

TUESDAY, SEPTEMBER 4, 1787.

JOURNAL

Tuesday September 4th

The honorable Mr Brearley from the Committee of eleven informed the House that the Committee were prepared to report partially — He then read the report in his place; it was afterwards delivered in at the Secretary's table — and was again read: and is as follows.<sup>1</sup>

The Committee of eleven to whom sundry resolutions &ca were referred on the 31st ultimo, report that in their opinion the following additions and alterations should be made to the report before the Convention — viz

The first clause of the first Sect. of the 7th article to read as follows. "The Legislature shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States.

At the end of 2nd clause of the 1st sect. 7 art. add "and with the Indian tribes.

In the place of the 9 article 1st sect. to be inserted

"The Senate of the United States shall have power to try all impeachments; but no person shall be convicted without the concurrence of two thirds of the Members present.

after the word Excellency in the 1st sect 10 article to be inserted "He shall hold his office during the term of four years, and together with the Vice President, chosen for the same term, be elected in the following manner.

Each State shall appoint in such manner as it's Legisla-

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<sup>1</sup> In this report in the Journal there are four penciled interlineations in another handwriting than that of the Secretary. Those are indicated in the present text by enclosing in angle brackets. See Madison's note, below.

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ture may direct, a number of Electors equal to the whole number of Senators, and Members of the House of representatives to which the State may be entitled in the legislature.

The Electors shall meet in their respective States, and vote by ballot for two Persons, of whom one at least shall not be an inhabitant of the same State with themselves. — and they shall make a list of all the Persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the general Government, directed to the President of the Senate.

The President of the Senate shall in that House open all the certificates, and the votes shall be then and there counted — The Person having the greatest number of votes shall be the President, if such number be a majority of (the whole number)<sup>2</sup> of the Electors (appointed)<sup>3</sup> and if there be more than One, who have such Majority, and have an equal number of votes, then the Senate shall (immediately)<sup>4</sup> choose by ballot one of them for President: but if no Person have a majority, then from the five highest on the list, the Senate shall choose by ballot the President — and in every case after the choice of the President, the Person having the greatest number of votes shall be Vice President: but if there should remain two or more, who have equal votes, the Senate shall choose from them the Vice President.

The Legislature may determine the time of chusing and assembling the Electors, and the manner of certifying and transmitting their votes.

Sect. 2. No Person except a natural born Citizen, or a Citizen of the U. S. at the time of the adoption of this Constitution shall be eligible to the office of President: nor shall any Person be elected to that office, who shall be under the age of 35 years, and who has not been in the whole, at least 14 years a resident within the U. S.

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<sup>2</sup> In place of "that" crossed out. None of the other copies of this report includes the words "the whole number", but there seems to be no record of a later amendment inserting them.

<sup>3</sup> "appointed", an amendment of September 5.

<sup>4</sup> "immediately", an amendment of September 6.

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Sect. 3. The Vice President shall be ex officio, President of the Senate, except when they sit to try the impeachment of the President, in which case the Chief Justice shall preside, and excepting also when he shall exercise the powers and duties of President, in which case, and in case of his absence, the Senate shall chuse a President pro tempore — The Vice President when acting as President of the Senate shall not have a vote unless the House be equally divided

Sect. 4. The President by and with the advice and consent of the Senate, shall have power to make treaties: and he shall nominate and by and with the advice and consent of the Senate shall appoint Ambassadors and other public Ministers, Judges of the supreme Court, and all other officers of the U. S. whose appointments are not otherwise herein provided for. But no Treaty (except Treaties of Peace)<sup>5</sup> shall be made without the consent of two thirds of the Members present

after the words “into the service of the U. S. in the 2 sect. 10 art. add “and may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices.

The latter part of the 2 sect 10 art to read as follows.

He shall be removed from his office on impeachment by the House of representatives, and conviction by the Senate, for treason or bribery, and in case of his removal as aforesaid, death, absence, resignation or inability to discharge the powers or duties of his office the Vice President shall exercise those powers and duties until another President be chosen, or until the inability of the President be removed.

On the question to agree to the first clause of the report.

it passed in the affirmative

On the question to agree to the second clause of the report

it passed in the affirmative

It was moved and seconded to postpone the consideration of the 3rd clause of the report

which passed in the affirmative

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<sup>5</sup> Amendment of September 7.

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It was moved and seconded to postpone the consideration of the remainder of the report

which passed in the negative [Ayes — 1; noes — 10.]<sup>6</sup>

After some time passed in debate.

It was moved and seconded to postpone the consideration of the remainder of the report, and that the Members take copies thereof —

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

It was moved and seconded to refer the following motion to the committee of eleven.

