

FRIDAY, SEPTEMBER 7, 1787.

JOURNAL

Friday September 7. 1787.

It was moved and seconded to insert the following clause after the words "throughout the United States" in the first sect. of the report.

"The Legislature may declare by law what officer of the United States shall act as President in case of the death, resignation, or disability of the President and Vice President; and such Officer shall act accordingly, until such disability be removed, or a President shall be elected"

which passed in the affirmative [Ayes — 6; noes — 4; divided — 1.]¹

It was moved and seconded to insert the following amendment after the words "a member or members from two thirds of the States" in the 1st sect of the report.

"and the concurrence of a majority of all the States shall be necessary to make such choice."

which passed in the affirmative.

On the question to agree to the 2nd sect. of the report.

it passed in the affirmative.

[The V: Presidt shall ex officio be Presidt of the Senate. Ayes — 8; noes — 2.]²

Separate questions having been taken on the several clauses of the 3rd sect. of the report

They passed in the affirmative.

[To insert "& the Ho of representatives" 5 sect of ye report Ayes — 1; noes — 10.

foreign Ministers Ayes — 4; noes — 7]³.

¹ Vote 473, Detail of Ayes and Noes.

² Vote 474, Detail of Ayes and Noes.

³ Votes 475 and 476, Detail of Ayes and Noes.

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It was moved and seconded to amend the 2nd clause of the 4 sect of the report to read

“Ambassadors, other public Ministers, and Consuls”
which passed in the affirmative

[By & with the consent of the Senate appoint Ministers &ca
Ayes — 11; noes — 0.

Judges of the Supreme Court Ayes — 11; noes — 0.
and all other officers Ayes — 9; noes — 2.]⁴

It was moved and seconded to postpone the consideration of the 4 sect. of the report in order to take up the following.

That it be an instruction to the Committee of the States to prepare a clause or clauses for establishing an Executive Council, as a Council of State, for the President of the United States, to consist of six Members, two of which from the Eastern, two from the middle, and two from the southern States with a rotation and duration of office similar to that of the Senate; such Council to be appointed by the Legislature or by the Senate.

On the question to postpone

it passed in the negative [Ayes — 3; noes — 8.]⁵

[To agree to the last question Ayes — 11; noes — 0.]⁶

It was moved and seconded to agree to the following clause

That the President shall have power to fill up all vacancies that may happen during the recess of the Senate by granting commissions which shall expire at the end of the next session of the Senate.

which passed in the affirmative

It was moved and seconded to insert the words (except treaties of Peace) after the word Treaty in the 4 sect of the report

which passed in the affirmative

[To agree to Mr Madison’s amendmt Ayes — 3; noes — 8.]⁷

— On the question to agree to the 4 sect. of the report as amended

it passed in the affirmative [Ayes — 8; noes — 3]⁸

⁴ Votes 477-479, Detail of Ayes and Noes.

⁵ Vote 482, Detail of Ayes and Noes. *Journal* (pp. 340-341) mistakenly assigns Vote 480 to this question, see Madison’s note below.

⁶ Vote 483, Detail of Ayes and Noes.

⁷ Vote 480, Detail of Ayes and Noes.

⁸ Vote 481, Detail of Ayes and Noes.

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It was moved and seconded to agree to the follow'g amendment.

“But no Treaty of peace shall be entered into, whereby the United States shall be deprived of any of their present Territory or rights without the concurrence of two thirds of the Members of the Senate present

