

SATURDAY, SEPTEMBER 8, 1787.

JOURNAL

Saturday September 8. 1787.

It was moved and seconded to strike the words (“except Treaties of Peace”) out of the 4 sect. of the report.

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

It was moved and seconded to strike out the last clause of the 4 sect. of the report

which passed in the negative [Ayes — 1; noes — 9; divided — 1.]

It was moved and seconded to agree to the following amendment.

“two thirds of all the Members of the Senate to make a treaty”

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

It was moved and seconded to agree to the following amendment.

“a majority of all the Members of the Senate to make a treaty”

which passed in the negative [Ayes — 5; noes — 6.]

It was moved and seconded to agree to the following amendment.

“No Treaty shall be made unless two thirds of the whole number of Senators be present

which passed in the negative. [Ayes — 5; noes — 6.]

It was moved and seconded to agree to the following amendment.

“But no Treaty shall be made before all the Members of the Senate are summoned and shall have time to attend”

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

It was moved and seconded to agree to the following amendment

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“neither shall any appointment be made as aforesaid unless to offices established by the Constitution or by law

which passed in the negative [Ayes — 5; noes — 6.]

It was moved and seconded to insert the words

“or other high crimes and misdemeanors against the State” after the word “bribery”

which passed in the affirmative [Ayes — 7; noes — 4.]

It was moved and seconded to strike out the words

“by the Senate” after the word “conviction”

which passed in the Negative [Ayes — 2; noes — 9.]

It was moved and seconded to strike out the word “State” after the word “against” and to insert the words “United States”

which passed in the affirmative. [“unanimous”]

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

it passed in the affirmative [Ayes — 10; noes — 1.]

It was moved and seconded to add the following clause after the words “United States”

“The Vice President and other civil Officers of the United States shall be removed from Office on impeachment and “conviction as aforesaid”

which passed in the affirmative [“unanimous”]

It was moved and seconded to amend the 3rd clause of the report, entered on the Journal of the 5 instant, to read as follows — instead of the 12 sect. 6 article.

“all Bills for raising revenue shall originate in the House of representatives: but the Senate may propose or concur “with amendments as on other bills.” no money shall be drawn from the Treasury but in consequence of appropriations made by law.

which passed in the affirmative.¹

[all bills for raising revenue shall originate in the Ho of representatives Ayes — 9; noes — 2.]²

It was moved and seconded to amend the 3rd clause of the report, entered on the Journal of the 4 instant, to read as follows

¹ Vote 496, Detail of Ayes and Noes. No vote being recorded, the assumption is that it was unanimous as in Votes 493 and 495.

² Vote 497, Detail of Ayes and Noes.

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
[484]	aye	aye		aye		no	no	no	no	aye	aye	aye	aye	To strike out "except Treaties of Peace."	8	3	
[485]	no	no	dd	no		no	no	no	no	no	no	no	no	To strike out the clause respectg Treaties.	1	9	1
[486]	no	no		no		no	no	no	no	aye	aye	aye	aye	frds of all the Members of the Senate to make a treaty	3	8	
[487]	no	aye		aye		no	no	no	no	no	no	no	no	a majority of all the Members of the Senate to make a treaty	5	6	
[488]	no	no		no		no	no	no	no	aye	aye	aye	aye	no treaty shall be made unless frds of the whole number of Senators be present	5	6	
[489]	no	no		no		no	no	no	no	no	aye	aye	aye	But no treaty shall be made before all the members of the Senate are summoned & shall have time to attend	3	8	
[page 16]																	
[490]	no	aye		aye		aye	no	no	no	no	no	no	no	neither shall any appointment be made as aforesaid unless to offices established by the Constitution or by law.	5	6	
[491]	aye	aye		aye		no	no	no	no	aye	aye	aye	aye	To insert after the word "bribery" "or other high crimes and misdemeanors, against the State"	7	4	
[492]	no	no		no		no	no	no	no	no	no	no	no	To strike out the words "by the Senate"	2	9	
[493]				no		unanimous.								To insert the "United States" instead of the "State"			
[494]	aye	aye		aye		aye	no	aye	aye	aye	aye	aye	aye	To agree to the clause respectg the impeachment of the Presidt			
[495]						unanimous								The Vice Presidt and other civil officers of the U. S. shall be removed from office on impeachment & conviction as aforesaid			
[496]														But the Senate may propose or concur with amendments as in other Bills.			
[497]	aye	aye		aye		aye	aye	no	no	aye	aye	aye	aye	all bills for raising revenue shall originate in the Ho of representatives	9	2	
[498]	aye	aye		aye		aye	no	aye	aye	no	aye	aye	aye	To agree to the resolution that the Senate be the court of impeachment	9	2	
[499]	no	aye		aye		no	no	no	no	no	no	no	no	The Legislature shall have the sole right of establishing offices not herein provided for	3	8	
[500]	aye	no		aye		aye	no	aye	aye	no	aye	no	aye	He may convene both or either of the Houses on extraordinary occasions.	7	4	
[501]	no	no		no		no	aye	aye	aye	aye	aye	no	no	To reconsider the number of representatives	5	6	