To prepare and report a plan for defraying the expences of this Convention

which passed in the affirmative

[To adjourn Ayes — 11; noes — 0.]<sup>7</sup>

The House adjourned

## DETAIL OF AYES AND NOES

	New Hampshire	Massachusetts	Rhode Island	Connecticut	New York	New Jersey	Pennsylvania	Delaware	Maryland	Virginia	No Carolina	So Carolina	Georgia	Questions	ayes	noes	divided
[442]	no	no		no		no	no	no	no	no	aye	no	no	To postpone the report	2	9	
[443]	aye	aye		no		no	no	aye	aye	aye		aye	aye	To postpone	7	3	
[444]	aye	aye		aye		aye	aye	aye	aye	aye	aye	aye	aye	To adjourn			

[End of page 14]

## MADISON

Tuesday Sept. 4. 1787. In Convention

Mr. Brearley from the Committee of eleven made a further partial Report as follows<sup>8</sup>

<sup>6</sup> Vote 442, Detail of Ayes and Noes, which is obviously mistaken in the summary of the vote.

<sup>7</sup> Vote 444, Detail of Ayes and Noes.

<sup>8</sup> Among the unbound Madison Papers is a copy of this report endorsed "Reptt. of Com. of 11". Subsequently it was endorsed

"(Appointd Aug. 31) Sept. 4.—the first clause (including "Common defence &

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“The Committee of Eleven to whom sundry resolutions &c were referred on the 31st. of August, report that in their opinion the following additions and alterations should be made to the Report before the Convention, viz

\* (1.) The first clause of sect: 1. art. 7. to read as follow — ‘The Legislature shall have power to lay and collect taxes duties imposts & excises, to pay the debts and provide for the common defence & general welfare<sup>9</sup> of the U. S.’

(2). At the end of the 2d. clause of sect. 1. art. 7. add ‘and with the Indian tribes’.

(3) In the place of the 9th. art: Sect. 1. to be inserted ‘The Senate of the U— S— shall have power to try all impeachments; but no person shall be convicted without the concurrence of two thirds of the members present.’<sup>10</sup>

(4) After the word ‘Excellency’ in sect. 1. art. 10. to be inserted. ‘He shall hold his office during the term of four years, and together with the vice-President, chosen for the same term, be elected in the following manner, viz. Each State shall appoint in such manner as its Legislature may direct, a number of electors equal to the whole number of Senators and members of the House of Representatives, to which the State may be entitled in the Legislature. The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify and transmit sealed to the Seat of the. Genl. Government, directed to the President of the Senate — The President of the Senate

\* (This is an exact copy. The variations in that in the printed Journal are occasioned by its incorporation of subsequent amendments. This remark is applicable to other cases.)<sup>11</sup>

Genl. welfare passed nem: con: and, as appears, without debate. Quer. if this report be not in the handwriting of Mr. Sherman? | more probably in that of Mr. Brearley”.

In this copy some abbreviations are used, the punctuation differs slightly, and the paragraphs are not numbered, otherwise it is identical with Madison’s copy, except in three instances noted below.

<sup>9</sup> See Appendix A, CCCLXXII.

<sup>10</sup> See Appendix A, CLXX.

<sup>11</sup> See above, note 1.

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shall in that House open all the certificates; and the votes shall be then & there counted. The Person having the greatest number of votes shall be the President, if such number be a majority of that of the electors; and if there be more than one who have such a majority, and have an equal number of votes, then the Senate shall immediately<sup>12</sup> choose by ballot one of them for President: but if no person have a majority. then from the five highest on the list, the Senate shall choose by ballot the President. And in every case after the choice of the President, the person having the greatest number of votes shall be vice-president: but if there should remain two or more who have equal votes, the Senate shall choose from them the vice-President. The Legislature may determine the time of choosing and assembling the Electors, and the manner of certifying and transmitting their votes.’<sup>12a</sup>

(5) ‘Sect. 2. No person except a natural born citizen or a Citizen of the U— S— at the time of the adoption of this Constitution shall be eligible to the office of President; nor shall any person be elected to that office, who shall be under the age of thirty five years, and who has not been in the whole, at least fourteen years a resident within the U— S.’

(6) ‘Sect— 3— The vice-president shall be ex officio President of the Senate, except when they sit to try the impeachment of the President, in which case the Chief Justice shall preside, and excepting also when he shall exercise the powers and duties of President, in which case & in case of his absence, the Senate shall chuse a President pro tempore. — The vice President when acting as President of the Senate shall not have a vote unless the House be equally divided.’