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
[473]	dd	no	no		aye	aye	no	aye	aye	no	aye	aye		To agree to the provision in case of the Presidts disability	6	4	1
[474]	aye	aye	aye		no	aye	aye	no	aye		aye	aye		The V: Presidt shall ex officio be Presidt of the Senate.	8	2	
[475]	no	no	no		no	aye	no	no	no	no	no	no		To insert “& the Ho of representatives” 5 sect of ye report	1	10	
[476]	no	no	no		no	aye	no	aye	no	aye	aye	no		foreign Ministers			
[477]	aye	aye	aye		aye	aye	aye	aye	aye	aye	aye	aye		By & with the consent of the Senate appoint Ministers &c			
[478]	aye	aye	aye		aye	aye	aye	aye	aye	aye	aye	aye		Judges of the Supreme Court			
[479]	aye	aye	aye		aye	no	aye	aye	aye	aye	no	aye		and all other officers	9	2	
[480]	no	no	no		no	no	no	aye	no	no	aye	aye		To agree to Mr Madison's amendmt	3	8	
[481]	aye	aye	aye		no	no	aye	aye	aye	aye	aye	no		To agree to ye 4 sect of ye report	8	3	
[482]	no	no	no		no	no	no	aye	aye	no	no	aye		To postpone the clause and may require the opinion &c	3	8	
[483]	aye	aye	aye		aye	aye	aye	aye	aye	aye	aye	aye		To agree to the last question	11		

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Friday Sept. 7. 1787. In Convention

The mode of constituting the Executive being resumed, Mr- Randolph moved (to insert in the first Section of the report made yesterday)⁹

“The Legislature may declare by law what officer of the U. S— shall act as President in case of the death, resignation, or disability of the President and Vice-President; and such officer shall act accordingly until the time of electing a President shall arrive.”

Mr. Madison observed that this, as worded, would prevent a supply of the vacancy by an intermediate election of the President, and moved to substitute — “until such disability be removed, or a President shall be elected —” * Mr. Governr. Morris 2ded. the motion, which was agreed to.

It seemed to be an objection to the provision with some, that according to the process established for chusing the Executive, there would be difficulty in effecting it at other than the fixed periods; with others, that the Legislature was restrained in the temporary appointment to “*officers*” of the U. S: (They wished it to be at liberty to appoint others than such.)

On the motion of Mr. Randolph as amended, it passed in the affirmative

N. H. divided. Mas. no. Ct. no. N. J. ay. Pa. ay. Del— no. Md. ay. Va. ay. N— C— no— S. C. ay— Geo. ay [Ayes — 6; noes — 4; divided — 1.]

Mr. Gerry moved “that in the election of President by the House of Representatives, no State shall vote by less than three members, and where that number may not be allotted to a State, it shall be made up by its Senators; and a concurrence of a majority of all the States shall be necessary to make such choice”. Without some such provision five individuals might possibly be competent to an election, these

* (In the printed Journal this amendment is put into the original Motion.)

⁹ Taken from *Journal*.

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being a majority of two thirds of the existing number of States; and two thirds being a quorum for this business.

Mr. Madison zded. the motion¹⁰

Mr. Read observed that the States having but one member only in the House of Reprs. would be in danger of having no vote at all in the election: the sickness or absence either of the Representative or one of the Senators would have that effect

Mr. Madison replied that, if one member of the House of Representatives should be left capable of voting for the State, the states having one Representative only would still be subject to that danger. He thought it an evil that so small a number at any rate should be authorized, to elect. Corruption would be greatly facilitated by it. The mode itself was liable to this further weighty objection that the representatives of a *Minority* of the people, might reverse the choice of a *majority* of the *States* and of the *people*— He wished some cure for this inconveniency might yet be provided—

Mr Gerry withdrew the first part of his motion; and on the, — . . .

Question on the 2d. part viz, “and a concurrence of a majority of all the States shall be necessary to make such choice” to follow the words “a member or members from two thirds of the States” — It was agreed to nem: con:

The (section 2.)¹¹ (see Sepr. 4)

requiring that the President should be a natural-born Citizen, &c & have been resident for fourteen years, & be thirty five years of age, was agreed to nem: con:

(Section 3.)¹² (see Sepr. 4). “The vice President shall be ex officio President of the Senate”¹³

Mr. Gerry opposed this regulation. We might as well put the President himself at the head of the Legislature. The close intimacy that must subsist between the President

¹⁰ Crossed out “adding that otherwise three members might possibly elect them being from their several States and a quorum being made up by the representatives of two large States”.

