88The House went into Committee of the Whole on the State of the Union. Mr. Gorham was elected to the Chair by Ballot.¹

89The propositions of Mr. Randolph which had been referred to the Committee being taken up. He moved on the suggestion of Mr. G. Morris, that the first of his propositions to wit "Resolved that the articles of Confederation ought to be so corrected & enlarged, as to accomplish the objects proposed by their institution; namely, common defence, security of liberty & general welfare" – should be postponed, in order to consider the 3 following:¹

901. that a Union of the States merely federal will not accomplish the objects proposed by the articles of Confederation, namely common defence, security of liberty, & genl. welfare.¹

912. that no treaty or treaties among the whole or part of the States, as individual Sovereignities, would be sufficient.¹

923. that a national Government ought to be established consisting of a supreme Legislative, Executive & Judiciary. The motion for postponing was seconded by Mr. Govr. MORRIS and unanimously agreed

to.3

93Some verbal criticisms were raised agst. the first proposition, and it was agreed on motion of Mr. BUTLER seconded by Mr. Randolph, to pass on to the third, which underwent a discussion, less however on its general merits than on the force and extent of the particular terms national & supreme.

94Mr. CHARLES PINKNEY wished to know of Mr. Randolph whether he meant to abolish the State Governnts. altogether. Mr. R. replied that he meant by these general propositions merely to introduce the particular ones which explained the outlines of the system he had in view.

95Mr. BUTLER said he had not made up his mind on the subject, and was open to the light which discussion might throw on it. After some general observations he concluded with saying that he had opposed the grant of powers to Congs. heretofore, because the whole power was vested in one body. The proposed distribution of the powers with different bodies changed the case, and would induce him to go great lengths.

96Genl. PINKNEY expressed a doubt whether the act of Congs. recommending the Convention, or the Commissions of the Deputies to it, would authorise a discussion of a System founded on different principles from the federal Constitution.

97Mr. GERRY seemed to entertain the same doubt.

98Mr. Govr. MORRIS explained the distinction between a federal and national, supreme, Govt.; the former being a mere compact resting on the good faith of the parties; the latter having a compleat and compulsive operation. He contended that in all Communities there must be one supreme power, and one only.

99Mr. MASON observed, not only that the present confederation was deficient in not providing for coercion & punishment agst. delinquent States; but argued very cogently that punishment could not in the nature of things be executed on the States collectively, and therefore that such a Govt. was necessary as could directly operate on individuals, and would punish those only whose guilt required it.

100Mr. SHERMAN admitted that the Confederation had not given sufficient power to Congs. and that additional powers were necessary; particularly that of raising money which he said would involve many other powers. He admitted also that the General & particular jurisdictions ought in no case to be concurrent. He seemed however not to be disposed to make too great inroads on the existing system; intimating as one reason that it would be wrong to lose every amendment, by inserting such as would not be agreed to by the States.

101It was moved by Mr. READ and 2ded. by Mr. Chs. COTESWORTH PINKNEY, to postpone the 3d. proposition last offered by Mr. Randolph viz that a national Government ought to be established consisting of a supreme Legislative Executive and Judiciary," in order to take up the following-viz. "Resolved that in order to carry into execution the Design of the States in forming this Convention, and to accomplish the objects proposed by the Confederation a more effective Government consisting of a Legislative, Executive and Judiciary ought to be established."1

102The motion to postpone for this purpose was lost:

103Massachusetts, Connecticut, Delaware, S. Carolina- aye 4. N. Y. Pennsylvania, Virginia, North Carolina- no 4.

104On the question as moved by Mr. Butler, on the third proposition it was resolved in Committee of the whole that a national governt. ought to be established consisting of a supreme Legislative Executive & Judiciary." Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina aye-6; Connecticut, no-1; New York, divided (Colonel Hamilton, aye, Mr. Yates, No).

105The following Resolution being the 2d. of those proposed by Mr. Randolph was taken up, viz-"that the rights of suffrage in the National Legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases."1

106Mr. MADISON observing that the words "or to the number of free inhabitants," might occasion debates which would divert the Committee from the general question whether the principle of representation should be changed, moved that they might be struck out.¹

107Mr. KING observed that the quotas of contribution which would alone remain as the measure of representation, would not answer, because waving every other view of the matter, the revenue might hereafter be so collected by the general Govt. that the sums respectively drawn from the States would not appear; and would besides be continually varying.¹

108Mr. MADISON admitted the propriety of the observation, and that some better rule ought to be found.

109Col. HAMILTON moved to alter the resolution so as to read "that the rights of suffrage in the national Legislature ought to be proportioned to the number of free inhabitants. Mr. SPAIGHT 2ded. the motion. It was then moved that the Resolution be postponed, which was agreed to.¹

110Mr. Randolph and Mr. MADISON then moved the following resolution-"that the rights of suffrage in the national Legislature ought to be proportioned." It was moved and 2ded. to amend it by adding "and not according to the present system"-which was agreed to. It was then moved and 2ded. to alter the resolution so as to read "that the rights of suffrage in the national Legislature ought not to be according to the present system." It was then moved & 2ded. to postpone the Resolution moved by Mr. Randolph & Mr. Madison, which being agreed to:¹

111Mr. MADISON, moved, in order to get over the difficulties, the following resolution-"that the equality of suffrage established by the articles of Confederation ought not to prevail in the national Legislature, and that an equitable ratio of representation ought to be substituted." This was 2ded. by Mr. Govr. MORRIS, and being generally relished, would have been agreed to; when,¹

112Mr. REED moved that the whole clause relating to the point of Representation be postponed; reminding the Come. that the deputies from Delaware were restrained by their commission from assenting to any change of the rule of suffrage, and in case such a change should be fixed on, it might become their duty to retire from the Convention.¹

113Mr. Govr. MORRIS observed that the valuable assistance of those members could not be lost without real concern, and that so early a proof of discord in the Convention as a secession of a State, would add much to the regret; that the change proposed was however so fundamental an article in a national Govt. that it could not be dispensed with.¹

114Mr. MADISON observed that whatever reason might have existed for the equality of suffrage when the Union was a federal one among sovereign States, it must cease when a national Governmt. should be put into the place. In the former case, the acts of Congs. depended so much for their efficacy on the cooperation of the States, that these had a weight both within & without Congress, nearly in proportion to their extent and importance. In the latter case, as the acts of the Genl. Govt. would take effect without the intervention of the State legislatures, a vote from a small State wd. have the same efficacy & importance as a vote from a large one, and there was the same reason for different numbers of representatives from different States, as from Counties of different extents within particular States. He suggested as an expedient for at once taking the sense of the members on this point and saving the Delaware deputies from embarrassment, that the question should be taken in Committee, and the clause on report to the House be postponed without a question there. This however did not appear to satisfy Mr. Read. By several it was observed that no just construction of the Act of Delaware, could require or justify a secession of her deputies, even if the resolution were to be carried thro' the House as well as the Committee. It was finally agreed however that the clause should be postponed: it being understood that in the event the proposed change of representation would certainly be agreed to, no objection or difficulty being started from any other quarter than from Delaware.¹

115The motion of Mr. Read to postpone being agreed to, The Committee then rose. The Chairman reported progress, and the House having resolved to resume the subject in Committee tomorrow,

116Adjourned to 10 O'clock.

117 THURSDAY, MAY 31

118 William Pierce from Georgia took his seat.

119 In Committee of the whole on Mr. Randolph's propositions.

120 The 3d. Resolution "that the national Legislature ought to consist of two branches" was agreed to without debate or dissent, except that of Pennsylvania, given probably from complaisance to Doctr. Franklin who was understood to be partial to a single House of Legislation.¹

121 The fourth Resolution, first clause, "that the members of the first branch of the National Legislature ought to be elected by the people of the several States" being taken up,

122 Mr. SHERMAN opposed the election by the people, insisting that it ought to be by the State Legislatures. The people he said, immediately should have as little to do as may be about the Government. They want information and are constantly liable to be misled.¹

123 Mr. GERRY. The evils we experience flow from the excess of democracy. The people do not want virtue, but are the dupes of pretended patriots. In Masss. it had been fully confirmed by experience that they are daily misled into the most baneful measures and opinions by the false reports circulated by designing men, and which no one on the spot can refute. One principal evil arises from the want of due provision for those employed in the administration of Governmt. It would seem to be a maxim of democracy to starve the public servants. He mentioned the popular clamour in Masss. for the reduction of salaries and the attack made on that of the Govr. though secured by the spirit of the Constitution itself. He had he said been too republican heretofore: he was still however republican, but had been taught by experience the danger of the levelling spirit.²

124 Mr. MASON, argued strongly for an election of the larger branch by the people. It was to be the grand depository of the democratic principle of the Govtt. It was, so to speak, to be our House of Commons-It ought to know & sympathise with every part of the community; and ought therefore to be taken not only from different parts of the whole republic, but also from different districts of the larger members of it, which had in several instances particularly in Virga., different interests and views arising from difference of produce, of habits &c &c. He admitted that we had been too democratic but was afraid we sd. incautiously run into the opposite extreme. We ought to attend to the rights of every class of the people. He had often wondered at the indifference of the superior classes of society to this dictate of humanity & policy; considering that however affluent their circumstances, or elevated their situations, might be, the course of a few years, not only might but certainly would, distribute their posterity throughout the lowest classes of Society. Every selfish motive therefore, every family attachment, ought to recommend such a system of policy as would provide no less carefully for the rights and happiness of the lowest than of the highest orders of Citizens.¹

125 Mr. WILSON contended strenuously for drawing the most numerous branch of the Legislature immediately from the people. He was for raising the federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible. No government could long subsist without the confidence of the people. In a republican Government this confidence was peculiarly essential. He also thought it wrong to increase the weight of the State Legislatures by making them the electors of the national Legislature. All interference between the general and local Governmts. should be obviated as much as possible. On examination it would be found that the opposition of States to federal measures had proceeded much more from the officers of the States, than from the people at large.¹

126 Mr. MADISON considered the popular election of one branch of the National Legislature as essential to every plan of free Government. He observed that in some of the States one branch of the Legislature was composed of men already removed from the people by an intervening body of electors. That if the first branch of the general legislature should be elected by the State Legislatures, the second branch elected by the first-the Executive by the second together with the first; and other appointments again made for subordinate purposes by the Executive, the people would be lost sight of altogether; and the necessary sympathy between them and their rulers and officers, too little felt. He was an advocate for the policy of refining the popular appointments by successive filtrations, but though it

might be pushed too far. He wished the expedient to be resorted to only in the appointment of the second branch of the Legislature, and in the Executive & judiciary branches of the Government. He thought too that the great fabric to be raised would be more stable and durable, if it should rest on the solid foundation of the people themselves, than if it should stand merely on the pillars of the Legislatures.