(7) ‘Sect— 4 The President by and with the advice and Consent of the Senate, shall have power to make Treaties; and he shall nominate and by and with the advice and consent of the Senate shall appoint ambassadors, and other public Ministers,<sup>13</sup> Judges of the Supreme Court, and all other Officers

<sup>12</sup> Madison himself seems to have been misled here: “immediately” was inserted by an amendment on Sept. 6. It is omitted in the Brearley draft among the Madison Papers, and in McHenry’s copy.

<sup>12a</sup> See Appendix A, CCa.

<sup>13</sup> Brearley copy has interlined “& consuls” above “Ministers”.

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of the U—S—, whose appointments are not otherwise herein provided for. But no Treaty<sup>14</sup> shall be made without the consent of two thirds of the members present.’

(8) After the words “into the service of the U S.” in sect. 2. art: 10. add ‘and may require the opinion in writing of the principal Officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices.’

The latter part of Sect. 2. Art: 10. to read as follows.

(9) ‘He shall be removed from his office on impeachment by the House of Representatives, and conviction by the Senate, for Treason, or bribery, and in case of his removal as aforesaid, death, absence, resignation or inability to discharge the powers or duties of his office, the vice-president shall exercise those powers and duties until another President be chosen, or until the inability of the President be removed.’

The (1st.) clause of the Report was agreed to nem. con.

The (2) clause was also agreed to nem: con:

The (3) clause was postponed in order to decide previously on the mode of electing the President—

The (4) clause was accordingly taken up.

Mr. Gorham disapproved of making the next highest after the President, the vice-President, without referring the decision to the Senate in case the next highest should have less than a majority of votes. as the regulation stands a very obscure man with very few votes may arrive at that appointment

Mr Sherman said the object of this clause of the report of the Committee was to get rid of the ineligibility, which was attached to the mode of election by the Legislature, & to render the Executive independent of the Legislature. As the choice of the President was to be made out of the five highest, obscure characters were sufficiently guarded against in that case: And he had no objection to requiring the vice-President to be chosen in like manner, where the choice was not decided by a majority in the first instance

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<sup>14</sup> Brearley copy has interlined “except treaties of peace” to be inserted after “Treaty”.

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Mr. Madison was apprehensive that by requiring both the President & vice President to be chosen out of the five highest candidates, the attention of the electors would be turned too much to making candidates instead of giving their votes in order to a definitive choice, Should this turn be given to the business, the election would in fact be consigned to the Senate altogether. It would have the effect at the same time, he observed, of giving the nomination of the candidates to the largest States.

Mr Govr Morris concurred in, & enforced the remarks of Mr. Madison.

Mr Randolph & Mr Pinkney wished for a particular explanation & discussion of the reasons for changing the mode of electing the Executive.

Mr. Govr. Morris said he would give the reasons of the Committee and his own. The 1st. was the danger of intrigue & faction if the appointmt. should be made by the Legislature. 2 the inconveniency of an ineligibility required by that mode in order to lessen its evils. 3 The difficulty of establishing a Court of Impeachments, other than the Senate which would not be so proper for the trial nor the other branch for the impeachment of the President, if appointed by the Legislature, 4. No body had appeared to be satisfied with an appointment by the Legislature. 5. Many were anxious even for an immediate choice by the people— 6— the indispensable necessity of making the Executive independent of the Legislature. — As the Electors would vote at the same time throughout the U. S. and at so great a distance from each other, the great evil of cabal was avoided. It would be impossible also to corrupt them. A conclusive reason for making the Senate instead of the Supreme Court the Judge of impeachments, was that the latter was to try the President after the trial of the impeachment.

Col: Mason confessed that the plan of the Committee had removed some capital objections, particularly the danger of cabal and corruption. It was liable however to this strong objection, that nineteen times in twenty the President would be chosen by the Senate, an improper body for the purpose.

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Mr. Butler thought the mode not free from objections, but much more so than an election by the Legislature, where as in elective monarchies, cabal faction & violence would be sure to prevail.

Mr. Pinkney stated as objections to the mode 1. that it threw the whole appointment in fact into the hands of the Senate. 2—The Electors will be strangers to the several candidates and of course unable to decide on their comparative merits. 3. It makes the Executive reeligible which will endanger the public liberty. 4. It makes the same body of men which will in fact elect the President his Judges in case of an impeachment.

Mr. Williamson had great doubts whether the advantage of reeligibility would balance the objection to such a dependence of the President on the Senate for his reappointment. He thought at least the Senate ought to be restrained to the *two* highest on the list

Mr. Govr. Morris said the principal advantage aimed at was that of taking away the opportunity for cabal. The President may be made if thought necessary ineligible on this as well as on any other mode of election. Other inconveniences may be no less redressed on this plan than any other.

