

TUESDAY, MAY 29, 1787.

JOURNAL

Tuesday May 29, 1787.

Mr Wythe reported, from the Committee to whom the motions made by Mr Butler and Mr Spaight were referred, that the Committee had examined the matters of the said motions, and had come to the following resolution thereupon,

resolved that it is the opinion of this Committee that provision be made for the purposes mentioned in the said motions — and to that end.

The Committee beg leave to propose that the rules written under their resolution be added to the standing orders of the House.

And the said rules were once read throughout and then a second time, one by one; and, on the question severally put thereupon, were, with amendments to some of them, agreed to by the House which rules so agreed to are as follow.

rules.

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

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

That no copy be taken of any entry on the journal during the sitting of the House without the leave of the House.¹

That members only be permitted to inspect the journal.

That nothing spoken in the House be printed, or otherwise published, or communicated without leave.²

¹ See Appendix A, CXC.

² On secrecy of Convention proceedings see Appendix A, XXIII-CXVIII *passim*, CLVIII (3), CCLXX, CCCLXVII. That this was not always strictly observed, see Appendix A, XLVI, LVI, LXXVI, CVI.

Tuesday

JOURNAL

May 29

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

Resolved that the said rules be added to the standing orders of the House.

The honorable John Dickinson Esq a Deputy of the State of Delaware — and the honorable Elbridge Gerry Esquire, a Deputy from the State of Massachusetts, attended and took their seats.

Mr Randolph, one of the Deputies of Virginia, laid before the House, for their consideration, sundry propositions, in writing, concerning the american confederation, and the establishment of a national government ³

Resolved that the House will to-morrow resolve itself into a Committee of the whole House to consider of the state of the American Union.

Ordered that the propositions this day laid before the House, for their consideration, by Mr Randolph be referred to the said Committee.

Mr Charles Pinckney, one of the Deputies of South Carolina, laid before the House for their consideration, the draught of a foederal government to be agreed upon between the free and independent States of America.⁴

Ordered that the said draught be referred to the Committee of the whole House appointed to consider of the state of the american Union

And then the House adjourned till to-morrow morning at 10 o'clock

³ The papers of Secretary Jackson do not include a copy of the Randolph Resolutions. That which was printed in the *Journal* was taken from the papers of David Brearley. See Appendix A, CCCXXV, CCCXXVI, CCCXXVIII.

⁴ For the Pinckney Plan, see Appendix D.

Tuesday

MADISON

May 29

MADISON

Tuesday May 29

(John Dickenson, and Elbridge Gerry, the former from Delaware, the latter from Massts. took their seats,⁵ The following rules were added, on the report of Mr. Wythe, from the Committee

Additional rules.⁵

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

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

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

That members only be permitted to inspect the journal.

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

That a motion to reconsider a matter which had been determined by a majority, may be made, with leave unani- mously 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 the purpose.)

Mr. C. Pinckney moved that a Committee be appointed to superintend the minutes.

Mr. 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

The motion was negatived 5 noes 4 ays.⁶

⁵ Copied from *Journal*.

⁶ Madison tried two other ways of expressing the result of this vote. This uncertainty as to the best form of expression may indicate that it was the first vote recorded: See below *Records* of May 30, note 6.

Upon the method of voting in the Convention, see Appendix A, CCXCV, CCCXXVIII, CCCLXXVI.

Tuesday

MADISON

May 29

Mr. Randolph (then) opened the main business ⁷ He 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.⁸

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 1. into the properties, which such a government ought to possess, 2. the defects of the confederation, 3. the danger of our situation & 4. the remedy.

1. The character of such a governme[nt] ought to secure 1. against foreign invasion: 2. against dissentions between members of the Union, or seditions in particular states: 3. to p[ro]cure to the several States various blessings, of which an isolated situation was i[n]capable: 4. to be able to defend itself against incroachment: & 5. to be paramount to the state constitutions.