127Mr. GERRY did not like the election by the people. The maxims taken from the British constitution were often fallacious when applied to our situation which was extremely different. Experience he said had shewn that the State legislatures drawn immediately from the people did not always possess their confidence. He had no objection however to an election by the people if it were so qualified that men of honor & character might not be unwilling to be joined in the appointments. He seemed to think the people might nominate a certain number out of which the State legislatures should be bound to choose.

128Mr. BUTLER thought an election by the people an impracticable mode.

129On the question for an election of the first branch of the national Legislature by the people.

130Massts. ay. Connect. divd. N. York ay. N. Jersey no. Pena. ay. Delawe. divd. Va. ay. N. C. ay. S. C. no. Georga. ay.

131The remaining Clauses of the fourth Resolution relating to the qualifications of members of the National Legislature, being pospd. nem. con., as entering too much into detail for general propositions:

132The Committee proceeded to the fifth Resolution "that the second, (or senatorial) branch of the National Legislature ought to be chosen by the first branch out of persons nominated by the State Legislatures."

133Mr. SPAIGHT contended that the 2d. branch ought to be chosen by the State Legislatures and moved an amendment to that effect.¹

134Mr. BUTLER apprehended that the taking so many powers out of the hands of the States as was proposed, tended to destroy all that balance and security of interests among the States which it was necessary to preserve; and called on Mr. Randolph the mover of the propositions, to explain the extent of his ideas, and particularly the number of members he meant to assign to this second branch.¹

135Mr. RAND observed that he had at the time of offering his propositions stated his ideas as far as the nature of general propositions required; that details made no part of the plan, and could not perhaps with propriety have been introduced. If he was to give an opinion as to the number of the second branch, he should say that it ought to be much smaller than that of the first; so small as to be exempt from the passionate proceedings to which numerous assemblies are liable. He observed that the general object was to provide a cure for the evils under which the U. S. laboured; that in tracing these evils to their origin every man had found it in the turbulence and follies of democracy: that some check therefore was to be sought for agst. this tendency of our Governments: and that a good Senate seemed most likely to answer the purpose.¹

136Mr. KING reminded the Committee that the choice of the second branch as proposed (by Mr. Spaight) viz. by the State Legislatures would be impracticable, unless it was to be very numerous, or the idea of proportion among the States was to be disregarded. According to this idea, there must be 80 or 100 members to entitle Delaware to the choice of one of them. -Mr. SPAIGHT withdrew his motion.¹

137Mr. WILSON opposed both a nomination by the State Legislatures, and an election by the first branch of the national Legislature, because the second branch of the latter, ought to be independent of both. He thought both branches of the National Legislature ought to be chosen by the people, but was not prepared with a specific proposition. He suggested the mode of chusing the Senate of N. York to wit of uniting several election districts, for one branch, in chusing members for the other branch, as a good model.¹

138Mr. MADISON observed that such a mode would destroy the influence of the smaller States associated with larger ones in the same district; as the latter would chuse from within themselves, altho' better men might be found in the former. The election of Senators in Virga. where large & small counties were often formed into one district for the purpose, had illustrated this consequence Local partiality, would often prefer a resident within the County or State, to a candidate of superior merit residing out of it. Less merit also in a resident would be more known throughout his own State.

139Mr. SHERMAN favored an election of one member by each of the State Legislatures.

140Mr. PINKNEY moved to strike out the "nomination by the State Legislatures." On this question * is: Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no-9; Delaware divided.

141On the whole question for electing by the first branch out of nominations by the State Legislatures: Massachusetts, Virginia, South Carolina, aye-3; Connecticut, New York, New Jersey, Pennsylvania, Delaware, North Carolina, Georgia, no-7.1

142So the clause was disagreed to & a chasm left in this part of the plan.

143The sixth Resolution stating the cases in which the national Legislature ought to legislate was next taken into discussion: On the question whether each branch shd. originate laws, there was an unanimous affirmative without debate. On the question for transferring all the Legislative powers of the existing Congs. to this Assembly, there was also an unanimous affirmative, without debate.

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145* This question omitted in the printed Journal, & the votes applied to the succeeding one, instead of the votes as here stated.

146On the proposition for giving "Legislative power in all cases to which the State Legislatures were individually incompetent."

147Mr. PINKNEY & Mr. RUTLEDGE objected to the vagueness of the term incompetent, and said they could not well decide how to vote until they should see an exact enumeration of the powers comprehended by this definition.1

148Mr. BUTLER repeated his fears that we were running into an extreme in taking away the powers of the States, and called on Mr. Randolp for the extent of his meaning.1

149Mr. Randolph disclaimed any intention to give indefinite powers to the national Legislature, declaring that he was entirely opposed to such an inroad on the State jurisdictions, and that he did not think any considerations whatever could ever change his determination. His opinion was fixed on this point.1

150Mr. MADISON said that he had brought with him into the Convention a strong bias in favor of an enumeration and definition of the powers necessary to be exercised by the national Legislature; but had also brought doubts concerning its practicability. His wishes remained un ltered; but his doubts had become stronger. What his opinion might ultimately be he could not yet tell. But he should shrink from nothing which should be found essential to such a form of Govt. as would provide for the safety, liberty and happiness of the community. This being the end of all our deliberations, all the necessary means for attaining it must, however reluctantly, be submitted to.1

151On the question for giving powers, in cases to which the States are not competent, Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye- 9; Connecticut divided (Sherman, no. Ellsworth, aye).

152The other clauses giving powers necessary to preserve harmony among the States to negative all State laws contravening in the opinion of the Nat. Leg. the articles of union, down to the last clause, (the words "or any treaties subsisting under the authority of the Union," being added after the words "contravening &c. the articles of the Union," on motion of Dr. FRANKLIN) were agreed to witht. debate or dissent. The last clause of the sixth Resolution authorizing an exertion of the force of the

whole agst. a delinquent State came next into consideration.¹

153Mr. MADISON, observed that the more he reflected on the use of force, the more he doubted the practicability, the justice and the efficacy of it when applied to people collectively and not individually. -A union of the States containing such an ingredient seemed to provide for its own destruction. The use of force agst. a State, would look more like a declaration of war, than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound. He hoped that such a system would be framed as might render this resource unnecessary, and moved that the clause be postponed. This motion was agreed to nem. con.¹

154The Committee then rose & the House

155Adjourned

156FRIDAY, JUNE 1

157William Houston from Georgia took his seat.

158The Committee of the whole proceeded to the seventh Resolution "that a national Executive be instituted, to be chosen by the national Legislature-for the term of ----- years &c to be ineligible thereafter, to possess the executive powers of Congress &c."¹

159Mr. PINKNEY was for a vigorous Executive but was afraid the Executive powers of the existing Congress might extend to peace & war &c., which would render the Executive a monarchy, of the worst kind, to wit an elective one.

160Mr. WILSON moved that the Executive consist of a single person.¹

161Mr. C PINKNEY seconded the motion, so as to read "that a National Ex. to consist of a single person, be instituted.

162A considerable pause ensuing and the Chairman asking if he should put the question, Doctr. FRANKLIN observed that it was a point of great importance and wished that the gentlemen would deliver their sentiments on it before the question was put.¹

163Mr. RUTLIDGE animadverted on the shyness of gentlemen on this and other subjects. He said it looked as if they supposed themselves precluded by having frankly disclosed their opinions from afterwards changing them, which he did not take to be at all the case. He said he was for vesting the Executive power in a single person, tho' he was not for giving him the power of war and peace. A single man would feel the greatest responsibility and administer the public affairs best.¹

164Mr. SHERMAN said he considered the Executive magistracy as nothing more than an institution for carrying the will of the Legislature into effect, that the person or persons ought to be appointed by and accountable to the Legislature only, which was the depository of the supreme will of the Society. As they were the best judges of the business which ought to be done by the Executive department, and consequently of the number necessary from time to time for doing it, he wished the number might not be fixed but that the legislature should be at liberty to appoint one or more as experience might dictate.¹

165Mr. WILSON preferred a single magistrate, as giving most energy dispatch and responsibility to the office. He did not consider the Prerogatives of the British Monarch as a proper guide in defining the Executive powers. Some of these prerogatives were of Legislative nature. Among others that of war & peace &c. The only powers he considered strictly Executive were those of executing the laws, and appointing officers, not appertaining to and appointed by the Legislature.

166Mr. GERRY favored the policy of annexing a Council to the Executive in order to give weight & inspire confidence. Mr. Randolph strenuously opposed a unity in the Executive magistracy. He regarded it as the foetus of monarchy. We had he said no motive to be governed by the British Governmt. as our prototype. He did not mean however to throw censure on that Excellent fabric. If we were in a situation to copy it he did not know that he should be opposed to it; but the fixt genius of the

people of America required a different form of Government. He could not see why the great requisites for the Executive department, vigor, despatch & responsibility could not be found in three men, as well as in one man. The Executive ought to be independent. It ought therefore in order to support its independence to consist of more than one.

167Mr. WILSON said that unity in the Executive instead of being the fetus of monarchy would be the best safeguard against tyranny. He repeated that he was not governed by the British Model which was inapplicable to the situation of this Country; the extent of which was so great, and the manners so republican, that nothing but a great confederated Republic would do for it. Mr. Wilson's motion for a single magistrate was postponed by common consent, the Committee seeming unprepared for any decision on it; and the first part of the clause agreed to, viz- "that a National Executive be instituted."

168Mr. MADISON thought it would be proper, before a choice shd. be made between a unity and a plurality in the Executive, to fix the extent of the Executive authority; that as certain powers were in their nature Executive, and must be given to that departmt. whether administered by one or more persons, a definition of their extent would assist the judgment in determining how far they might be safely entrusted to a single officer. He accordingly moved that so much of the clause before the Committee as related to the powers of the Executive shd. be struck out & that after the words "that a national Executive ought to be instituted" there be inserted the words following viz. "with power to carry into effect the national laws, to appoint to offices in cases not otherwise provided for, and to execute such other powers "not Legislative nor Judiciary in their nature," as may from time to time be delegated by the national Legislature." The words "not legislative nor judiciary in their nature" were added to the proposed amendment in consequence of a suggestion by Genl. Pinkney that improper powers might otherwise be delegated.

169Mr. WILSON seconded this motion-

170Mr. PINKNEY moved to amend the amendment by striking out the last member of it; viz: "and to execute such other powers not Legislative nor Judiciary in their nature as may from time to time be delegated." He said they were unnecessary, the object of them being included in the "powers to carry into effect the national laws."

171Mr. Randolph seconded the motion.

172Mr. MADISON did not know that the words were absolutely necessary, or even the preceding words-"to appoint to offices &c. the whole being perhaps included in the first member of the proposition. He did not however see any inconvenience in retaining them, and cases might happen in which they might serve to prevent doubts and misconstructions.

