

MONDAY, JUNE 4, 1787.

JOURNAL

Monday June 4th 1787.

The Order of the day being read

The House resolved itself into a Committee of the whole House to consider of the state of the american Union.

Mr President left the Chair

Mr Gorham took the Chair of the Committee.

Mr President resumed the Chair

Mr Gorham reported from the Committee that the Committee had made a further progress in the matter to them referred; and had directed him to move that they may have leave to sit again.

Resolved that this House will to-morrow again resolve itself into a Committee of the whole House to consider of the state of the american union.

And then the House adjourned till to-morrow at 11 o'clock a. m.

In a Committee of the whole House

Monday June 4. 1787.

Mr Gorham in the Chair

It was moved and seconded to proceed to the farther consider of the propositions submitted to the Committee by Mr Randolph — when

On motion of Mr C. Pinckney seconded by Mr Wilson to fill up the blank after the words “that a national executive be instituted to consist of” with the words “a single person”

On the question to fill up the blank with the words “a single person”

it passed in the affirmative. [Ayes — 7; noes — 3.]¹

It was then moved and seconded to take into consideration the first clause of the eighth resolution, submitted by Mr Randolph. namely

¹ Vote 17, Detail of Ayes and Noes.

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“Resolved that the national executive and a convenient number of the national judiciary ought to compose a Council of revision”

It was then moved and seconded to postpone the consideration of the said clause in order to introduce the following resolution submitted by Mr Gerry namely

“resolved that the national Executive shall have a right to negative any legislative act, which shall not be afterwards passed unless by parts of each branch of the national legislature.”

and on the question to postpone

it passed in the affirmative [Ayes — 6; noes — 4.]²

It was then moved by Mr Wilson seconded by Mr Hamilton to strike out the words

“shall not be afterwards passed but but by parts of each branch of the national legislature.”

and on the question to strike out the words

it passed unan: in the negative³

It was then moved by Mr Butler seconded by Dr Franklin that the resolution be altered so as to read

“resolved that the national executive have a power to suspend any legislative act for

and on the question to agree to the alteration

it passed unan: in the negative.⁴

A question was then taken on the resolution submitted by Mr Gerry⁵ namely

“resolved that the national executive shall have a right to negative any legislative act which shall not be afterwards passed unless by two third parts of each branch of the national legislature”

And on the question to agree to the same

it passed in the affirmative [Ayes — 8; noes — 2.]⁶

It was then moved by Mr Wilson seconded by Mr Madison

² Vote 18, Detail of Ayes and Noes.

³ Vote 19, Detail of Ayes and Noes.

⁴ Vote 20, Detail of Ayes and Noes.

⁵ A preliminary question is omitted, see Madison and Yates.

⁶ Vote 21, Detail of Ayes and Noes, where there is an evident mistake in the summary of the vote.

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Monday June 4. In Committee of the whole

(The) Question (was) resumed (on motion of Mr. Pinkney 2ded. by Wilson) "shall the blank for the number of the Executive be filled with (<"a single) person"?⁷

Mr. 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 was 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 Governmt. 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 the 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.

⁷ Revised from *Journal*.

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Mr. 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 a 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.

Mr. Williamson asks Mr. Wilson whether he means to annex a Council

Mr. Wilson means (to have) no Council, which oftener serves to cover, than prevent malpractices.

Mr 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.⁸

On the question for a single Executive (it was agreed to) Massts. ay. Cont. ay. N. Y. no. Pena. ay. Del. no. Maryd. no. Virg. ay. (Mr. R & Mr. Blair no—Docr. Mc.Cg. Mr. M. & Gen W. ay. Col. Mason being no, but not in house, Mr. Wythe ay but gone home). N. C. ay. S. C. ay. Georga. ay. [Ayes — 7; noes — 3.]

(First) Clause (of Proposition 8th) relating to a Council of Revision taken into con-consideration.

Mr. 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

⁸ See further Appendix A, CCXXVII.

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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."⁹

Mr. 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.