¹¹ Crossed out: “clause (2)”.

¹² Crossed out “Clause (6)”.

¹³ Upon the Vice-President, see CLVIII (78), CCXXVI, CCXCVII, CCXCIX.

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& vice-president makes it absolutely improper. He was agst. having any vice President.

Mr Govr Morris. The vice president then will be the first heir apparent that ever loved his father — If there should be no vice president, the President of the Senate would be temporary successor, which would amount to the same thing.

Mr Sherman saw no danger in the case. If the vice-President were not to be President of the Senate, he would be without employment, and some member by being made President must be deprived of his vote, unless when an equal division of votes might happen in the Senate, which would be but seldom.

Mr. Randolph concurred in the opposition to the clause.

Mr. Williamson, observed that such an officer as vice-President was not wanted. He was introduced only for the sake of a valuable mode of election which required two to be chosen at the same time.

Col: Mason, thought the office of vice-President an encroachment on the rights of the Senate; and that it mixed too much the Legislative & Executive, which as well as the Judiciary departments, ought to be kept as separate as possible. He took occasion to express his dislike of any reference whatever of the power to make appointments to either branch of the Legislature. On the other hand he was averse to vest so dangerous a power in the President alone. As a method for avoiding both, he suggested that a privy Council of six members to the president should be established; to be chosen for six years by the Senate, two out of the Eastern two out of the middle, and two out of the Southern quarters of the Union, & to go out in rotation two every second year; the concurrence of the Senate to be required only in the appointment of Ambassadors, and in making treaties. which are more of a legislative nature. This would prevent the constant sitting of the Senate which he thought dangerous, as well as keep the departments separate & distinct. It would also save the expence of constant sessions of the Senate. He had he said always considered the Senate as too unwieldy & expensive for appointing officers, especially the smallest, such

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as tide waiters &c. He had not reduced his idea to writing, but it could be easily done if it should be found acceptable.

On the question shall the vice President be ex officio President of the Senate?

N— H. ay— Mas. ay— Ct. ay. N. J. no. Pa. ay. Del. ay— Mas— no. Va ay— N— C— abst S. C. ay— Geo. ay. [Ayes — 8; noes — 2; absent — 1.]

The other parts of the same (Section) (3) were then agreed to.

The (Section 4.)¹⁴— to wit, “The President by & with the advice and consent of the Senate shall have power to make Treaties &c”

Mr. Wilson moved to add, after the word “Senate” the words, “and House of Representatives”. As treaties he said are to have the operation of laws, they ought to have the sanction of laws also. The circumstance of secrecy in the business of treaties formed the only objection; but this he thought, so far as it was inconsistent with obtaining the Legislative sanction, was outweighed by the necessity of the latter.

Mr. Sherman thought the only question that could be made was whether the power could be safely trusted to the Senate. He thought it could; and that the necessity of secrecy in the case of treaties forbade a reference of them to the whole Legislature.

Mr Fitzsimmons 2ded. the motion of Mr Wilson, & on the question¹⁵

N. H. no. Mas. no. Ct. no. N. J. no. Pa ay. Del. no. Md. no Va. no. N. C. no. S. C. no. Geo. no. [Ayes — 1; noes — 10.]

The first sentence as to making treaties, was then Agreed to: nem: con:

— “He shall nominate &c Appoint ambassadors &c.”

Mr. Wilson objected to the mode of appointing, as blending a branch of the Legislature with the Executive. Good laws are of no effect without a good Executive; and there can be

¹⁴ Crossed out “(7) clause”.

¹⁵ See further, September 8, Appendix A, CXLIX, CLII, CLXX, CCXXV, CCXXVIII, CCLXXII, CCLXXIV, CCCXXII, CCCXXVI.