173In consequence of the motion of Mr. Pinkney, the question on Mr. Madison's motion was divided; and the words objected to by Mr. Pinkney struck out; by the votes of Connecticut, N. Y. N. J. Pena. Del. N. C. & Geo. 7 agst., Mass. Virga. & S. Carolina 3, the preceding part of the motion being first agreed to; Connecticut divided, all the other States in the affirmative.

174The next clause in the seventh Resolution, relating to the mode of appointing, & the duration of, the Executive being under consideration,

175Mr. WILSON said he was almost unwilling to declare the mode which he wished to take place, being apprehensive that it might appear chimerical. He would say however at least that in theory he was for an election by the people. Experience, particularly in N. York & Massts., shewed that an election of the first magistrate by the people at large, was both a convenient & successful mode. The objects of choice in such cases must be persons whose merits have general notoriety.

176Mr. SHERMAN was for the appointment by the Legislature, and for making him absolutely dependent on that body, as it was the will of that which was to be executed. An independence of the Executive on the supreme Legislature, was in his opinion the very essence of tyranny if there was any such thing.

177Mr. WILSON moves that the blank for the term of duration should be filled with three years, observing at the same time that he preferred this short period, on the supposition that a reeligibility

would be provided for.

178Mr. PINKNEY moves for seven years.

179Mr. SHERMAN was for three years, and agst. the doctrine of rotation as throwing out of office the men best qualified to execute its duties.

180Mr. MASON was for seven years at least, and for prohibiting a re-eligibility as the best expedient both for preventing the effect of a false complaisance on the side of the Legislature towards unfit characters; and a temptation on the side of the Executive to intrigue with the Legislature for a re-appointment.¹

181Mr. BEDFORD was strongly opposed to so long a term as seven years. He begged the committee to consider what the situation of the Country would be, in case the first magistrate should be saddled on it for such a period and it should be found on trial that he did not possess the qualifications ascribed to him, or should lose them after his appointment. An impeachment he said would be no cure for this evil, as an impeachment would reach misfeasance only, not incapacity. He was for a triennial election, and for an ineligibility after a period of nine years.

182On the question for seven years, New York, New Jersey, Pennsylvania, Delaware, Virginia, aye-5; Connecticut, North Carolina, South Carolina, Georgia, no-4; Massachusetts, divided. There being 5ays, 4 noes, 1 divid., a question was asked whether a majority had voted in the affirmative? The President decided that it was an affirmative vote.

183The mode of appointing the Executive was the next question.

184Mr. WILSON renewed his declarations in favor of an appointment by the people. He wished to derive not only both branches of the Legislature from the people, without the intervention of the State Legislatures but the Executive also; in order to make them as independent as possible of each other, as well as of the States;¹

185Col. MASON favors the idea, but thinks it impracticable. He wishes however that Mr. Wilson might have time to digest it into his own form.-the clause "to be chosen by the National Legislature"-was accordingly postponed.-

186Mr. RUTLIDGE suggests an election of the Executive by the second branch only of the national Legislature.

187The Committee then rose and the House

188Adjourned.

189SATURDAY, JUNE 2

190IN COMMITTEE OF WHOLE

191William Saml. Johnson from Connecticut, Daniel of St. Thomas Jennifer, from Maryland. & John Lansing Jr. from N. York, took their seats.

192It was movd. & 2ded. to postpone ye Resol: of Mr. Randolph respecting the Executive, in order to take up the 2d. branch of the Legislature; which being negatived by Mas: Con: Del: Virg: N. C. S. C. Geo: 7 agst. N. Y. Pena. Maryland. 3

193The mode of appointg ye Executive was resumed.

194Mr. WILSON made the following motion, to be substituted for the mode proposed by Mr. Randolph's resolution, "that the Executive Magistracy shall be elected in the following manner: That the States be divided into ----- districts: & that the persons qualified to vote in each district for members of the first branch of the national Legislature elect ----- members for their respective districts to be electors of the Executive magistracy, that the said Electors of the Executive magistracy meet at ----- and they or any ----- of them so met shall proceed to elect by ballot, but not out of their own body ----- person in whom the Executive authority of the national Government shall be

vested."1

195Mr. WILSON repeated his arguments in favor of an election without the intervention of the States. He supposed too that this mode would produce more confidence among the people in the first magistrate, than an election by the national Legislature.

196Mr. GERRY, opposed the election by the national legislature. There would be a constant intrigue kept up for the appointment. The Legislature & the candidates wd. bargain & play into one another's hands, votes would be given by the former under promises or expectations from the latter, of recompensing them by services to members of the Legislature or their friends. He liked the principle of Mr. Wilson's motion, but fears it would alarm & give a handle to the State partisans, as tending to supersede altogether the State authorities. He thought the Community not yet ripe for stripping the States of their powers, even such as might not be requisite for local purposes. He was for waiting till people should feel more the necessity of it. He seemed to prefer the taking the suffrages of the States instead of Electors, or letting the Legislatures nominate, and the electors appoint. He was not clear that the people ought to act directly even in the choice of electors, being too little informed of personal characters in large districts, and liable to deceptions.1

197Mr. WILLIAMSON could see no advantage in the introduction of Electors chosen by the people who would stand in the same relation to them as the State Legislatures, whilst the expedient would be attended with great trouble and expence.

198On the question for agreeing to Mr. Wilson's substitute, it was negatived: Pennsylvania, Maryland, aye-2; Massachusetts, Connecticut, New York, * Delaware, Virginia, North Carolina, South Carolina, Georgia, no-8.

199On the question for electing the Executive by the national Legislature for the term

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201* N.Y. in the printed Journal – “divided.”

202of seven years, it was agreed to: Massachusetts, Connecticut, New York, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye-8; Pennsylvania, Maryland, no-2.

203Docr. FRANKLIN moved that what related to the compensation for the services of the Executive be postponed, in order to substitute-"whose necessary expences shall be defrayed, but who shall receive no salary, stipend fee or reward whatsoever for their services"-He said that being very sensible of the effect of age on his memory, he had been unwilling to trust to that for the observations which seemed to support his motion, and had reduced them to writing, that he might with the permission of the Committee read instead of speaking them.1

204Mr. WILSON made an offer to read the paper, which was accepted – The following is a literal copy of the paper.

205Sir.

206It is with reluctance that I rise to express a disapprobation of any one article of the plan for which we are so much obliged to the honorable gentleman who laid it before us. From its first reading I have borne a good will to it, and in general wished it success. In this particular of salaries to the Executive branch I happen to differ; and as my opinion may appear new and chimerical, it is only from a persuasion that it is right, and from a sense of duty that I hazard it. The Committee will judge of my reasons when they have heard them, and their judgment may possibly change mine. -I think I see inconveniences in the appointment of salaries; I see none in refusing them, but on the contrary, great advantages.

207Sir, there are two passions which have a powerful influence on the affairs of men. These are ambition and avarice; the love of power, and the love of money. Separately each of these has great force in prompting men to action; but when united in view of the same object, they have in many minds the most violent effects. Place before the eyes of such men, a post of honour that shall be at the same time a place of profit, and they will move heaven and earth to obtain it. The vast number of such

places it is that renders the British Government so tempestuous. The struggles for them are the true sources of all those factions which are perpetually dividing the Nation, distracting its Councils, hurrying sometimes into fruitless & mischievous wars, and often compelling a submission to dishonorable terms of peace. And of what kind are the men that will strive for this profitable pre-eminence, through all the bustle of cabal, the heat of contention, the infinite mutual abuse of parties, tearing to pieces the best of characters? It will not be the wise and moderate; the lovers of peace and good order, the men fittest for the trust. It will be the bold and the violent, the men of strong passions and indefatigable activity in their selfish pursuits. These will thrust themselves into your Government and be your rulers. -And these too will be mistaken in the expected happiness of their situation: For their vanquished competitors of the same spirit, and from the same motives will perpetually be endeavouring to distress their administration, thwart their measures, and render them odious to the people.¹

208 Besides these evils, Sir, tho' we may set out in the beginning with moderate salaries, we shall find that such will not be of long continuance. Reasons will never be wanting for proposed augmentations. And there will always be a party for giving more to the rulers, that the rulers may be able in return to give more to them. -Hence as all history informs us, there has been in every State & Kingdom a constant kind of warfare between the governing & governed: the one striving to obtain more for its support, and the other to pay less. And this has alone occasioned great convulsions, actual civil wars, ending either in dethroning of the Princes, or enslaving of the people. Generally indeed the ruling power carries its point, the revenues of princes constantly increasing, and we see that they are never satisfied, but always in want of more. The more the people are discontented with the oppression of taxes; the greater need the prince has of money to distribute among his partizans and pay the troops that are to suppress all resistance, and enable him to plunder at pleasure. There is scarce a king in a hundred who would not, if he could, follow the example of Pharoah, get first all the peoples money, then all their lands, and then make them and their children servants for ever. It will be said, that we don't propose to establish Kings. I know it. But there is a natural inclination in mankind to Kingly Government. It sometimes relieves them from Aristocratic domination. They had rather have one tyrant than five hundred. It gives more of the appearance of equality among Citizens, and that they like. I am apprehensive therefore, perhaps too apprehensive, that the Government of these States, may in future times, end in a Monarchy. But this Catastrophe I think may be long delayed, if in our proposed System we do not sow the seeds of contention, faction & tumult, by making our posts of honor, places of profit. If we do, I fear that tho' we do employ at first a number, and not a single person, the number will in time be set aside, it will only nourish the foetus of a King, as the honorable gentleman from Virginia very aptly expressed it, and a King will the sooner be set over us.

209 It may be imagined by some that this is an Utopian Idea, and that we can never find men to serve us in the Executive department, without paying them well for their services. I conceive this to be a mistake. Some existing facts present themselves to me, which incline me to a contrary opinion. The high Sheriff of a County in England is an honorable office, but it is not a profitable one. It is rather expensive and therefore not sought for. But yet, it is executed and well executed, and usually by some of the principal Gentlemen of the County. In France, the office of Counsellor or Member of their Judiciary Parliaments is more honorable. It is therefore purchased at a high price: There are indeed fees on the law proceedings, which are divided among them, but these fees do not amount to more than three per Cent on the sum paid for the place. Therefore as legal interest is there at five per Ct. they in fact pay two per Ct. for being allowed to do the Judiciary business of the Nation, which is at the same time entirely exempt from the burden of paying them any salaries for their services. I do not however mean to recommend this as an eligible mode for our Judiciary department. I only bring the instance to shew that the pleasure of doing good & serving their Country and the respect such conduct entitles them to, are sufficient motives with some minds to give up a great portion of their time to the public, without the mean inducement of pecuniary satisfaction.

210 Another instance is that of a respectable Society who have made the experiment, and practised it with success more than one hundred years. I mean the Quakers. It is an established rule with them, that they are not to go to law; but in their controversies they must apply to their monthly, quarterly

and yearly meetings. Committees of these sit with patience to hear the parties, and spend much time in composing their differences. In doing this, they are supported by a sense of duty, and the respect paid to usefulness. It is honorable to be so employed, but it is never made profitable by salaries, fees, or perquisites. And indeed in all cases of public service the less the profit the greater the honor.