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In the place of the 1st sect. 9 article. insert

“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: and
“every Member shall be on oath”

which passed in the affirmative [Ayes — 9; noes — 2.]

It was moved and seconded to agree to the following clause

“The Legislature shall have the sole right of establishing
offices not herein provided for”

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

It was moved and seconded to amend the 3rd clause of the 2nd
sect. 10 article to read

“He may convene both or either of the Houses on extra-
ordinary occasions”

which passed in the affirmative [Ayes — 7; noes — 4.]

It was moved and seconded to appoint a Committee of
five to revise the style of and arrange the articles agreed to
by the House

which passed in the affirmative

And a Committee was appointed by ballot of the honorable Mr
Johnson, Mr Hamilton, Mr G. Morris, Mr Madison and Mr
King.

[To reconsider the number of representatives Ayes — 5;
noes — 6.]³

The House adjourned.

MADISON

Saturday September 8th. In convention

The last Report of Committee of Eleven ((see Sepr. 4))
was resumed.

Mr. King moved to strike out the “exception of Treaties
of peace” from the general clause requiring two thirds of the
Senate for making Treaties

Mr. Wilson wished the requisition of two thirds to be struck

³ Vote 501, Detail of Ayes and Noes. *Journal* (p. 347) assigns this to September
10.

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out altogether If the majority cannot be trusted, it was a proof, as observed by Mr. Ghorum, that we were not fit for one Society.

A reconsideration of the whole clause was agreed to.

Mr. Govr. Morris was agst. striking out the "exception of Treaties of peace" If two thirds of the Senate should be required for peace, the Legislature will be unwilling to make war for that reason, on account of the Fisheries or the Mississippi, the two great objects of the Union.⁴ Besides, if a Majority of the Senate be for peace, and are not allowed to make it, they will be apt to effect their purpose in the more disagreeable mode, of negating the supplies for the war.

Mr. Williamson remarked that Treaties are to be made in the branch of the Govt. where there may be a majority of the States without a majority of the people, Eight men may be a majority of a quorum, & should not have the power to decide the conditions of peace. There would be no danger, that the exposed States, as S. Carolina or Georgia, would urge an improper war for the Western Territory.

Mr. Wilson If two thirds are necessary to make peace, the minority may perpetuate war, against the sense of the majority.

Mr. Gerry enlarged on the danger of putting the essential rights of the Union in the hands of so small a number as a majority of the Senate, representing perhaps, not one fifth of the people. The Senate will be corrupted by foreign influence.

Mr. Sherman was agst leaving the rights, established by the Treaty of Peace, to the Senate, & moved to annex a "proviso that no such rights shd be ceded without the sanction of the Legislature.

Mr Govr. Morris seconded the ideas of Mr Sherman.

Mr. Madison observed that it had been too easy in the present Congress to make Treaties altho' nine States were required for the purpose.

On the question for striking "except Treaties of peace"

⁴ See Appendix A, CCIV.

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

Mr. Wilson & Mr Dayton move to strike out the clause requiring two thirds of the Senate for making Treaties. — on which,

N. H no— Mas— no— Ct. divd. N— J. no. Pa. no Del. ay. Md. no. Va. no. N. C. no S. C. no. Geo. no. [Ayes — 1; noes — 9; divided — 1.]

Mr Rutledge & Mr. Gerry moved that “no Treaty be made without the consent of $\frac{2}{3}$ of all the members of the Senate” — according to the example in the present Congs

Mr. Ghorum. There is a difference in the case, as the President’s consent will also be necessary in the new Govt.

On the question

N— H. no— Mass no— (Mr. Gerry ay) Ct. no. N. J— no. Pa. no. Del. no. Md. no. Va. no. N. C. ay. S. C. ay. Geo. ay. [Ayes — 3; noes — 8.]