2. 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

⁷ Madison originally had written: "in a long speech in which he pointed out the various defects of the federal system, the necessity of transforming it into a national efficient Government, and the extreme danger of delaying this great work, concluding with sundry propositions as the outlines of a proper form." This was struck out, and there is written: "(here insert his speech including his resolutions.)"

The speech which follows is in Randolph's hand, see Madison's note at the end of the speech, and Appendix A, CCXLVII. There are slight mutilations in the MS.

⁸ Upon the formation of the Virginia Plan and the choice of Randolph to present it, see Appendix A, XV, XVI, XXXII, CCCVIII, CCCLVI, CCCLXXXVIII, CCCXCII, CCCXCIII, CCCXCVII, CCCCI.

Tuesday

MADISON

May 29

had not been violated — and perhaps nothing better could be obtained from the jealousy of the states with regard to their sovereignty.

He then proceeded to enumerate the defects: 1. that the confederation produced no security agai[nst] foreign invasion; congress not being permitted to prevent a war nor to support it by th[eir] own authority — Of this he cited many examples; most of whi[ch] 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, enlistments only could be successful, and these could not be executed without money.

2. 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:

3. 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,

4. that the foederal government could not defend itself against the incroachments from the states:

5. that it was not even paramount to the state constitutions, ratified as it was in may of the states.

3. He next reviewed the danger of our situation 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.

4. He then proceeded to the remedy; the basis of which he said, must be the republican principle

He proposed as conformable to his ideas the following resolutions,⁹ which he explained one by one.

⁹ See Appendix A, CCV, CCXCII.

Tuesday

MADISON

May 29

Resolutions¹⁰ proposed by Mr Randolph in Convention.

May 29. 1787.

1. 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."¹¹

2. Resd. therefore that the rights of suffrage in the National¹² 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.

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

4. 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 public service; to be ineligible to any office established by a particular State, or under the authority of the United States, except those beculiarly 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 re-election for the space of after the expiration of their term of service, and to be subject to recall.

5. 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 independency, to receive liberal stipends, by which they may be compensated for the devotion of their time to public service;

¹⁰ For a discussion of the correct text of the Randolph Resolutions or the Virginia Plan, see Appendix C.

¹¹ On terms "common defence . . . and general welfare," see Appendix A, CCCLXXII.

¹² On the term "National" see Appendix A, CCCLVI, CCCLVII, CCCLXXXVIII, CCCXCII, also debates of June 19-20.

Tuesday

MADISON

May 29

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.

6. 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; and to call forth the force of the Union agst. any member of the Union failing to fulfill its duty under the articles thereof.

7. Resd. that a National Executive be instituted; to be chosen by the National Legislature for the term of years, to receive punctually at stated times, a fixed compensation for the services rendered, in which no increase or 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.

8. 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.

9. 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

Tuesday

MADISON

May 29

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 dernière 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.

10. 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.

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

12. 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.

13. 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.

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

15. 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.

Tuesday

YATES

May 29

He 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.*

(It¹³ was then Resolved &c — &c — That the House will to-morrow 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.

Mr. 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.¹⁴— Mr. P. plan ordered that the same be referred to the Committee of the whole appointed to consider the State of the American Union.

adjourned.)¹⁵

* This abstract of the Speech was furnished to J. M. by Mr. Randolph and is in his hand writing. As a report of it from him, had been relied, on, it was omitted by J. M.¹⁶

[May]¹⁷ 29. — (pages 10 to 38.) two additional members take their seats — other rules added on report of Mr W. Mr Randolph on the part of the Virginia delegation opened the main business, enumerating defects of the confederation & proposed his resolutions which were referred to a Comee of the whole—copy of C. Pinkneys resolutions (journal) & note &c on them by J. M.— resolutions referred to same Comee

Y A T E S

TUESDAY, MAY 29th, 1787.

The additional rules agreed tó.

His excellency Governor Randolph, a member from Virginia, got up, and in a long and elaborate speech, shewed the defects in the system of the present federal government as

¹³ The remainder of Madison's records for this day were copied from *Journal*.