Mr. Wilson thinks neither the original proposition nor the amendments go far enough. If the Legislative Exētiv & Judiciary ought to be distinct & independent, The Executive ought to have an absolute negative. Without such a Self-defence 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

On the question to postpone in order to take Mr. Gerry's proposition into consideration (it was agreed to) Massts. ay. Cont. no. N. Y. ay. Pa. ay. Del. no. Maryd. no. Virga. no. N. C. ay. S. C. ay. Ga. ay. [Ayes — 6; noes — 4.]

Mr. Gerry's proposition being now before Committee, Mr. Wilson & Mr. Hamilton move that the last part of it ((viz wch. sl. not be afterwds. passed" unless by parts of each branch of the National legislature))¹⁰ 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.)¹¹

Mr. 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.

Docr. Franklin, said he was sorry to differ from his col-

⁹ Revised from *Journal*.

¹⁰ Taken from *Journal*.

¹¹ In place of "(by Col. Hamilton)" Madison first wrote "by one of them". The only source for this interpolation would seem to be King's notes which were probably known to Madison.

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league 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, everything 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 gotten to influence & bribe the Legislature into a compleat subjection to the will of the Executive.

Mr. 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 overrule the decided and cool opinions of the Legislature.

(Mr.)M(adison) 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'

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to resist the Legislature, unless backed by a certain part of the body itself.¹² 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.)

Mr. 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 animosties may run high between the Executive and Legislative branches, and in which the former ought to be able to defend itself.

Mr. 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.

Mr. Bedford was opposed to every check on the Legislative, 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

¹² Crossed out "or actuated by some foreign support agst. his own Country."

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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.)

Col. Mason¹³ 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. We 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 Government. and to the scenes of confusion which may ensue. He

¹³ For Mason's own copy of this speech see below.

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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.

Docr. Franklin.¹⁴ A Gentleman from S. C. (Mr. Butler)

¹⁴The following is evidently Franklin's own draft of this speech:

The Steady Course of public Measures is most probably to be expected from a Number.

A single Person's Measures may be good. The Successor, often differs in Opinion of those Measures, & adopts others. Often is ambitious of distinguishing himself, by opposing them, and offering new Projects. One is peaceably dispos'd. Another may be food of War, &c: Hence foreign States can never have that Confidence, in the Treaties or Friendship of such a Government as in that which is conducted by a Number.

The Single Head may be Sick. Who is to conduct the Public Affairs in that Case? When he dies, who are to conduct, till a new Election? — If a Council why not continue them? — Shall we not be harass'd with Factions for the Election of Successors? become like Poland, weak from our Dissensions?

Consider the present distracted Condition of Holland. They had at first a Stadtholder, the Prince of Orange, a Man of undoubted and great Merit. They found some Inconveniencies however in the Extent of Powers annex'd to that Office, and exercis'd by a single Person. On his Death They resum'd and divided those Powers among the States and Cities. But there has been a constant Struggle since between that Family & the Nation. In the last Century the then Prince of Orange found Means to inflame the Populace against their Magistrates, excite a general Insurrection in which an excellent Minister, *Dewit*, was murdered, all the old Magistrates displac'd, and the Stadtholder re-invested with all the former Powers. In this Century, the Father of the present Stadtholder, having married a British Princess, did, by exciting another Insurrection, force from the Nation a Decree that the Stadtholdership should be thenceforth hereditary in his Family. And now his Son, being suspected of having favour'd England in the late War, and thereby lost the Confidence of the Nation, he is forming an internal Faction to support his Power, & reinstate his Favourite the Duke of Brunswick; and he holds up his Family Alliances with England and Prussia to terrify Opposition. It was this Conduct of the Stadtholder which induc'd the States to recur to the Protection of France, and put their Troops under a French rather than the Stadtholder's German General the Duke of Brunswick. And this is the Source of all the present Disorders in Holland, which if the Stadtholder

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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 & to 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

On the question for striking out so as to give Executive an absolute Negative —

Massts. no. Cont. no. N. Y. no. Pa. no. Dl. no. Md. no. Va. no. N. C. no. S. C. no. Georga. no. [Ayes — 0; noes — 10.]¹⁵

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 .”)¹⁶

Doctr. Franklin seconds the motion.

has Abilities equal to his Inclinations, will probably after a ruinous & bloody civil War, end in establishing an hereditary Monarchy in his Family.