Mr. Sherman movd, that “no Treaty be made without a Majority of the whole number (of the Senate) — Mr. Gerry seconded him.

Mr Williamson. This will be less security than $\frac{2}{3}$ as now required.

Mr Sherman— It will be less embarrassing.

On the question, (it passed in the negative.)

N. H. no. Mas. ay. Ct. ay. N. J. no. Pa. no. Del. ay. Md. no. Va. no. N— C— no. S. C. ay. Geo. ay. [Ayes — 5; noes — 6.]

Mr. Madison movd. that a Quorum of the Senate consist of $\frac{2}{3}$ of all the members.

Mr. Govr. Morris — This will put it in the power of one man to break up a Quorum.

Mr. Madison, This may happen to any Quorum.

On the Question (it passed in the negative)

N. H. no. Mas. no. Ct. no. N. J. no. Pa. no— Del. no— Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay. [Ayes — 5; noes — 6.]

Mr. Williamson & Mr Gerry movd. “that no Treaty shd.

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be made with previous notice to the members, & a reasonable time for their attending.”

On the Question

All the States no, except N—C—S. C. & Geo. ay.

On a question on clause of the Report of the Come. of Eleven relating to Treaties by $\frac{2}{3}$ of the Senate. All the States <were> ay — except Pa N. J. & Geo. no.

Mr. Gerry movd. that no officer shall be appd but to offices created by the Constitution or by law.” — This was rejected as unnecessary by six no’s and five ays;

<The Ayes. Mas. Ct. N. J. N. C. Geo. — Noes— N. H. Pa.: Del. Md Va. S. C.>⁶ [Ayes — 5; noes — 6.]

The clause referring to the Senate, the trial of impeachments agst. the President, for Treason & bribery, was taken up.⁶

Col. Mason. Why is the provision restrained to Treason & bribery only? Treason as defined in the Constitution will not reach many great and dangerous offences. Hastings is not guilty of Treason. Attempts to subvert the Constitution may not be Treason as above defined— As bills of attainder which have saved the British Constitution are forbidden, it is the more necessary to extend: the power of impeachments. He movd. to add after “bribery” “or maladministration”. Mr. Gerry seconded him—

Mr Madison So vague a term will be equivalent to a tenure during pleasure of the Senate.

Mr Govr Morris, it will not be put in force & can do no harm— An election of every four years will prevent maladministration.

Col. Mason withdrew “maladministration” & substitutes “other high crimes & misdemeanors” <agst. the State>⁷

On the question thus altered

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

* <In the printed Journal. S. Carolina — no>

⁶ Taken from *Journal*.

⁶ See Appendix A, CXLIX, CLVIII (81-82), CLXX, CCCVI, CCCXCII.

⁷ Revised from *Journal*.

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Mr. Madison, objected to a trial of the President by the Senate, especially as he was to be impeached by the other branch of the Legislature, and for any act which might be called a misdemeanor. The President under these circumstances was made improperly dependent. He would prefer the supreme Court for the trial of impeachments, or rather a tribunal of which that should form a part.

Mr Govr Morris thought no other tribunal than the Senate could be trusted. The Supreme Court were too few in number and might be warped or corrupted. He was agst. a dependence of the Executive on the Legislature, considering the Legislative tyranny the great danger to be apprehended; but there could be no danger that the Senate would say untruly on their oaths that the President was guilty of crimes or facts, especially as in four years he can be turned out. —

Mr Pinkney disapproved of making the Senate the Court of Impeachments, as rendering the President too dependent on the Legislature. If he opposes a favorite law, the two Houses will combine agst him, and under the influence of heat and faction throw him out of office.

Mr. Williamson thought there was more danger of too much lenity than of too much rigour towards the President, considering the number of cases in which the Senate was associated with the President —

Mr Sherman regarded the Supreme Court as improper to try the President, because the Judges would be appointed by him.

On motion by Mr. Madison to strike out the words — “by the Senate” after the word “Conviction”

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

In the amendment of Col: Mason just agreed to, the word “State” after the words misdemeanors against” was struck out, and the words “United States” inserted, (unanimously)⁸ in order to remove ambiguity—

On the question to agree to clause as amended,

⁸ Taken from *Journal*.

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N. H. ay. Mas. ay. (Cont ay)^{8a} N. J. ay. Pa. no. (Del. ay)^{8a} Md. ay— Va. ay. N— C. ay. S. C. ay. Geo. ay [Ayes—10; noes—1.]