Mr. Baldwin thought the plan not so objectionable when well considered, as at first view. The increasing intercourse among the people of the States, would render important characters less & less unknown; and the Senate would consequently be less & less likely to have the eventual appointment thrown into their hands.

Mr. Wilson. This subject has greatly divided the House, and will also divide people out of doors. It is in truth the most difficult of all on which we have had to decide. He had never made up an opinion on it entirely to his own satisfaction. He thought the plan on the whole a valuable improvement on the former. It gets rid of one great evil, that of cabal & corruption; & Continental Characters will multiply as we more & more coalesce, so as to enable the electors in every part of the Union to know & judge of them. It clears the way also for a discussion of the question of re-eligibility on its own

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merits, which the former mode of election seemed to forbid. He thought it might be better however to refer the eventual appointment to the Legislature than to the Senate, and to confine it to a smaller number than five of the Candidates. The eventual election by the Legislature wd. not open cabal anew, as it would be restrained to certain designated objects of choice, and as these must have had the previous sanction of a number of the States: and if the election be made as it ought as soon as the votes of the electors are opened & it is known that no one has a majority of the whole, there can be little danger of corruption— Another reason for preferring the Legislature to the Senate in this business, was that the House of Reps. will be so often changed as to<sup>15</sup> be free from the influence & faction to which the permanence of the Senate may subject that branch —

Mr. Randolph preferred the former mode of constituting the Executive, but if the change was to be made, he wished to know why the eventual election was referred to the *Senate* and not to the *Legislature*? He saw no necessity for this and many objections to it. He was apprehensive also that the advantage of the eventual appointment would fall into the hands of the States near the Seat of Government.

Mr Govr. Morris said the *Senate* was preferred because fewer could then, say to the President, you owe your appointment to us. He thought the President would not depend so much on the Senate for his re-appointment as on his general good conduct.

The further consideration of the Report was postponed that each member might take a copy of the remainder of it.

The following motion was referred to the Committee of Eleven — to wit, — “To prepare & report a plan for defraying the expences of the Convention”

\* Mr. Pinkney moved a clause declaring “that each House should be judge of the privilege of its own members.<sup>16</sup> Mr Govr. Morris 2ded. the motion

\*( This motion not inserted in the printed Journal)

<sup>15</sup> Crossed out “break from its accustomed spirit of faction & intrigue in which the Senate retains”.

<sup>16</sup> See Appendix A, CCLXXXVII.

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Mr. Randolph & Mr. Madison expressed doubts as to the propriety of giving such a power, & wished for a postponement.

Mr Govr. Morris thought it so plain a case that no postponement could be necessary.

Mr. Wilson thought the power involved, and the express insertion of it needless. It might beget doubts as to the power of other public bodies, as Courts &c. Every Court is the judge of its own privileges.

Mr Madison distinguished between the power of Judging of privileges previously & duly established, and the effect of the motion which would give a discretion to each House as to the extent of its own privileges. He suggested that it would be better to make provision for ascertaining by *law*, the privileges of each House, than to allow each House to decide for itself. He suggested also the necessity of considering what privileges ought to be allowed to the Executive.

Adjourned <sup>17</sup>

### McHENRY

Sepr. 3. and 4 Employed chiefly by the committee.

Agreed on report of the com. that the 1 clause of the 1 sect. of the 7 art. read vz.

“The legislature shall have power to lay and collect taxes duties imposts and excises, to pay the debts and provide for the common defence and general welfare of the U. S.”

Also to add at the end of the 2 clause of the 1 sect of the 7 art. “and with the Indian tribes.”

+ Took up in the report “in the place of the 9 art. 1 sec. —“The senate of the U. S. shall have power to try all impeachments but no person shall be convicted without the concurrence of  $\frac{3}{4}$  of the members present. postponed.

The committee report in part as follows<sup>18</sup> . . .

<sup>17</sup> See Appendix A, CI, CII.

<sup>18</sup> The rest of the report is like that in Madison, (except in the one instance noted above, see note 12), and is accordingly omitted here.

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No provision in the above for a new election in case of the death or removal of the President.

Upon looking over the constitution it does not appear that the national legislature can *erect light houses* or *clean out or preserve the navigation of harbours* — This expence ought to be borne by commerce — of course by the general treasury into which all the revenue of commerce must come —

Is it proper to declare all the navigable waters or rivers and within the U. S. common high ways? Perhaps a power to restrain any State from demanding tribute from citizens of another State in such cases is comprehended in the power to regulate trade between State and State.

This to be further considered. A motion to be made on the light house etc, to-morrow.