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no good Executive without a responsible appointment of officers to execute. Responsibility is in a manner destroyed by such an agency of the Senate — He would prefer the Council proposed by Col: Mason, provided its advice should not be made obligatory on the President¹⁶

Mr. Pinkney was against joining the Senate in these appointments, except in the instances of Ambassadors who he thought ought not to be appointed by the President

Mr. Govr. Morris said that as the President was to nominate, there would be responsibility, and as the Senate was to concur, there would be security. As Congress now make appointments there is no responsibility.

Mr Gerry— The idea of responsibility in the nomination to offices is chimerical— The President can not know all characters, and can therefore always plead ignorance.

Mr King. As the idea of a Council proposed by Col. Mason has been supported by Mr. Wilson, he would remark that most of the inconveniencies charged on the Senate are incident to a Council of Advice. He differed from those who thought the Senate would sit constantly. He did not suppose it was meant that all the minute officers were to be appointed by the Senate, or any other original source, but by the higher officers of the departments to which they belong. He was of opinion also that the people would be alarmed at an unnecessary creation of New Corps which must increase the expence as well as influence of the Government.¹⁷

On the question on these words in the clause viz — “He shall nominate & by & with the advice and consent of the Senate, shall appoint ambassadors, and other public ministers (and Consuls) Judges of the supreme Court” Agreed to: nem: con: the insertion of “(and consuls” having first taken place.

On the question on the following words “And all other officers of U. S—”¹⁸

¹⁶ See Appendix A, CXLIX.

¹⁷ See Appendix A, CLXXXIV.

¹⁸ See further Appendix A, CXXXVII, CXLIX, CLVIII (80), CCXXVIII, CCXLI, CCXLIII, CCXLV, CCLXXVII, CCLXXXVII, CCCV, CCCXVII, CCCXXVI, CCCLXXXIII, also CXXVIII.

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N. H— ay— Mas ay. Ct ay. N— J— ay. Pa. no. Del. ay. Md. ay. Va ay. N— C. ay. S— C. no. Geo. ay. [Ayes 9; noes — 2.]

On¹⁹ motion of Mr. Spaight — “that the President shall have power to fill up all vacancies that may happen during the recess of the Senate by granting Commissions which shall expire at the end of the next Session of the Senate” It was agreed to nem: con:

Section 4.²⁰ “The President by and with the advice and consent of the Senate shall have power to make Treaties” — “*But no treaty shall be made without the consent of two thirds of the members present*” — this last being before the House.²¹

Mr Wilson thought it objectionable to require the concurrence of $\frac{2}{3}$ which puts it in the power of a minority to controul the will of a majority.

Mr. King concurred in the objection; remarking that as the Executive was here joined in the business, there was a check which did not exist in Congress where The concurrence of $\frac{2}{3}$ was required.

Mr. Madison moved to insert after the word “treaty” the words “except treaties of peace” allowing these to be made with less difficulty than other treaties — It was agreed to nem: con:

Mr. Madison then moved to authorize a concurrence of two thirds of the Senate to make treaties of peace, without the concurrence of the President” — The President he said would necessarily derive so much power and importance from a state of war that he might be tempted, if authorized, to impede a treaty of peace. Mr. Butler 2ded. the motion

Mr Gorham thought the precaution unnecessary as the means of carrying on the war would not be in the hands of the President, but of the Legislature.

Mr. Govr Morris thought the power of the President in

¹⁹ Several lines preceding were crossed out, they contained Mason’s motion for a Council of State repeated below. From the Journal and Detail of Ayes and Noes, it seems as if this motion might have been offered at this time, but not voted upon till later.

²⁰ Crossed out “Clause (7)”.

²¹ See Appendix A, CCIV, CCXVII.

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this case harmless; and that no peace ought to be made without the concurrence of the President, who was the general Guardian of the National interests.

Mr. Butler was strenuous for the motion, as a necessary security against ambitious & corrupt Presidents. He mentioned the late perfidious policy of the Statholder in Holland; and the artifices of the Duke of Marlbro' to prolong the war of which he had the management.

Mr. Gerry was of opinion that in treaties of peace a greater rather than less proportion of votes was necessary, than in other treaties. In Treaties of peace the dearest interests will be at stake, as the fisheries, territories &c. In treaties of peace also there is more danger to the extremities of the Continent, of being sacrificed, than on any other occasions.