On motion “The vice-President and other Civil officers of the U. S. shall be removed from office on impeachment and conviction as aforesaid” was added to the clause on the subject of impeachments.

The clause of the report made on the 5th. Sepr. & postponed was taken up, to wit — “All bills for raising revenue shall originate in the House of Representatives; and shall be subject to alterations and amendments by the Senate. No money shall be drawn from the Treasury but in consequence of appropriations made by law.”

It was moved to strike out the words “and shall be subject to alterations and amendments by the Senate” and insert the words used in the Constitution of Massachusetts on the same subject — “but the Senate may propose or concur with amendments as in other bills” — which was agreed too nem: con:⁹

On the question On the first part of the clause — “All bills for raising revenue shall originate in the house of Representatives” *

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

Mr. Govr Morris moved to add to clause (3) of the report made on Sept. 4. the words “and every member shall be on oath” which being agreed to, and a question taken on the clause (so amended) viz — “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: and every member shall be on oath”

N. H. ay— Mas. ay. Ct. ay. N. J— ay. Pa. no— Del—

* This was a conciliatory vote, the effect of the compromise formerly alluded to. See Note Wednesday Sepr. 5.

^{8a} Taken from *Journal*.

⁹ Upon this subject, see June 13 (references under note 13), and Appendix A, CXLVIA, CLXXXI, CCX.

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ay—Md ay. Va. no. N. C. ay. S. C. ay. Geo. ay. [Ayes —9; noes — 2.]

Mr. Gerry repeated his motion above made on this day, in the form following “The Legislature shall have the sole right of establishing offices not herein provided for”. which was again negatived: (Mas. Cont. & Geo. only being ay.)¹⁰

Mr. McHenry observed that the President had not yet been any where authorized to convene the Senate, and moved to amend Art X. sect. 2. by striking out the words “He may convene them (the Legislature) on extraordinary occasions” & insert “He may convene both or either of the Houses on extraordinary occasions” — This he added would also provide for the case of the Senate being in Session at the time of convening the Legislature.

Mr. Wilson said he should vote agst the motion because it implied that the senate might be in Session, when the Legislature was not, which he thought improper.

On the question

N. H. ay— Mas. no. Ct. ay. N. J. ay. Pa. no. Del— ay. Md. ay. Va. no— N. C. ay. S. C. no. Geo. ay. [Ayes — 7; noes — 4.]

A Committee was then appointed by Ballot to revise the stile of and arrange the articles which had been agreed to by the House. The Committee consisted of Mr. Johnson, Mr. Hamilton, Mr Govr. Morris, Mr. Madison and Mr. King.

Mr. Williamson moved that previous to this work of the Committee the clause relating to the number of the House of Representatives shd. be reconsidered for the purpose of increasing the number.¹¹

Mr Madison 2ded. the Motion

Mr. Sherman opposed it— he thought the provision on that subject amply sufficient.

Col: Hamilton expressed himself with great earnestness and anxiety in favor of the motion. He avowed himself a friend to a vigorous Government, but would declare at the same time, that he held it essential that the popular branch

¹⁰ Taken from *Journal*.

¹¹ See Appendix A, CCXVIII.

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of it should be on a broad foundation. He was seriously of opinion that the House of Representatives was on so narrow a scale as to be really dangerous, and to warrant a jealousy in the people for their liberties. He remarked that the connection between the President & Senate would tend to perpetuate him, by corrupt influence. It was the more necessary on this account that a numerous representation in the other branch of the Legislature should be established.

On the motion of Mr. Williamson to reconsider, (it was negatived,)

* N— H— no. Mas. no. Ct. no. N. J. no. Pa. ay. Del. ay. Md. ay. Va ay— N. C. ay. S. C. no. Geo. no. [Ayes — 5; noes — 6.]

Adj'd¹²

* (This motion & vote are entered on the Printed journal of the ensuing morning.)

McHENRY

Sept. 8 —

Agreed to the whole report with some amendments — and refered the printed paper etc to a committee of 5 to revise and place the several parts under their proper heads — with an instruction to bring in draught of a letter to Congress.

Committee Gov. Morris

Maddison

Hamilton

Dr. Johnson

King—

Maryland gave notice that she had a proposition of much importance to bring forward — but would delay it till Monday it being near the hour to adjourn.

¹² See further Appendix A, CV.