211 To bring the matter nearer home, have we not seen, the great and most important of our offices, that of General of our armies executed for eight years together without the smallest salary, by a Patriot whom I will not now offend by any other praise; and this through fatigues and distresses in common with the other brave men his military friends & Companions, and the constant anxieties peculiar to his station? And shall we doubt finding three or four men in all the U. States, with public spirit enough to bear sitting in peaceful Council for perhaps an equal term, merely to preside over our civil concerns, and see that our laws are duly executed. Sir, I have a better opinion of our Country. I think we shall never be without a sufficient number of wise and good men to undertake and execute well and faithfully the office in question.

212 Sir, The saving of the salaries that may at first be proposed is not an object with me. The subsequent mischiefs of proposing them are what I apprehend. And therefore it is, that I move the amendment. If it is not seconded or accepted I must be contented with the satisfaction of having delivered my opinion frankly and done my duty.

213 The motion was seconded by Col. HAMILTON with the view he said merely of bringing so respectable a proposition before the Committee, and which was besides enforced by arguments that had a certain degree of weight. No debate ensued, and the proposition was postponed for the consideration of the members. It was treated with great respect, but rather for the author of it, than from any apparent conviction of its expediency or practicability.¹

214 Mr. DICKENSON moved "that the Executive be made removeable by the National Legislature on the request of a majority of the Legislatures of individual States." It was necessary he said to place the power of removing somewhere. He did not like the plan of impeaching the Great officers of State. He did not know how provision could be made for removal of them in a better mode than that which he had proposed. He had no idea of abolishing the State Governments as some gentlemen seemed inclined to do. The happiness of this Country in his opinion required considerable powers to be left in the hands of the States.

215 Mr. BEDFORD seconded the motion.

216 Mr. SHERMAN contended that the National Legislature should have power to remove the Executive at pleasure.

217 Mr. MASON. Some mode of displacing an unfit magistrate is rendered indispensable by the fallibility of those who choose, as well as by the corruptibility of the man chosen. He opposed decidedly the making the Executive the mere creature of the Legislature as a violation of the fundamental principle of good Government.

218 Mr. MADISON & Mr. WILSON observed that it would leave an equality of agency in the small with the great States; that it would enable a minority of the people to prevent ye. removal of an officer who had rendered himself justly criminal in the eyes of a majority; that it would open a door for intrigues agst. him in States where his administration tho' just might be unpopular, and might tempt him to pay court to particular States whose leading partizans he might fear, or wish to engage as his partizans. They both thought it bad policy to introduce such a mixture of the State authorities, where their agency could be otherwise supplied.

219 Mr. DICKENSON considered the business as so important that no man ought to be silent or reserved. He went into a discourse of some length, the sum of which was, that the Legislative, Executive, & Judiciary departments ought to be made as independent. as possible; but that such an Executive as some seemed to have in contemplation was not consistent with a republic: that a firm Executive could only exist in a limited monarchy. In the British Govt. itself the weight of the Executive arises from the attachments which the Crown draws to itself, & not merely from the force of its

prerogatives. In place of these attachments we must look out for something else. One source of stability is the double branch of the Legislature. The division of the Country into distinct States formed the other principal source of stability. This division ought therefore to be maintained, and considerable powers to be left with the States. This was the ground of his consolation for the future fate of his Country. Without this, and in case of a consolidation of the States into one great Republic, we might read its fate in the history of smaller ones.

220A limited Monarchy he considered as one of the best Governments in the world. It was not certain that the same blessings were derivable from any other form. It was certain that equal blessings had never yet been derived from any of the republican form. A limited Monarchy however was out of the question. The spirit of the times-the state of our affairs, forbade the experiment, if it were desirable. Was it possible moreover in the nature of things to introduce it even if these obstacles were less insuperable. A House of Nobles was essential to such a Govt. could these be created by a breath, or by a stroke of the pen? No. They were the growth of ages, and could only arise under a complication of circumstances none of which existed in this Country.

221But though a form the most perfect perhaps in itself be unattainable, we must not despair. If ancient republics have been found to flourish for a moment only & then vanish for ever, it only proves that they were badly constituted; and that we ought to seek for every remedy for their diseases. One of these remedies he conceived to be the accidental lucky division of this Country into distinct States; a division which some seemed desirous to abolish altogether. As to the point of representation in the national Legislature as it might affect States of different sizes, he said it must probably end in mutual concession. He hoped that each State would retain an equal voice at least in one branch of the National Legislature, and supposed the sums paid within each State would form a better ratio for the other branch than either the number of inhabitants or the quantum of property.

222A motion being made to strike out "on request by a majority of the Legislatures of the individual States" and rejected, Connecticut, S. Carol: & Geo. being ay, the rest no: the question was taken-

223On Mr. DICKENSON'S motion for making the Executive removeable by the Natl.; Legislature at the request of a majority of State Legislatures which was also rejected – all the States being in the negative Except Delaware which gave an affirmative vote.

224The Question for making ye. Executive ineligible after seven years, was next taken, and agreed to: Massachusetts, New York, Delaware, Maryland, Virginia, North Carolina, South Carolina, aye-7; Connecticut, Georgia,† no-2; Pennsylvania, divided.

225Mr. WILLIAMSON 2ded. by Mr. DAVIE moved to add to the last Clause, the words- "and to be removeable on impeachment & conviction of mal-practice or neglect of duty"-which was agreed to.1

226Mr. RUTLIDGE & Mr. C. PINKNEY moved that the blank for the no. of persons in the Executive be filled with the words "one person." He supposed the reasons to be so obvious & conclusive in favor of one that no member would oppose the motion.

227Mr. Randolph opposed it with great earnestness, declaring that he should not do justice to the Country which sent him if he were silently to suffer the establishmt. of a Unity in the Executive department. He felt an opposition to it which he believed he should continue to feel as long as he lived. He urged first that the permanent temper of the people was adverse to the very semblance of Monarchy. Secondly that a unity was unnecessary a plurality being equally competent to all the objects of the department. Thirdly that the necessary confidence would never be reposed in a single Magistrate. Fourthly that the appointments would generally be in favor of some inhabitant near the center of the Community, and consequently the remote parts would not be on an equal footing. He was in favor of three members of the Executive to be drawn from different portions of the Country.

228Mr. BUTLER contended strongly for a single magistrate as most likely to answer the purpose of the remote parts. If one man should be appointed he would be responsible to the whole, and would be impartial to its interests. If three or more should be taken from as many districts, there would be a constant struggle for local advantages. In Military matters this would be particularly mischievous. He

said his opinion on this point had been formed under the opportunity he had had of seeing the manner in which a plurality of military heads distracted Holland when threatened with invasion by the imperial troops. One man was for directing the force to the defence of this part, another to that part of the Country, just as he happened to be swayed by prejudice or interest.

229The motion was then postpd. the Committee rose & the House Adjd.

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231[†] In the printed Journal Geo. – ay.

232[The delegates did not convene on Sunday, June 3]

233MONDAY, JUNE 4

234IN COMMITTEE OF THE WHOLE

235The Question was resumed on motion of Mr. PINKNEY 2ded. by Mr. WILSON, "shall the blank for the number of the Executive be filled with a single person?"

236Mr. WILSON was in favor of the motion. It had been opposed by the gentleman from Virga. (Mr. Randolph) but the arguments used had not convinced him. He observed that the objections of Mr. R. were levelled not so much agst. the measure itself, as agst. its unpopularity. If he could suppose that it would occasion a rejection of the plan of which it should form a part, though the part were an important one, yet he would give it up rather than lose the whole. On examination he could see no evidence of the alledged antipathy of the people. On the contrary he was persuaded that it does not exist. All know that a single magistrate is not a King. One fact has great weight with him. All the 13 States tho agreeing in scarce any other instance, agree in placing a single magistrate at the head of the Govern. The idea of three heads has taken place in none. The degree of power is indeed different; but there are no co-ordinate heads. In addition to his former reasons for preferring a unity, he would mention another. The tranquility not less than the vigor of the Govt. he thought would be favored by it. Among three equal members, he foresaw nothing but uncontroled, continued, & violent animosities; which would not only interrupt the public administration; but diffuse their poison thro' the other branches of Govt., thro' the States, and at length thro' the people at large. If the members were to be unequal in power the principle of opposition to the unity was given up. If equal, the making them an odd number would not be a remedy. In Courts of Justice there are two sides only to a question. In the Legislative & Executive departmts. questions have commonly many sides. Each member therefore might espouse a separate one & no two agree.

237Mr. SHERMAN. This matter is of great importance and ought to be well considered before it is determined. Mr. Wilson he said had observed that in each State a single magistrate was placed at the head of the Govt. It was so he admitted, and properly so, and he wished the same policy to prevail in the federal Govt. But then it should be also remarked that in all the States there was a Council of advice, without which the first magistrate could not act. A council he thought necessary to make the establishment acceptable to the people. Even in G. B. the King has a Council; and though he appoints it himself, its advice has its weight with him, and attracts the Confidence of the people.

238Mr. WILLIAMSON asks Mr. WILSON whether he means to annex a Council.

239Mr. WILSON means to have no Council, which oftener serves to cover, than prevent malpractices.

240Mr. GERRY was at a loss to discover the policy of three members for the Executive. It Wd. be extremely inconvenient in many instances, particularly in military matters, whether relating to the militia, an army, or a navy. It would be a general with three heads.2

241On the question for a single Executive it was agreed to: Massachusetts, Connecticut, Pennsylvania, Virginia, (Mr. Randolph and Mr. Blair, no; Doctor McClurg, Mr. Madison, and General Washington, aye; Colonel Mason being no, but not in the House, Mr. Wythe, aye, but gone home), North Carolina, South Carolina, Georgia, aye-; New York, Delaware, Maryland, no-3.2

242First Clause of the eighth Resolution relating to a Council of Revision taken into consideration.

243Mr. GERRY doubts whether the Judiciary ought to form a part of it, as they will have a sufficient check agst. encroachments on their own department by their exposition of the laws, which involved a power of deciding on their Constitutionality. In some States the Judges had actually set aside laws as being agst. the Constitution. This was done too with general approbation. It was quite foreign from the nature of ye. office to make them judges of the policy of public measures. He moves to postpone the clause in order to propose "that the National Executive shall have a right to negative any Legislative act which shall not be afterwards passed by ----- parts of each branch of the national Legislature."1

244Mr. KING seconds the motion, observing that the Judges ought to be able to expound the law as it should come before them, free from the bias of having participated in its formation.