¹⁴ For the Pinckney Plan see Appendix D.

¹⁵ See further Appendix A, XXVII-XXIX.

¹⁶ The resolutions are in Madison's handwriting.

¹⁷ Memoranda by Madison, see May 25, note 13.

Tuesday

McHENRY

May 29

totally inadequate to the peace, safety and security of the confederation, and the absolute necessity of a more energetic government.

He closed these remarks with a set of resolutions, fifteen in number, which he proposed to the convention for their adoption, and as leading principles whereon to form a new government—He candidly confessed that they were not intended for a federal government—he meant a strong *consolidated* union, in which the idea of states should be nearly annihilated. (I have taken a copy of these resolutions, which are hereunto annexed.)¹⁸

He then moved that they should be taken up in committee of the whole house.

Mr. C. Pinkney, a member from South-Carolina, then added, that he had reduced his ideas of a new government to a system, which he read, and confessed that it was grounded on the same principle as of the above resolutions.

The house then resolved, that they would the next day form themselves into a committee of the whole, to take into consideration *the state of the union*.

Adjourned to next day.

McHENRY

29.

Governor Randolph opened the business of the convention.^{18a} He observed that the confederation fulfilled *none* of the objects for which it was framed. 1st. It does not provide against foreign invasions. 2dly. It does not secure harmony to the States. 3d. It is incapable of producing certain blessings to the States. 4 It cannot defend itself against encroachments. 5th. It is not superior to State constitutions.

1st *It does not provide against foreign invasion*. If a State acts against a foreign power contrary to the laws of nations or violates a treaty, it cannot punish that State, or compel

¹⁸ "The several papers referred to did not accompany his notes." See *Records* of July 5, note 18.

^{18a} See Appendix A, CXLVI a.

Tuesday

McHENRY

May 29

its obedience to the treaty. It can only leave the offending State to the operations of the offended power. It therefore cannot prevent a war. If the rights of an ambassador be invaded by any citizen it is only in a few States that any laws exist to punish the offender. A State may encroach on foreign possessions in its neighbourhood and Congress cannot prevent it. Disputes that respect naturalization cannot be adjusted. None of the judges in the several States under the obligation of an oath to support the confederation, in which view this writing will be made to yield to State constitutions.

Imbecility of the Confederation equally conspicuous when called upon to support a war. The journals of Congress a history of expedients. The States in arrears to the federal treasury from the

to the

What reason to expect that the treasury will be better filled in future, or that money can be obtained under the present powers of Congress to support a war. *Volunteers* not to be depended on for such a purpose. *Militia* difficult to be collected and almost impossible to be kept in the field. *Draughts* stretch the strings of government too violently to be adopted. Nothing short of a regular military force will answer the end of war, and this only to be created and supported by money.

2. *It does not secure harmony to the States.*

It cannot preserve the particular States against seditions within themselves or combinations against each other. What laws in the confederation authorise Congress to intrude troops into a State. What authority to determine which of the citizens of a State is in the right, The supporters or the opposers of the government, Those who wish to change it, or they who wish to preserve it.

No provision to prevent the States breaking out into war. One State may as it were underbid another by duties, and thus keep up a State of war.

3 *Incapable to produce certain blessings.*

The benefits of which we are *singly incapable* cannot be produced by the union. The 5 per cent impost not agreed; a blessing congress ought to be enabled to obtain.

Tuesday

McHENRY

May 29

Congress ought to possess a power to prevent emissions of bills of credit.

Under this head may be considered the establishment of great national works — the improvement of inland navigation — agriculture — manufactures — a freer intercourse among the citizens.

4 *It cannot defend itself against incroachments.* Not an animated existence which has not the powers of defence. Not a political existence which ought not to possess it. In every Congress there has been a party opposed to federal measures? In every State assembly there has been a party opposed to federal measures. The States have been therefore delinquent. To What expedient can congress resort, to compel delinquent States to do what is right. If force, this force must be drawn from the States, and the States may or may not furnish it.