[In Franklin's Works (Sparks edition, V, 142, Smyth edition, IX, 603-4) these notes are mistakenly attached to a proposal by Franklin on June 30.]

¹⁵ Cf. King's record of this vote.

¹⁶ Madison originally had this motion in substance, but revised it from *Journal*.

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Mr. Gerry observed that a 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.

On question "for giving this suspending power". all the States, to wit Massts. Cont. N. Y. Pa. Del. Maryland. Virga. N. C. S. C. Georgia. were *no*.

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.)¹⁷

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 $\frac{2}{3}$ of each branch.)¹⁸ Massts. ay. Cont. no. N. Y. ay. Pena. ay. Del. ay. Maryland. no. Va. ay N. C. ay. S. C. ay. Geo. ay. [Ayes—8; noes—2.]¹⁹

(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."²⁰

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. — whereupon Wednesday (the day after) was assigned to reconsider the amendment of Mr. Gerry.

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 and 2ded. to add these words to the first clause of the ninth resolution namely — "to consist of one

¹⁷ Probably based upon Yates.

¹⁸ Corrected from *Journal*.

¹⁹ See Appendix A, XLI, CXXXVII, CLVIII (47).

²⁰ Originally Madison had only recorded "Clause. — 'That a national Judiciary be established' passed nem. con." This was crossed out and the rest of this day's records copied from *Journal*. See below, note 25.

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YATES

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supreme tribunal, and of one or more inferior tribunals". which passed in the affirmative —

The Comme. then rose and the House
Adjourned.)

Y A T E S

MONDAY, JUNE 4th, 1787.

Met pursuant to adjournment.

Mr. Pinkney moved that the blank in the 7th resolve *consisting of* be filled up with an individual.

Mr. Wilson, in support of the motion, asserted, that it would not be obnoxious to the minds of the people, as they in their state governments were accustomed and reconciled to a single executive. Three executives might divide so that two could not agree in one proposition — the consequence would be anarchy and confusion.

Mr. Sherman thought there ought to be one executive, but that he ought to have a council. Even the king of Great Britain has his privy council.

Mr. Gerry was for one executive — if otherwise, it would be absurd to have it consist of three. Numbers equally in rank would oddly apply to a general or admiral.

Question put — 7 states for, and 3 against. New-York against it.

The 8th resolve, That the executive and a number of the judicial officers ought to compose a council of revision.

Mr. Gerry objects to the clause — moves its postponement in order to let in a motion — *that the right of revision should be in the executive only.*

Mr. Wilson contends that the executive and judicial ought to have a joint and full negative — they cannot otherwise preserve their importance against the legislature.

Mr. King was against the interference of the judicial — they may be biased in the interpretation — He is therefore to give the executive a complete *negative.*

Carried to be postponed, 6 states against 4 — New-York for it.

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The next question, that the executive have a complete negative; and it was therefore moved to expunge the remaining part of the clause.

Dr. Franklin against the motion — the power dangerous, and would be abused so as to get money for passing bills.

Mr. Madison against it — because of the difficulty of an executive venturing on the exercise of this negative, and is therefore of opinion that the revisional authority is better.

Mr. Bedford is against the whole, either negative or revisional — the two branches are sufficient checks on each other — no danger of subverting the executive, because his powers may by the convention be so well defined that the legislature cannot overleap the bounds.

Mr. Mason against the negative power in the executive, because it will not accord with the genius of the people.

On this the question was put and carried, *nem. con.* against expunging part of the clause so as to establish a complete negative.

Mr. Butler then moved that all acts passed by the legislature be suspended for the space of _____ days by the executive.

Unanimously in the negative.

It was resolved and agreed, that the blank be filled up with the words *two thirds of the legislature*. Agreed to.

The question was then put on the whole of the resolve as amended and filled up. Carried, 8 states for — 2 against. New-York for it.