Mr. Williamson thought that Treaties of peace should be guarded at least by requiring the same concurrence as in other Treaties.

On the motion of Mr. Madison & Mr. Butler

N. H. no. Mas. no. Ct. no. N. J. no. Pa. no. Del— no. Md. ay— Va no— N. C. no. S. C. ay. Geo. ay. [Ayes — 3; noes — 8.]

On the part of the clause concerning treaties amended by the exception as to Treaties of peace.

N. H. ay. Mas. ay. Ct. ay. N. J. no. Pa. no. Del. ay. Md. ay. Va. ay. N— C. ay. S— C. ay— Geo. no. [Ayes — 8; noes — 3.]

“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.” being before the House

Col: Mason* said that in rejecting a Council to the President we were about to try an experiment on which the most despotic Governments had never ventured— The Grand Signor himself had his Divan. He moved to postpone the

* (In the printed Journal— Mr- Madison is erroneously substituted for Col: Mason—)

■ See above, note 5, and Appendix A, CCCXXXVII.

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consideration of the clause in order to take up the following

“That it be an instruction to the Committee of the States to prepare a clause or clauses for establishing an Executive Council, as a Council of State for the President of the U. States, to consist of six members, two of which from the Eastern, two from the middle, and two from the Southern States, with a Rotation and duration of office similar to those of the Senate; such Council to be appointed by the Legislature or by the Senate”.

Doctor Franklin 2ded. the motion. We seemed he said too much to fear cabals in appointments by a number, and to have too much confidence in those of single persons. Experience shewed that caprice, the intrigues of favorites & mistresses, &c were nevertheless the means most prevalent in monarchies. among instances of abuse in such modes of appointment, he mentioned the many bad Governors appointed in G. B. for the Colonies. He thought a Council would not only be a check on a bad President but be a relief to a good one.

Mr. Govr. Morris. The question of a Council was considered in the Committee, where it was judged that the Presidt. by persuading his Council—to concur in his wrong measures, would acquire their protection for them—

Mr. Wilson approved of a Council, in preference to making the Senate a party to appointmts.

Mr. Dickinson was for a Council. It wd. be a singular thing if the measures of the Executive were not to undergo some previous discussion before the President

Mr Madison was in favor of the instruction to the Committee proposed by Col. Mason.

(The motion of Mr. Mason was negatived. Maryd. ay. S. C. ay. Geo. ay— N. H. no. Mas. no. Ct. no. N. J. no Pa. no. Del. no. Va. no. N C no.)²³ [Ayes — 3; noes — 8.]

On the question, “authorizing the President to call for the opinions of the Heads of Departments, in writing:” it

²³ Taken from *Journal*, which is in error as to the vote. See above note 5.

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passed in the affirmative,²⁴ N. H. only being no.* (The clause was then unanimously agreed to.)

Mr Williamson & Mr. Spaight moved "that no Treaty of Peace affecting Territorial rights shd be made without the concurrence of two thirds of the (members of the Senate present.)

Mr. King— It will be necessary to look out for securities for some other rights, if this principle be established; he moved to extend the motion to — "all present rights of the U. States".

Adjourned²⁵

* (Not so stated in the Printed Journal; but conformable to the result afterwards appearing. passed in the)

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Made some further progress in the report.

Mr. Mason moved to postpone the section giving the President power to require the advice of the heads of the great departments to take up a motion — to appoint a council of State, to consist of 6 members — two from the Eastern, two from the middle and two from the Southern States — who should in conjunction with the President make all appointments and be an advisory body — to be elected by the legislature, to be in for 6 years with such succession as provided for the Senate.

3 States for postponing 8 against it — so it was lost.

Adjourned.

²⁴ Crossed out "N. H. ay & all the rest ay". See Vote 482, Detail of Ayes and Noes, and note 5.

²⁵ See further Appendix A, CIV.