245Mr. WILSON thinks neither the original proposition nor the amendment go far enough. If the Legislative Exetv & Judiciary ought to be distinct & independent. The Executive ought to have an absolute negative. Without such a self-defense the Legislature can at any moment sink it into non-existence. He was for varying the proposition in such a manner as to give the Executive & Judiciary jointly an absolute negative.

246On the question to postpone in order to take Mr. Gerry's proposition into consideration it was agreed to, Massachusetts, New York, Pennsylvania, North Carolina, South Carolina, Georgia, aye-6; Connecticut, Delaware, Maryland, Virginia, no-4.

247Mr. GERRY'S proposition being now before the Committee, Mr. WILSON & Mr. HAMILTON move that the last part of it (viz. "Wch. Sl. not be afterwds. passed by -----parts of each branch of the National legislature) be struck out, so as to give the Executive an absolute negative on the laws. There was no danger they thought of such a power being too much exercised. It was mentioned by Col: HAMILTON that the King of G. B. had not exerted his negative since the Revolution.1

248Mr. GERRY sees no necessity for so great a controul over the legislature as the best men in the Community would be comprised in the two branches of it.

249Docr. FRANKLIN, said he was sorry to differ from his colleague for whom he had a very great respect, on any occasion, but he could not help it on this. He had had some experience of this check in the Executive on the Legislature, under the proprietary Government of Pena. The negative of the Governor was constantly made use of to extort money. No good law whatever could be passed without a private bargain with him. An increase of his salary, or some donation, was always made a condition; till at last it became the regular practice, to have orders in his favor on the Treasury, presented along with the bills to be signed, so that he might actually receive the former before he should sign the latter. When the Indians were scalping the western people, and notice of it arrived, the concurrence of the Governor in the means of self- defence could not be got, till it was agreed that his Estate should be exempted from taxation: so that the people were to fight for the security of his property, whilst he was to bear no share of the burden. This was a mischievous sort of check. If the Executive was to have a Council, such a power would be less objectionable. It was true the King of G. B. had not, as was said, exerted his negative since the Revolution; but that matter was easily explained. The bribes and emoluments now given to the members of parliament rendered it unnecessary, every thing being done according to the will of the Ministers. He was afraid, if a negative should be given as proposed, that more power and money would be demanded, till at last eno' would be got to influence & bribe the Legislature into a compleat subjection to the will of the Executive.1

250Mr. SHERMAN was agst. enabling any one man to stop the will of the whole. No one man could be found so far above all the rest in wisdom. He thought we ought to avail ourselves of his wisdom in revising the laws, but not permit him to overule the decided and cool opinions of the Legislature.

251Mr. MADISON supposed that if a proper proportion of each branch should be required to overrule the objections of the Executive, it would answer the same purpose as an absolute negative. It would rarely if ever happen that the Executive constituted as ours is proposed to be would, have firmness eno' to resist the legislature, unless backed by a certain part of the body itself. The King of G. B. with all his

splendid attributes would not be able to withstand ye. unanimous and eager wishes of both houses of Parliament. To give such a prerogative would certainly be obnoxious to the temper of this Country; its present temper at least.

252Mr. WILSON believed as others did that this power would seldom be used. The Legislature would know that such a power existed, and would refrain from such laws, as it would be sure to defeat. Its silent operation would therefore preserve harmony and prevent mischief. The case of Pena. formerly was very different from its present case. The Executive was not then as now to be appointed by the people. It will not in this case as in the one cited be supported by the head of a Great Empire, actuated by a different & sometimes opposite interest. The salary too is now proposed to be fixed by the Constitution, or if Dr. F.'s idea should be adopted all salary whatever interdicted. The requiring a large proportion of each House to overrule the Executive check might do in peaceable times; but there might be tempestuous moments in which animosities may run high between the Executive and Legislative branches, and in which the former ought to be able to defend itself.

253Mr. BUTLER had been in favor of a single Executive Magistrate; but could he have entertained an idea that a compleat negative on the laws was to be given him he certainly should have acted very differently. It had been observed that in all countries the Executive power is in a constant course of increase. This was certainly the case in G. B. Gentlemen seemed to think that we had nothing to apprehend from an abuse of the Executive power. But why might not a Cataline or a Cromwell arise in this Country as well as in others.

254Mr. BEDFORD was opposed to every check on the Legislature, even the Council of Revision first proposed. He thought it would be sufficient to mark out in the Constitution the boundaries to the Legislative Authority, which would give all the requisite security to the rights of the other departments. The Representatives of the people were the best Judges of what was for their interest, and ought to be under no external controul whatever. The two branches would produce a sufficient controul within the Legislature itself.

255Col. MASON observed that a vote had already passed he found (he was out at the time) for vesting the executive powers in a single person. Among these powers was that of appointing to offices in certain cases. The probable abuses of a negative had been well explained by Dr. F. as proved by experience, the best of all tests. Will not the same door be opened here. The Executive may refuse its assent to necessary measures till new appointments shall be referred to him; and having by degrees engrossed all these into his own hands, the American Executive, like the British, will by bribery & influence, save himself the trouble & odium of exerting his negative afterwards.

256We are Mr. Chairman going very far in this business. We are not indeed constituting a British Government, but a more dangerous monarchy, an elective one. We are introducing a new principle into our system, and not necessary as in the British Govt. where the Executive has greater rights to defend. Do gentlemen mean to pave the way to hereditary Monarchy? Do they flatter themselves that the people will ever consent to such an innovation? If they do I venture to tell them, they are mistaken. The people never will consent. And do gentlemen consider the danger of delay, and the still greater danger of a rejection, not for a moment but forever, of the plan which shall be proposed to them. Notwithstanding the oppressions & injustice experienced among us from democracy; the genius of the people is in favor of it, and the genius of the people must be consulted. He could not but consider the federal system as in effect dissolved by the appointment of this Convention to devise a better one. And do gentlemen look forward to the dangerous interval between the extinction of an old, and the establishment of a new Governmt. and to the scenes of confusion which may ensue.

257He hoped that nothing like a Monarchy would ever be attempted in this Country. A hatred to its oppressions had carried the people through the late Revolution. Will it not be eno' to enable the Executive to suspend offensive laws, till they shall be coolly revised, and the objections to them overruled by a greater majority than was required in the first instance. He never could agree to give up all the rights of the people to a single Magistrate. If more than one had been fixed on, greater powers might have been entrusted to the Executive. He hoped this attempt to give such powers would have its weight hereafter as an argument for increasing the number of the Executive.

258 Doctr. FRANKLIN. A Gentleman from S. C. (Mr. Butler) a day or two ago called our attention to the case of the U. Netherlands. He wished the gentleman had been a little fuller, and had gone back to the original of that Govt. The people being under great obligations to the Prince of Orange whose wisdom and bravery had saved them, chose him for the Stadtholder. He did very well. Inconveniences however were felt from his powers; which growing more & more oppressive, they were at length set aside. Still however there was a party for the P. of Orange, which descended to his son who excited insurrections, spilt a great deal of blood, murdered the de Witts, and got the powers revested in the Stadtholder. Afterwards another Prince had power to excite insurrections & make the Stadtholdership hereditary. And the present Stadthder. is ready to wade thro a bloody civil war to the establishment of a monarchy. Col. Mason had mentioned the circumstance of appointing officers. He knew how that point would be managed. No new appointment would be suffered as heretofore in Pensa. unless it be referred to the Executive; so that all profitable offices will be at his disposal. The first man put at the helm will be a good one. No body knows what sort may come afterwards. The Executive will be always increasing here, as elsewhere, till it ends in a Monarchy

259 On the question for striking out so as to give the Executive an absolute negative – Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no-10.

260 Mr. BUTLER moved that the Resoln. be altered so as to read-"Resolved that the National Executive have a power to suspend any Legislative act for the term of -----."

261 Doctr. FRANKLIN seconds the motion.

262 Mr. GERRY observed that the power of suspending might do all the mischief dreaded from the negative of useful laws; without answering the salutary purpose of checking unjust or unwise ones.

263 On the question for giving this suspending power, all the States, to wit Massts. Cont. N. Y. Pa. Del. Maryd. Virga. N. C. S. C. Georgia were No.

264 On a question for enabling two thirds of each branch of the Legislature to overrule the revisionary check: it passed in the affirmative sub silentio; and was inserted in the blank of Mr. Gerry's motion.¹

265 On the question on Mr. Gerry's motion which gave the Executive alone without the Judiciary the revisionary controul on the laws unless overruled by 2/3 of each branch; Massachusetts, New York, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye- 8; Connecticut, Maryland, no-2.

266 It was moved by Mr. WILSON & 2ded. by Mr. MADISON-that the following amendment be made to the last resolution-after the words "National Ex." to add "& a convenient number of the National Judiciary."

267 An objection of order being taken by Mr. HAMILTON to the introduction of the last amendment at this time, notice was given by Mr. W. & Mr. M.-that the same wd. be moved tomorrow, where-upon Wednesday was assigned to reconsider the amendment of Mr. Gerry.

268 It was then moved & 2ded. to proceed to the consideration of the 9th. resolution submitted by Mr. Randolph-when on motion to agree to the first clause namely "Resolved that a National Judiciary be established" It passed in the affirmative nem. con. It was then moved & 2ded. to add these words to the first clause of the ninth resolution namely-"to consist of one supreme tribunal, and of one or more inferior tribunals," which passed in the affirmative-1

269 The Comme. then rose and the House

270 Adjourned

271 TUESDAY, JUNE 5

272 IN COMMITTEE OF THE WHOLE

273 GOVERNOR Livingston of New Jersey, took his seat.

274The words, "one or more" were struck out before "inferior tribunals" as an amendment to the last clause of the ninth Resolution. The Clause-"that the National Judiciary be chose by the National Legislature," being under consideration.

275Mr. WILSON opposed the appointmt. of Judges by the National Legisl: Experience shewed the impropriety of such appointmts. by numerous bodies. Intrigue, partiality, and concealment were the necessary consequences. A principal reason for unity in the executive was that officers might be appointed by a single, responsible person.

276Mr. RUTLIDGE was by no means disposed to grant so great a power to any single person. The people will think we are leaning too much towards Monarchy. He was against establishing any national tribunal except a single supreme one. The State tribunals are most proper to decide in all cases in the first instance.

277Doctr. FRANKLIN observed that two modes of chusing the Judges had been mentioned, to wit, by the Legislature and by the Executive. He wished such other modes to be suggested as might occur to other gentlemen; it being a point of great moment. He would mention one which he had understood was practiced in Scotland. He then in a brief and entertaining manner related a Scotch mode, in which the nomination proceeded from the Lawyers, who always selected the ablest of the profession in order to get rid of him, and share his practice among themselves. It was here he said the interest of the electors to make the best choice, which should always be made the case if possible.¹

278Mr. MADISON disliked the election of the Judges by the Legislature or any numerous body. Besides, the danger of intrigue and partiality, many of the members were not judges of the requisite qualifications. The Legislative talents which were very different from those of a Judge, commonly recommended men to the favor of Legislative Assemblies. It was known too that the accidental circumstances of presence and absence, of being a member or not a member, had a very undue influence on the appointment. On the other hand he was not satisfied with referring the appointment to the Executive. He rather inclined to give it to the Senatorial branch, as numerous eno' to be confided in-as not so numerous as to be governed by the motives of the other branch; and as being sufficiently stable and independent to follow their deliberate judgments. He hinted this only and moved that the appointment by the Legislature might be struck out, & a blank left to be hereafter filled on maturer reflection.¹

279Mr. WILSON seconds it.