5 *Inferior to State constitutions.*

State constitutions formed at an early period of the war, and by persons *elected by the people* for that purpose. These in general with one or two exceptions established about 1786. The *confederation* was formed long after this, and had its ratification not by any *special appointment* from the people, but from the several assemblies. No judge will say that the *confederation* is paramount to a State constitution.

Thus we see that the confederation is incompetent to any *one* object for which it was instituted. The framers of it wise and great men; but human rights were the chief knowledge of the times when it was framed so far as they applied to oppose Great Britain. Requisitions for men and money had never offered their form to our assemblies. None of those vices that have since discovered themselves were apprehended. Its defects therefore no reflexion on its contrivers.

Having pointed out its defects, let us not be affraid to view with a steady eye the perils with which we are surrounded. Look at the public countenance from New Hampshire to Georgia. Are we not on the eve of war, which is only prevented by the hopes from this convention.

Our chief danger arises from the democratic parts of our constitutions. It is a maxim which I hold incontrovertible,

Tuesday

PATERSON

May 29

that the powers of government exercised by the people swallows up the other branches. None of the constitutions have provided sufficient checks against the democracy. The feeble Senate of Virginia is a phantom. Maryland has a more powerful senate, but the late distractions in that State, have discovered that it is not powerful enough. The check established in the constitution of New York and Massachusetts is yet a stronger barrier against democracy, but they all seem insufficient.

He then submitted the following propositions which he read and commented upon seriatim. . . .¹⁹

The convention resolved that on to-morrow, the convention resolve itself into a committee of the whole.

to take into consideration the state of the american union.

It was observed by Mr. Hamilton before adjourning that it struck him as a necessary and preliminary inquiry to the propositions from Virginia whether the united States were susceptible of one government, or required a separate existence connected only by leagues offensive and defensive and treaties of commerce.

PATERSON

Govr. Randolph —

Propositions founded upon republican Principles.²⁰

1. The Articles of the Confdn. should be so enlarged and corrected as to answer the Purposes of the Instn.

2. That the Rights of Suffrage shall be ascertained by the Quantum of Property or Number of Souls — This the Basis upon which the larger States can assent to any Reform.

Objn. — Sovereignty is an integral Thing — We ought to be one Nation —

3. That the national Legr. should consist of two Branches—

4. That the Members of the first Branch should be elected

¹⁹ In all essential particulars McHenry's copy of the Virginia Plan is identical with that of Madison. It is accordingly omitted here. For further discussion of the correct text of the Virginia Plan, see Appendix C.

²⁰ Among the Paterson MSS. there is a copy of the Virginia Plan, which does not differ from the Madison copy sufficiently to warrant reprinting here, see Appendix C.

Tuesday

PATERSON

May 29

by the People, etc. This the democrattick Branch — Perhaps, if inconvenient, may be elected by the several Legrs. —

5. Members of the 2d. Branch to be elected out of the first — to continue for a certain Length of Time, etc. To be elected by Electors appointed for that Purpose —

6. The Powers to be vested in the national Legr. — A negative upon particular acts, etc. contravening the Articles of the Union — Force —

7. A national Executive to be elected by the national Legr.

Checks upon the Legv. and Ex. Powers—

1. A Council of Revision to be selected out of the ex. and judy. Departments, etc.

2. A natl Judiciary to be elected by the natl. Legr. — To consist of an inferior and superior Tribunal — To determine Piracies, Captures, Disputes between Foreigners and Citizens, and the Citizen of one State and that of another, Revenue-matters, national Officers —

1. Provision for future States —

2. A Guary. by the United States to each State of its Territory, etc.

3. Continuation of Congress till a given Day.

4. Provision, that the Articles of national Union should be amended —

5. That the leg. ex. and judy. Officers should be bound by Oath to observe the Union.

6. That Members be elected by the People of the several States to ratify the Articles of national Union —