

323 WEDNESDAY, JUNE 6

324 IN COMMITTEE OF THE WHOLE

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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.

344 Mr. MADISON 2^ded. 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.

345 Two 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. 2^{dly}. 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 2^d. 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

346 Mr. 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.

347 Mr. 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.

348 Mr. 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 $\frac{2}{3}$ 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.