280On the question for striking out: Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, aye-9; Connecticut, South Carolina,-2.

281Mr. WILSON gave notice that he should at a future day move for a reconsideration of the clause which respects "inferior tribunals."

282Mr. PINKNEY gave notice that when the clause respecting the appointment of the Judiciary should again come before the Committee he should move to restore the "appointment by the national Legislature."

283The following clauses of the ninth Resolution were agreed to viz "to hold their offices during good behaviour, and 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."

284The remaining clause of the ninth Resolution was postponed.

285The tenth Resolution was agreed to-viz-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 National Legislature less than the whole.¹

286The eleventh Resolution: "for guarantying to States Republican Govt. & territory &c., being read, Mr. PATTERSON wished the point of representation could be decided before this clause should be

considered, and moved to postpone it: which was not opposed, and agreed to: Connecticut & S. Carolina only voting agst. it.

287The twelfth Resolution "for continuing Congs. till a given day and for fulfilling their engagements," produced no debate.

288On the question, Mass. ay. Cont. no. N. Y. ay. N. J.* ay. Pa. ay. Del. no. Md. ay. Va. ay. N. C. ay. S. C. ay. G. ay.

289The thirteenth Resolution, to the effect: "that provision ought to be made for hereafter amending the system now to be established, without requiring the assent of the Natl. Legislature," being taken up,

290Mr. PINKNEY doubted the propriety or necessity of it.

291Mr. GERRY favored it. The novelty & difficulty of the experiment requires periodical revision. The prospect of such a revision would also give intermediate stability to the Govt. Nothing had yet happened in the States where this provision existed to prove its impropriety.

292The proposition was postponed for further consideration: the votes being, Mas: Con. N. Y. Pa. Del. Ma. N. C.-ay Virga. S. C. Geo: no

293The fourteenth Resolution "requiring oath from the State officers to support National Govt." was postponed after a short uninteresting conversation: the votes, Con. N. Jersey. Md. Virga.: S. C. Geo. ay N. Y. Pa. Del. N. C. - no Massachusetts - divided.

294The fifteenth Resolution "recommending Conventions under appointment of the people to ratify the new Constitution" &c. being taken up.

295Mr. SHERMAN thought such a popular ratification unnecessary: the articles of Confederation providing for changes and alterations with the assent of Congs. and ratification of State Legislatures.

296Mr. MADISON thought this provision essential. The articles of Confedn. themselves were defective in this respect, resting in many of the States on the Legislative sanction only. Hence in conflicts between acts of the States, and of Congs. especially where the former are of posterior date, and the decision is to be made by State tribunals, an uncertainty must necessarily prevail, or rather perhaps a certain decision in favor of the State authority. He suggested also that as far as the articles of Union were to be considered as a Treaty only of a particular sort, among the Governments of Independent

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298* New Jersey omitted in the Printed Journal.

299States, the doctrine might be set up that a breach of any one article, by any of the parties, absolved the other parties from the whole obligation. For these reasons as well as others he thought it indispensable that the new Constitution should be ratified in the most unexceptionable form, and by the supreme authority of the people themselves.

300Mr. GERRY observed that in the Eastern States the Confedn. had been sanctioned by the people themselves. He seemed afraid of referring the new system to them. The people in that quarter have at this time the wildest ideas of Government in the world. They were for abolishing the Senate in Massts. and giving all the other powers of Govt. to the other branch of the Legislature.

301Mr. KING supposed that the last article of ye Confedn. rendered the legislature competent to the ratification. The people of the Southern States where the federal articles had been ratified by the Legislatures only, had since impliedly given their sanction to it. He thought notwithstanding that there might be policy in varying the mode. A Convention being a single house, the adoption may more easily be carried thro' it, than thro' the Legislatures where there are several branches. The Legislatures also being to lose power, will be most likely to raise objections. The people having already parted with the necessary powers it is immaterial to them, by which Government they are possessed, provided they be well employed.

302Mr. WILSON took this occasion to lead the Committee by a train of observations to the idea of not suffering a disposition in the plurality of States to confederate anew on better principles, to be defeated by the inconsiderate or selfish opposition of a few States. He hoped the provision for ratifying would be put on such a footing as to admit of such a partial union, with a door open for the accession of the rest.
†

303Mr. PINKNEY hoped that in case the experiment should not unanimously take place nine States might be authorized to unite under the same Governmt.

304The fifteenth Resolution was postponed nem. cont.

305Mr. PINKNEY & Mr. RUTLIDGE moved that tomorrow be assigned to reconsider that clause of the fourth Resolution: which respects the election of the first branch of the National Legislature-which passed in the affirmative: Con: N. Y. Pa. Del: d. Va.-ay-6 Mas. N. J. N. C. S. C. Geo. no. 5.

306Mr. RUTLIDGE havg. obtained a rule for reconsideration of the clause for establishing inferior tribunals under the national authority, now moved that that part of the clause in the ninth Resolution should be expunged: arguing that the State Tribunals might and ought to be left in all cases to decide in the first instance the right of appeal to the supreme national tribunal being sufficient to secure the national rights & uniformity of Judgmts.: that it was making an unnecessary encroachment on the jurisdiction of the States and creating unnecessary obstacles to their adoption of the new system.2

307Mr. SHERMAN 2ded. the motion.

308Mr. MADISON observed that unless inferior tribunals were dispersed throughout the Republic with final jurisdiction in many cases, appeals would be multiplied to a most

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310† This hint was probably meant in terrorem to the smaller States of N. Jersey & Delaware. Nothing was said in reply to it.

311oppressive degree; that besides, an appeal would not in many cases be a remedy. What was to be done after improper Verdicts in State tribunals obtained under the biassed directions of a dependent Judge, or the local prejudices of an undirected jury? To remand the cause for a new trial would answer no purpose. To order a new trial at the Supreme bar would oblige the parties to bring up their witnesses, tho' ever so distant from the seat of the Court. An effective Judiciary establishment commensurate to the legislative authority, was essential. A Government without a proper Executive & Judiciary would be the mere trunk of a body, without arms or legs to act or move.

312Mr. WILSON opposed the motion on like grounds. he said the admiralty jurisdiction ought to be given wholly to the national Government, as it related to cases not within the jurisdiction of particular states, & to a scene in which controversies with foreigners would be most likely to happen.

313Mr. SHERMAN was in favor of the motion. He dwelt chiefly on the supposed expensiveness of having a new set of Courts, when the existing State Courts would answer the same purpose.

314Mr. DICKINSON contended strongly that if there was to be a National Legislature, there ought to be a national Judiciary, and that the former ought to have authority to institute the latter.

315On the question for Mr. Rutlidge's motion to strike out "inferior tribunals" it passed in the affirmative: Connecticut, New Jersey, North Carolina, South Carolina, Georgia, aye-5; Pennsylvania, Delaware, Maryland, Virginia, no-4; Massachusetts [and New York], divided.

316Mr. WILSON & Mr. MADISON then moved, in pursuance of the idea expressed above by Mr. Dickinson, to add to the ninth Resolution the words following "that the National Legislature be empowered to institute inferior tribunals." They observed that there was a distinction between establishing such tribunals absolutely, and giving a discretion to the Legislature to establish or not establish them. They repeated the necessity of some such provision.

317Mr. BUTLER. The people will not bear such innovations. The States will revolt at such encroachments. Supposing such an establishment to be useful, we must not venture on it. We must

follow the example of Solon who gave the Athenians not the best Govt. he could devise; but the best they wd. receive.

318Mr. KING remarked as to the comparative expence that the establishment of inferior tribunals wd. cost infinitely less than the appeals that would be prevented by them.

319On this question as moved by Mr. W. & Mr. M. Mass. ay. Ct. no. N. Y. divd. N.J. ay. ** Pa. ay. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. no. Geo. ay.1

320The Committee then rose & the House adjourned.

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322** In the printed Journal N. Jersey – no.

323WEDNESDAY, JUNE 6

324IN COMMITTEE OF THE WHOLE

325Mr. PINKNEY according to previous notice & rule obtained, moved "that the first branch of the national Legislature be elected by the State Legislatures, and not by the people." contending that the people were less fit Judges in such a case, and that the Legislatures would be less likely to promote the adoption of the new Government, if they were to be excluded from all share in it.

326Mr. RUTLIDGE 2ded. the motion.

327Mr. GERRY. Much depends on the mode of election. In England, the people will probably lose their liberty from the smallness of the proportion having a right of suffrage. Our danger arises from the opposite extreme: hence in Massts. the worst men get into the Legislature. Several members of that Body had lately been convicted of infamous crimes. Men of indigence, ignorance & baseness, spare no pains, however dirty to carry their point agst. men who are superior to the artifices practised. He was not disposed to run into extremes. He was as much principled as ever agst. aristocracy and monarchy. It was necessary on the one hand that the people should appoint one branch of the Govt. in order to inspire them with the necessary confidence. But he wished the election on the other to be so modified as to secure more effectually a just preference of merit. His idea was that the people should nominate certain persons in certain districts, out of whom the State Legislatures shd. make the appointment.

328Mr. WILSON. He wished for vigor in the Govt., but he wished that vigorous authority to flow immediately from the legitimate source of all authority. The Govt. ought to possess not only 1st. the force, but 2dly. the mind or sense of the people at large. The Legislature ought to be the most exact transcript of the whole Society. Representation is made necessary only because it is impossible for the people to act collectively. The opposition was to be expected he said from the Governments, not from the Citizens of the States. The latter had parted as was observed (by Mr. King) with all the necessary powers; and it was immaterial to them, by whom they were exercised, if well exercised. The State officers were to be the losers of power. The people he supposed would be rather more attached to the national Govt. than to the State Govts. as being more important in itself, and more flattering to their pride. There is no danger of improper elections if made by large districts. Bad elections proceed from the smallness of the districts which give an opportunity to bad men to intrigue themselves into office.

329Mr. SHERMAN. If it were in view to abolish the State Govts. the elections ought to be by the people. If the State Govts. are to be continued, it is necessary in order to preserve harmony between the National & State Govts. that the elections to the former shd. be made by the latter. The right of participating in the National Govt. would be sufficiently secured to the people by their election of the State Legislatures.