Mr. Wilson then moved for the addition of *a convenient number of the national judicial* to the executive as a council of revision. Ordered to be taken into consideration to-morrow.

Adjourned until to-morrow.

KING

4 June Comee. of y Whole

On the Question of vesting the executive powers in one or more persons — it was carried for the former

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KING

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Mas. Cont. NYk. Pen. Virg. NC. SC. Geor. Ay
N Jer. Del. Mar. No.²¹

Motion by Mr Gerry & Mr Kg to postpone the article for a Council of Revision and adopt one vesting a qualified negative in the Executive —

8 ays 2 no — Cont. & Mard.²²

Wilson moves & Hamilton seconds him that the Executive shd. have a complete and full negative — the former is in favor because the natural operation of the Legislature will be to swallow up the Executive — power divided is the object of Contest — the strongest will finally acquire the whole — Butler agt. it — it will terminate in a King — Franklin agt. it — one former Govr. abused his power of negative and extorted Money from the Legislature before he wd. sign yr. Acts. — in one instance of an indian Invasion, he wd. not agree to an act for marching the Militia agt. the Indians unless the Estate of the Proprietors was exempted from Taxes for the support of the Militia —

We ought not to believe that one man Can possess more wisdom than both br's. of the Legislature — The Negative of the King of G. B. has not been exercised since the Revolution — he effects that by Corruption wh. he might with hazard accomplish by his negative —

Mad: I am opposed to the complete negative, because no man will dare exercise it whn. the law was passed almost unanimously. I doubt whether the Kng of Eng. wd. have firmness sufficient to do it.

Mason. opposed to the Complete negative, We have voted that the Ex. powers be vested in one person, we now propose to give that single person a negative in all Cases. You have agreed that he shall appoint all Officers not otherwise to be appointed — and those which he has not the sole right of appointing, he has a power to negative — with these powers the executive may soon currupt the Legislature & we shall

²¹ Journal, Madison and Yates omit New Jersey and make New York's vote "no".

²² Journal, Madison and Yates, all give this vote: Ayes — 6, Noes — 4.

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have a monarchy & we must consult the Genius of our People wh. is republican — this Genius will not receive a King —

Franklin

The Pr. of Orange first had limited powers and for life — his son raised a faction and caused himself to be elected by force — in the present Century the Pr. of Orange caused himself to be declared hereditary & — we shall meet with the same misfortune —

Wil }
Ham } ay
Kg }

Unanimous negative

Mad. The Judicial ought to be introduced in the business of Legislation — they will protect their Department, and uniting wh. the Executive render their Check or negative more respectable — there is weight in the objections agt. this measure — but a Check is necessary experience proves it, and teaches us that what we once thought the Calumny of the Enemies of Republican Govts. is undoubtedly true — There is diversity of Interest in every Country the Rich & poor, the Dr. & Cr. the followers of different Demagogues, the diversity of religious Sects — The Effects of these parties are obvious in the ant'. Govts. — the same causes will operate with us —

We must introduce the Checks, which will destroy the measures of an interested majority — in this view a negative in the Ex: is not only necessary for its own safety, but for the safety of a minority in Danger of oppression from an unjust and interested majority — The independent condition of the Ex. who has the Eyes of all Nations on him will render him a just Judge — add the Judiciary and you increase the respectability —

Wilson moves the addition of the Judiciary — Madison seconds —

Dickerson — agt. it — you must separate the Leg. Jud. & Ex. — but you propose to give the Executive a share in Legislation — why not the Judicial —

There is a Difference — the Judges must interpret the Laws they ought not to be legislators. The Executive is merely

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PIERCE

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ministerial — besides we have Experience in the British Constitution of the Executive's having a negative —

The motion was waved — ²³

PIERCE.

Mr. Wilson said that all the Constitutions of America from New Hampshire to Georgia have their Executive in a single Person. A single Person will produce vigor and activity. Suppose the Executive to be in the hands of a number they will probably be divided in opinion.

It was proposed that the Judicial should be joined with the Executive to revise the Laws.