330The objects of the Union, he thought were few. First defence agst. foreign danger. Secondly agst. internal disputes & a resort to force. Thirdly Treaties with foreign nations. Fourthly regulating foreign commerce, & drawing revenue from it. These & perhaps a few lesser objects alone rendered a Confederation of the States necessary. All other matters civil & criminal would be much better in the hands of the States. The people are more happy in small than in large States. States may indeed be too

small as Rhode Island, & thereby be too subject to faction. Some others were perhaps too large, the powers of Govt. not being able to pervade them. He was for giving the General Govt. power to legislate and execute within a defined province.

331Col. MASON. Under the existing Confederacy, Congs. represent the States and not the people of the States: their acts operate on the States, not on the individuals. The case will be changed in the new plan of Govt. The people will be represented; they ought therefore to choose the Representatives. The requisites in actual representation are that the Reps. should sympathize with their constituents; shd. think as they think, & feel as they feel; and that for these purposes shd. even be residents among them. Much he sd. had been alledged agst. democratic elections. He admitted that much might be said; but it was to be considered that no Govt. was free from imperfections & evils; and that improper elections in many instances, were inseparable from Republican Govts. But compare these with the advantage of this Form in favor of the rights of the people, in favor of human nature. He was persuaded there was a better chance for proper elections by the people, if divided into large districts, than by the State Legislatures. Paper money had been issued by the latter when the former were against it. Was it to be supposed that the State Legislatures then wd. not send to the Natl. legislature patrons of such projects, if the choice depended on them.

332Mr. MADISON considered an election of one branch at least of the Legislature by the people immediately, as a clear principle of free Govt. and that this mode under proper regulations had the additional advantage of securing better representatives, as well as of avoiding too great an agency of the State Governments in the General one.

333He differed from the member from Connecticut (Mr. Sharman) in thinking the objects mentioned to be all the principal ones that required a National Govt. Those were certainly important and necessary objects; but he combined with them the necessity of providing more effectually for the security of private rights, and the steady dispensation of Justice. Interferences with these were evils which had more perhaps than any thing else, produced this convention. Was it to be supposed that republican liberty could long exist under the abuses of it practised in some of the States?

334The gentleman (Mr. Sharman) had admitted that in a very small State, faction & oppression wd. prevail. It was to be inferred then that wherever these prevailed the State was too small. Had they not prevailed in the largest as well as the smallest tho' less than in the smallest; and were we not thence admonished to enlarge the sphere as far as the nature of the Govt. would admit. This was the only defence agst. the inconveniencies of democracy consistent with the democratic form of Govt. All civilized Societies would be divided into different Sects, Factions, & interests, as they happened to consist of rich & poor, debtors & creditors, the landed, the manufacturing, the commercial interests, the inhabitants of this district or that district, the followers of this political leader or that political leader, the disciples of this religious Sect or that religious Sect. In all cases where a majority are united by a common interest or passion, the rights of the minority are in danger. What motives are to restrain them? A prudent regard to the maxim that honesty is the best policy is found by experience to be as little regarded by bodies of men as by individuals. Respect for character is always diminished in proportion to the number among whom the blame or praise is to be divided. Conscience, the only remaining tie, is known to be inadequate in individuals: In large numbers, little is to be expected from it. Besides, Religion itself may become a motive to persecution & oppression. -These observations are verified by the Histories of every Country antient & modern. In Greece & Rome the rich & poor, the creditors & debtors, as well as the patricians & plebians alternately oppressed each other with equal unmercifulness. What a source of oppression was the relation between the parent cities of Rome, Athens & Carthage, & their respective provinces: the former possessing the power, & the latter being sufficiently distinguished to be separate objects of it? Why was America so justly apprehensive of Parliamentary injustice? Because G. Britain had a separate interest real or supposed, & if her authority had been admitted, could have pursued that interest at our expence.¹

335We have seen the mere distinction of colour made in the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man. What has been the source of those unjust laws complained of among ourselves? Has it not been the real or supposed interest of the major

number? Debtors have defrauded their creditors. The landed interest has borne hard on the mercantile interest. The Holders of one species of property have thrown a disproportion of taxes on the holders of another species. The lesson we are to draw from the whole is that where a majority are united by a common sentiment, and have an opportunity, the rights of the minor party become insecure.¹

336 In a Republican Govt. the Majority if united have always an opportunity. The only remedy is to enlarge the sphere, & thereby divide the community into so great a number of interests & parties, that in the 1st. place a majority will not be likely at the same moment to have a common interest separate from that of the whole or of the minority; and in the 2d. place, that in case they shd. have such an interest, they may not be so apt to unite in the pursuit of it. It was incumbent on us then to try this remedy, and with that view to frame a republican system on such a scale & in such a form as will controul all the evils wch. have been experienced.¹

337 Mr. DICKENSON considered it essential that one branch of the Legislature shd. be drawn immediately from the people; and as expedient that the other shd. be chosen by the Legislatures of the States. This combination of the State Govts. with the national Govt. was as politic as it was unavoidable. In the formation of the Senate we ought to carry it through such a refining process as will assimilate it as near as may be to the House of Lords in England. He repeated his warm eulogiums on the British Constitution. He was for a strong National Govt. but for leaving the States a considerable agency in the System. The objection agst. making the former dependent on the latter might be obviated by giving to the Senate an authority permanent & irrevocable for three, five or seven years. Being thus independent they will check & decide with becoming freedom.

338 Mr. READ. Too much attachment is betrayed to the State Governrs. We must look beyond their continuance. A national Govt. must soon of necessity swallow them all up. They will soon be reduced to the mere office of electing the National Senate. He was agst. patching up the old federal System: he hoped the idea wd. be dismissed. It would be like putting new cloth on an old garment. The confederation was founded on temporary principles. It cannot last: it cannot be amended. If we do not establish a good Govt. on new principles, we must either go to ruin, or have the work to do over again. The people at large are wrongly suspected of being averse to a Genl. Govt. The aversion lies among interested men who possess their confidence.

339 Mr. PIERCE was for an election by the people as to the 1st. branch & by the States as to the 2d. branch; by which means the Citizens of the States wd. be represented both individually & collectively.

340 General PINKNEY wished to have a good National Govt. & at the same time to leave a considerable share of power in the States. An election of either branch by the people scattered as they are in many States, particularly in S. Carolina was totally impracticable. He differed from gentlemen who thought that a choice by the people wd. be a better guard agst. bad measures, than by the Legislatures. A majority of the people in S. Carolina were notoriously for paper money as a legal tender; the Legislature had refused to make it a legal tender. The reason was that the latter had some sense of character and were restrained by that consideration. The State Legislatures also he said would be more jealous, & more ready to thwart the National Govt., if excluded from a participation in it. The Idea of abolishing these Legislatures wd. never go down.

341 Mr. WILSON, would not have spoken again, but for what had fallen from Mr. Read; namely, that the idea of preserving the State Govts. ought to be abandoned. He saw no incompatibility between the National & State Govts. provided the latter were restrained to certain local purposes; nor any probability of their being devoured by the former. In all confederated Systems antient & modern the reverse had happened; the Generality being destroyed gradually by the usurpations of the parts composing it.

342 On the question for electing the 1st. branch by the State Legislatures as moved by Mr. Pinkney: it was negatived: Connecticut, New Jersey, South Carolina, aye-3; Massachusetts, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, no-8.

343 Mr. WILSON moved to reconsider the vote excluding the Judiciary from a share in the revision of the laws, and to add after "National Executive" the words "with a convenient number of the national

Judiciary"; remarking the expediency of reinforcing the Executive with the influence of that Department.

344Mr. MADISON 2ded. the motion. He observed that the great difficulty in rendering the Executive competent to its own defence arose from the nature of Republican Govt. which could not give to an individual citizen that settled pre-eminence in the eyes of the rest, that weight of property, that personal interest agst. betraying the national interest, which appertain to an hereditary magistrate. In a Republic personal merit alone could be the ground of political exaltation, but it would rarely happen that this merit would be so pre-eminent as to produce universal acquiescence. The Executive Magistrate would be envied & assailed by disappointed competitors: His firmness therefore wd. need support. He would not possess those great emoluments from his station, nor that permanent stake in the public interest which wd. place him out of the reach of foreign corruption: He would stand in need therefore of being controuled as well as supported. An association of the Judges in his revisionary function wd. both double the advantage and diminish the danger. It wd. also enable the Judiciary Department the better to defend itself agst. Legislative encroachments.

345Two objections had been made: 1st. that the Judges ought not to be subject to the bias which a participation in the making of laws might give in the exposition of them. 2dly. that the Judiciary Departmt. ought to be separate & distinct from the other great Departments. The 1st. objection had some weight; but it was much diminished by reflecting that a small proportion of the laws coming in question before a Judge wd. be such wherein he had been consulted; that a small part of this proportion wd. be so ambiguous as to leave room for his prepossessions; and that but a few cases wd. probably arise in the life of a Judge under such ambiguous passages. How much good on the other hand wd. proceed from the perspicuity, the conciseness, and the systematic character wch. the Code of laws wd. receive from the Judiciary talents. As to the 2d. objection, it either had no weight, or it applied with equal weight to the Executive & to the Judiciary revision of the laws. The maxim on which the objection was founded required a separation of the Executive as well as the Judiciary from the Legislature & from each other. There wd. in truth however be no improper mixture of these distinct powers in the present case. In England, whence the maxim itself had been drawn, the Executive had an absolute negative on the laws; and the supreme tribunal of Justice (the House of Lords) formed one of the other branches of the Legislature. In short whether the object of the revisionary power was to restrain the Legislature from encroaching on the other co-ordinate Departments, or on the rights of the people at large; or from passing laws unwise in their principle, or incorrect in their form, the utility of annexing the wisdom and weight of the Judiciary to the Executive seemed incontestable.¹

346Mr. GERRY thought the Executive, whilst standing alone wd. be more impartial than when he cd. be covered by the sanction & seduced by the sophistry of the Judges.

347Mr. KING. If the Unity of the Executive was preferred for the sake of responsibility, the policy of it is as applicable to the revisionary as to the Executive power.

348Mr. PINKNEY had been at first in favor of joining the heads of the principal departmts. the Secretary of War, of foreign affairs &-in the council of revision. He had however relinquished the idea from a consideration that these could be called on by the Executive Magistrate whenever he pleased to consult them. He was opposed to the introduction of the Judges into the business.

349Col. MASON was for giving all possible weight to the revisionary institution. The Executive power ought to be well secured agst. Legislative usurpations on it. The purse & the sword ought never to get into the same hands whether Legislative or Executive.¹

350Mr. DICKENSON. Secrecy, vigor & despatch are not the principal properties reqd. in the Executive. Important as these are, that of responsibility is more so, which can only be preserved; by leaving it singly to discharge its functions. He thought too a junction of the Judiciary to it, involved an improper mixture of powers.

351Mr. WILSON remarked, that the responsibility required belonged to his Executive duties. The revisionary duty was an extraneous one, calculated for collateral purposes.

352Mr. WILLIAMSON, was for substituting a clause requiring 2/3 for every effective act of the Legislature, in place of the revisionary provision.

353On the question for joining the Judges to the Executive in the revisionary business, Connecticut, New York, Virginia, aye- 3; Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia, no-8.

354Mr. PINKNEY gave notice that tomorrow he should move for the reconsideration of that clause in the sixth Resolution adopted by the Comme. which vests a negative in the National Legislature on the laws of the several States.

355The Come. rose & the House adjd.

356THURSDAY, JUNE 7

357IN COMMITTEE OF THE WHOLE

358Mr. PINKNEY according to notice moved to reconsider the clause respecting the negative on State laws, which was agreed to and tomorrow fixed for the purpose.

359The Clause providing for ye. appointment of the 2d. branch of the national Legislature, having lain blank since the last vote on the mode of electing it, to wit, by the 1st. branch, Mr. DICKENSON now moved "that the members of the 2d. branch ought to be chosen by the individual Legislatures."

360Mr. SHARMAN seconded the motion; observing that the particular States would thus become interested in supporting the national Governmt. and that a due harmony between the two Governments would be maintained. He admitted that the two ought to have separate and distinct jurisdictions, but that they ought to have a mutual interest in supporting each other.

361Mr. PINKNEY. If the small States should be allowed one Senator only, the number will be too great, there will be 80 at least.

362Mr. DICKENSON had two reasons for his motion. First because the sense of the States would be better collected through their Governments; than immediately from the people at large; secondly because he wished the Senate to consist of the most distinguished characters, distinguished for their rank in life and their weight of property, and bearing as strong a likeness to the British House of Lords as possible; and he thought such characters more likely to be selected by the State Legislatures, than in any other mode. The greatness of the number was no objection with him. He hoped there would be 80 and twice 80. of them. If their number should be small, the popular branch could not be balanced by them. The legislature of a numerous people ought to be a numerous body.

363Mr. WILLIAMSON, preferred a small number of Senators, but wished that each State should have at least one. He suggested 25 as a convenient number. The different modes of representation in the different branches, will serve as a mutual check.

364Mr. BUTLER was anxious to know the ratio of representation before he gave any opinion.

365Mr. WILSON. If we are to establish a national Government, that Government ought to flow from the people at large. If one branch of it should be chosen by the Legislatures, and the other by the people, the two branches will rest on different foundations, and dissensions will naturally arise between them. He wished the Senate to be elected by the people as well as the other branch, and the people might be divided into proper districts for the purpose & he moved to postpone the motion of Mr. Dickenson, in order to take up one of that import.

366Mr. MORRIS 2ded. him.

367Mr. READ proposed "that the Senate should be appointed by the Executive Magistrate out of a proper number of persons to be nominated by the individual legislatures." He said he thought it his duty, to speak his mind frankly. Gentlemen he hoped would not be alarmed at the idea. Nothing short of this approach towards a proper model of Government would answer the purpose, and he thought it best to come directly to the point at once. -His proposition was not seconded nor supported.

368Mr. MADISON, if the motion (of Mr. Dickenson) should be agreed to, we must either depart from the doctrine of proportional representation; or admit into the Senate a very large number of members. The first is inadmissible, being evidently unjust. The second is inexpedient. The use of the Senate is to consist in its proceeding with more coolness, with more system, & with more wisdom, than the popular branch. Enlarge their number and you communicate to them the vices which they are meant to correct.

369He differed from Mr. D. who thought that the additional number would give additional weight to the body. On the contrary it appeared to him that their weight would be in an inverse ratio to their numbers. The example of the Roman Tribunes was applicable. They lost their influence and power, in proportion as their number was augmented. The reason seemed to be obvious: They were appointed to take care of the popular interests & pretensions at Rome, because the people by reason of their numbers could not act in concert; and were liable to fall into factions among themselves, and to become a prey to their aristocratic adversaries. The more the representatives of the people therefore were multiplied, the more they partook of the infirmities of their constituents, the more liable they became to be divided among themselves either from their own indiscretions or the artifices of the opposite faction, and of course the less capable of fulfilling their trust. When the weight of a set of men depends merely on their personal characters; the greater the number the greater the weight. When it depends on the degree of political authority lodged in them the smaller the number the greater the weight. These considerations might perhaps be combined in the intended Senate; but the latter was the material one.

370Mr. GERRY. 4 modes of appointing the Senate have been mentioned. First by the 1st. branch of the National Legislature. This would create a dependence contrary to the end proposed. Secondly by the National Executive. This is a stride towards monarchy that few will think of. Thirdly by the people. The people have two great interests, the landed interest, and the commercial including the stockholders. To draw both branches from the people will leave no security to the latter interest; the people being chiefly composed of the landed interest, and erroneously supposing, that the other interests are adverse to it. Fourthly by the Individual Legislatures. The elections being carried thro' this refinement, will be most likely to provide some check in favor of the commercial interest agst. the landed; without which oppression will take place, and no free Govt. can last long where that is the case. He was therefore in favor of this last.

371Mr. DICKENSON.* The preservation of the States in a certain degree of agency is indispensable. It will produce that collision between the different authorities which should be wished for in order to check each other. To attempt to abolish the States altogether, would degrade the Councils of our Country, would be impracticable, would be ruinous. He compared the proposed National System to the Solar System, in which the States were the planets, and ought to be left to move freely in their proper orbits. The

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373* It will throw light on this discussion to remark that an election by the State Legislatures involved a surrender of the principle insisted on by the large State & dreaded by the small ones, namely that of a proportional representation is the Senate. Such a rule Wd. make the body too numerous, as the smallest State must elect one member at least.

374Gentleman from Pa. (Mr. Wilson) wished he said to extinguish these planets. If the State Governments were excluded from all agency in the national one, and all power drawn from the people at large, the consequence would be that the national Govt. would move in the same direction as the State Govts. now do, and would run into all the same mischiefs. The reform would only unite the 13 small streams into one great current pursuing the same course without any opposition whatever. He adhered to the opinion that the Senate ought to be composed of a large number, and that their influence from family weight & other causes would be increased thereby. He did not admit that the Tribunes lost their weight in proportion as their no. was augmented and gave a historical sketch of this institution. If the reasoning of (Mr. Madison) was good it would prove that the number of the Senate ought to be reduced below ten, the highest no. of the Tribunitial corps.

375Mr. WILSON. The subject it must be owned is surrounded with doubts and difficulties. But we must surmount them. The British Governmt. cannot be our model. We have no materials for a similar one. Our manners, our laws, the abolition of entails and of primogeniture, the whole genius of the people, are opposed to it.

376He did not see the danger of the States being devoured by the Nationl. Govt. On the contrary, he wished to keep them from devouring the national Govt. He was not however for extinguishing these planets as was supposed by Mr. D.-neither did he on the other hand, believe that they would warm or enlighten the Sun. Within their proper orbits they must still be suffered to act for subordinate purposes for which their existence is made essential by the great extent of our Country.

377He could not comprehend in what manner the landed interest wd. be rendered less predominant in the Senate, by an election through the medium of the Legislatures then by the people themselves. If the Legislatures, as was now complained, sacrificed the commercial to the landed interest, what reason was there to expect such a choice from them as would defeat their own views. He was for an election by the people in large districts which wd. be most likely to obtain men of intelligence & uprightness; subdividing the districts only for the accomodation of voters.

378Mr. MADISON could as little comprehend in what manner family weight, as desired by Mr. D. would be more certainly conveyed into the Senate through elections by the State Legislatures, than in some other modes. The true question was in what mode the best choice wd. be made? If an election by the people, or thro' any other channel than the State Legislatures promised as uncorrupt & impartial a preference of merit, there could surely be no necessity for an appointment by those Legislatures. Nor was it apparent that a more useful check would be derived thro' that channel than from the people thro' some other. The great evils complained of were that the State Legislatures run into schemes of paper money &c. whenever solicited by the people, & sometimes without even the sanction of the people. Their influence then, instead of checking a like propensity in the National Legislature, may be expected to promote it. Nothing can be more contradictory than to say that the Natl. Legislature witht. a proper check, will follow the example of the State Legislatures, & in the same breath, that the State Legislatures are the only proper check.

379Mr SHARMAN opposed elections by the people in districts, as not likely to produce such fit men as elections by the State Legislatures.

380Mr. GERRY insisted that the commercial & monied interest wd. be more secure in the hands of the State Legislatures, than of the people at large. The former have more sense of character, and will be restrained by that from injustice. The people are for paper money when the Legislatures are agst. it. In Massts. the County Conventions had declared a wish for a depreciating paper that wd. sink itself. Besides, in some States there are two Branches in the Legislature, one of which is somewhat aristocratic. There wd. therefore be so far a better chance of refinement in the choice. There seemed, he thought to be three powerful objections agst. elections by districts. First it is impracticable; the people cannot be brought to one place for the purpose; and whether brought to the same place or not, numberless frauds wd. be unavoidable. Secondly, small States forming part of the same district with a large one, or a large part of a large one, wd. have no chance of gaining an appointment for its citizens of merit. Thirdly, a new source of discord wd. be opened between different parts of the same district.

381Mr. PINKNEY thought the 2d. branch ought to be permanent & independent, & that the members of it wd. be rendered more so by receiving their appointments from the State Legislatures. This mode wd. avoid the rivalships & discontents incident to the election by districts. He was for dividing the States into three classes according to their respective sizes, & for allowing to the 1st. class three members-to the 2d. two, & to the 3d. one.

382On the question for postponing Mr. Dickinson's motion referring the appointment of the Senate to the State Legislatures, in order to consider Mr. Wilson's for referring it to the people: Pennsylvania, aye-1; Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no-10.

383Col. MASON. whatever power may be necessary for the Natl. Govt. a certain portion must

necessarily be left with the States. It is impossible for one power to pervade the extreme parts of the U.S. so as to carry equal justice to them. The State Legislatures also ought to have some means of defending themselves agst. encroachments of the Natl. Govt. In every other department we have studiously endeavored to provide for its self-defence. Shall we leave the States alone unprovided with the means for this purpose? And what better means can we provide than the giving them some share in, or rather to make them a constituent part of, the Natl. Establishment. There is danger on both sides no doubt; but we have only seen the evils arising on the side of the State Govts. Those on the other side remain to be displayed. The example of Congs. does not apply. Congs. had no power to carry their acts into execution as the Natl. Govt. will have.

384 On Mr. DICKINSON's motion for an appointment of the Senate by the State- Legislatures. Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye-10.

385 Mr. GERRY gave notice that he wd. tomorrow move for a reconsideration of the mode of appointing the Natl. Executive in order to substitute an appointmt. by the State Executives

386 The Committee rose & The House adjd.