Mr. King was of opinion that the Judicial ought not to join in the negative of a Law, because the Judges will have the expounding of those Laws when they come before them; and they will no doubt stop the operation of such as shall appear repugnant to the constitution.

Dr. Franklin thinks it would be improper to put it in the power of any Man to negative a Law passed by the Legislature because it would give him the controul of the Legislature; and mentioned the influence of the British King, and the influence which a Governor of Pennsylvania once had in arresting (for the consideration of an encrease of salary) the power out of the hands of the Legislature.

Mr. Maddison was of opinion that no Man would be so daring as to place a veto on a Law that had passed with the assent of the Legislature ²⁴

Mr. Butler observed that power was always encreasing on the part of the Executive. When he voted for a single Person to hold the Executive power he did it that Government be expeditiously executed, and not that it should be clogged.

Mr. Bedford was of opinion that no check was necessary on a Legislature composed as the national Legislature would be, with two branches, — an upper and a lower House.

Mr. Mason was of opinion that it would be so dangerous

²³ [Endorsed:] 4 June | Complete Neg. of the Extive | addn. of judiciary

²⁴ See Appendix A, CCCLXXIII.

Monday

MASON

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for the Executive in a single Person to negative a Law that the People will not accept of it. He asked if Gentlemen had ever reflected on that awful period of time between the passing and final adoption of this constitution; — what alarm might possibly take place in the public mind.

Mr. Maddison in a very able and ingenious Speech,²⁵ ran through the whole Scheme of the Government, — pointed out all the beauties and defects of ancient Republics; compared their situation with ours wherever it appeared to bear any analogy, and proved that the only way to make a Government answer all the end of its institution was to collect the wisdom of its several parts in aid of each other whenever it was necessary. Hence the propriety of incorporating the Judicial with the Executive in the revision of the Laws. He was of opinion that by joining the Judges with the Supreme Executive Magistrate would be strictly proper, and would by no means interfere with that independence so much to be approved and distinguished in the several departments.

Mr. Dickinson could not agree with Gentlemen in blending the national Judicial with the Executive, because the one is the expounder, and the other the Executor of the Laws.

MASON ²⁶

It is not yet determined how the Executive is to be regulated, whether it is to act solely from its own judgment, or with the advice of others; whether there is, or is not to be a council annexed to it, and if a council how far their advice shall operate in controlling the judgment of the supreme magistracy. If there is no Council of State and the executive power be vested in a single person, what are the provisions for its

²⁵ Professor Jameson (*American Historical Review*, III, 323 note) ascribes this speech by Madison and the one following by Dickinson to June 6. But the text above shows that Madison's records at the close of this day's sessions were quite defective. It is possible that he inserted in his record of his remarks on June 6 a portion of his speech on June 4.

²⁶ This document in Mason's handwriting was found among the Mason papers. It is evidently the draft of a speech in the Convention and probably of this date. The copy in the text is taken from K. M. Rowland, *Life of George Mason*, II, 112-115.

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proper operation, upon casual disability by sickness or otherwise. These are subjects which must come under our consideration, and perhaps some of the most important objections would be obviated by placing the executive power in the hands of three, instead of one person.

There is also to be a council of revision, invested, in a great measure, with a power of negative upon the laws; and an idea has been suggested, either within or without doors, that this council should be formed of the principal officers of the state, I presume of the members of the Treasury Board, the Board of War, the Navy Board, and the Department for Foreign Affairs. It is unnecessary, if not improper, to examine this part of the subject now, but I will venture to hazard an opinion, when it comes to be thoroughly investigated, that we can hardly find worse materials out of which to create a council of revision, or more improper or unsafe hands in which to place the power of a negative upon our laws. It is proposed, I think, sir, in the plan upon your table, that this council of revision shall be formed out of the members of the Judiciary departments joined with the Executive; and I am inclined to think, when the subject shall be taken up, it may be demonstrated, that this will be the wisest and safest mode of constituting this important council of revision. But the federal inferior courts of justice must, I presume, be fixed in the several respective States, and consequently most of them at a great distance from the seat of the federal government. The almost continual operation of the council of revision upon the acts of the national parliament, and upon their negative of the acts of the several State legislatures, will require that this council should be easily and speedily convened, and consequently, that only the judges of the Supreme Federal Court, fixed near the seat of government, can be members of it. Their number will be small. By placing the Executive in three persons, instead of one, we shall not only increase the number of the council of revision (which I have endeavored to show will want increasing), but by giving to each of the three a vote in the council of revision, we shall increase the strength of the Executive in that particular circumstance in

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which it will most want strength — in the power of defending itself against the encroachments of the legislature. These, I must acknowledge, are, with me, weighty considerations for vesting the Executive rather in three than in one person.

The chief advantages which have been urged in favor of unity in the Executive, are the secrecy, the dispatch, the vigor and energy which the government will derive from it, especially in time of war. That these are great advantages, I shall most readily allow. They have been strongly insisted on by all monarchical writers; they have been acknowledged by the ablest and most candid defenders of republican government; and it cannot be denied that a monarchy possesses them in a much greater degree than a republic. Yet perhaps a little reflection may incline us to doubt whether these advantages are not greater in theory than in practice, or lead us to enquire whether there is not some pervading principle in republican government which sets at naught and tramples upon this boasted superiority, as hath been experienced to their cost, by most monarchies which have been imprudent enough to invade or attack their republican neighbors. This invincible principle is to be found in the love, the affection, the attachment of the citizens to their laws, to their freedom, and to their country. Every husbandman will be quickly converted into a soldier when he knows and feels that he is to fight not in defence of the rights of a particular family, or a prince, but for his own. This is the true construction of the *pro aris et focis* which has, in all ages, performed such wonders. It was this which in ancient times enabled the little cluster of Grecian republics to resist, and almost constantly to defeat, the Persian monarch. It was this which supported the States of Holland against a body of veteran troops through a thirty years' war with Spain, then the greatest monarchy in Europe, and finally rendered them victorious. It is this which preserves the freedom and independence of the Swiss Cantons in the midst of the most powerful nations. And who that reflects seriously upon the situation of America, in the beginning of the late war — without arms — without soldiers — without trade, money or credit, in a manner destitute of all re-

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sources, but must ascribe our success to this pervading, all-powerful principle?

We have not yet been able to define the powers of the Executive, and however moderately some gentlemen may talk or think upon the subject, I believe there is a general tendency to a strong Executive, and I am inclined to think a strong Executive necessary. If strong and extensive powers are vested in the Executive, and that executive consists only of one person, the government will of course degenerate (for I will call it degeneracy) into a monarchy—a government so contrary to the genius of the people that they will reject even the appearance of it. I consider the federal government as in some measure dissolved by the meeting of this Convention. Are there no dangers to be apprehended from procrastinating the time between the breaking up of this Assembly and the adoption of a new system of government? I dread the interval. If it should not be brought to an issue in the course of the first year the consequences may be fatal. Have not the different parts of this extensive government, the several States of which it is composed a right to expect an equal participation in the Executive, as the best means of securing an equal attention to their interests? Should an insurrection, a rebellion or invasion happen in New Hampshire when the single supreme magistrate is a citizen of Georgia, would not the people of New Hampshire naturally ascribe any delay in defending them to such a circumstance and *vice versa*? If the Executive is vested in three persons, one chosen from the Northern, one from the Middle, and one from the Southern States, will it not contribute to quiet the minds of the people and convince them that there will be proper attention paid to their respective concerns? Will not three men so chosen bring with them, into office, a more perfect and extensive knowledge of the real interests of this great Union? Will not such a mode of appointment be the most effectual means of preventing cabals and intrigues between the legislature and the candidates for this office, especially with those candidates who from their local situation, near the seat of the federal government, will have the greatest temptations and the greatest

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opportunities? Will it not be the most effectual means of checking and counteracting the aspiring views of dangerous and ambitious men, and consequently the best security for the stability and duration of our government upon the invaluable principles of liberty? These Sir, are some of my motives for preferring an Executive consisting of three persons rather than of one.