

MONDAY, SEPTEMBER 10, 1787.

JOURNAL

Monday September 10. 1787.

It was moved and seconded to reconsider the 19th article  
which passed in the affirmative [Ayes — 9; noes — 1;  
divided — 1.]

It was moved and seconded to amend the 19 article by adding  
the following clause.

Or the Legislature may propose amendments to the sev-  
eral States, for their approbation, but no amendments shall  
be binding, until consented to by the several States.

It was moved and seconded to insert the words “two  
thirds of” before the words “the several States”

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

It was moved and seconded to insert the words “three fourths”  
which passed in the affirmative. [“unanimous”]

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

“The Legislature of the United States, whenever two  
“thirds of both Houses shall deem necessary, or on the ap-  
“plication of two thirds of the Legislatures of the several  
“States, shall propose amendments to this Constitution which  
“shall be valid to all intents and purposes as part thereof,  
“when the same shall have been ratified by three fourths at  
“least of the Legislatures of the several States, or by Conven-  
“tions in three fourths thereof, as one or the other mode  
“of ratification may be proposed by the Legislature of the  
“United-States: Provided that no amendments which may  
“be made prior to the year 1808. shall in any manner affect  
“the 4th and 5th Sections of article the 7th

On the question to postpone  
it passed in the affirmative

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On the question to agree to the last amendment.

it passed in the affirmative [Ayes — 9; noes — 1; divided — 1.]

It was moved and seconded to reconsider the 21st and 22nd articles

which passed in the affirmative [Ayes — 7; noes — 3; divided — 1.]<sup>1</sup>

It was moved and seconded to postpone the 21st article in order to take up the following.

Resolved that the foregoing plan of a Constitution be transmitted to the United States in Congress assembled in order that if the same shall be agreed to by them it may be communicated to the Legislatures of the several States to the end that they may provide for it's final ratification by referring the same to the consideration of a Convention of Deputies in each State to be chosen by the People thereof, and that it be recommended to the said Legislatures in their respective acts for organizing such Convention to declare that, if the said Convention shall approve of the said Constitution, such approbation shall be binding and conclusive upon the State, and further that if the said Convention should be of opinion that the same upon the assent of any nine States thereto ought to take effect between the States so assenting — such opinion shall thereupon be also binding upon such State and the said Constitution shall take effect between the States assenting thereto.

On the question to postpone

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

On the question to agree to the 21st article

it passed in the affirmative [Ayes — 11; noes — 0.]

It was moved and seconded to restore the words “for their approbation” to the 22nd article

it passed in the negative

It was moved and seconded to refer the following to the Committee of revision.

“That it be an instruction to the Committee to prepare an

<sup>1</sup> Votes 506 & 507, Detail of Ayes and Noes.

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“address to the People to accompany the present constitution, and to be laid with the same before the United States in Congress.

which passed in the affirmative.

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
[502]	dd	aye	aye		no	aye	aye	aye	aye	aye	aye	aye	aye	To reconsider the XIX article	9	1	1
[503]	aye	no	no		no	aye	aye	aye	aye	no	no	no	no	To agree to the amendment of “two-thirds”	5	6	
[504]					unanimous									To agree to the amendment of “three-fourths”			
[505]	dd	aye	aye		aye	aye	no	aye	aye	aye	aye	aye	aye	To agree to the amendment of article XIXth	9	1	1
[506]	dd	no	aye		aye	no	aye	aye	aye	aye	no	aye	no	To reconsider the XXIIInd article	7	3	1
[507]	dd	no	aye		aye	no	aye	aye	aye	aye	no	aye	no	To reconsider the XXIst article	7	3	1
[508]	no	no	aye		no	no	no	no	no	no	no	no	no	To postpone the 21st Article.	1	10	
[509]	aye	aye	aye		aye	aye	aye	aye	aye	aye	aye	aye	aye	To agree to the 21st article.	11		

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Monday Sepr. 10. 1787. In Convention

Mr Gerry moved to reconsider art XIX. viz, “On the application of the Legislatures of two thirds of the States in the Union, for an amendment of this Constitution, the Legislature of the U. S. shall call a Convention for that purpose.” ((see Aug.” 6.))

This Constitution he said is to be paramount to the State Constitutions. It follows, hence, from this article that two thirds of the States may obtain a Convention, a majority of which can bind the Union to innovations that may subvert

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the State-Constitutions altogether. He asked whether this was a situation proper to be run into—

Mr. Hamilton 2ded. the motion, but he said with a different view from Mr. Gerry— He did not object to the consequences stated by Mr. Gerry— There was no greater evil in subjecting the people of the U. S. to the major voice than the people of a particular State— It had been wished by many and was much to have been desired that an easier mode for introducing amendments had been provided by the articles of Confederation. It was equally desirable now that an easy mode should be established for supplying defects which will probably appear in the new System. The mode proposed was not adequate. The State Legislatures will not apply for alterations but with a view to increase their own powers— The National Legislature will be the first to perceive and will be most sensible to the necessity of amendments, and ought also to be empowered, whenever two thirds of each branch should concur to call a Convention— There could be no danger in giving this power, as the people would finally decide in the case.

Mr Madison remarked on the vagueness of the terms, “call a Convention for the purpose.” as sufficient reason for reconsidering the article. How was a Convention to be formed? by what rule decide? what the force of its acts?

On the motion of Mr. Gerry to reconsider

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

Mr. Sherman moved to add to the article ““or the Legislature may propose amendments to the several States for their approbation, but no amendments shall be binding until consented to by the several States”

Mr. Gerry 2ded. the motion

Mr. Wilson moved to insert “two thirds of” before the words “several States”— on which amendment to the motion of Mr. Sherman

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

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Md. ay. Va. ay. N. C. no. S. C. no. Geo. no. [Ayes — 5; noes — 6.]<sup>2</sup>

Mr. Wilson then moved to insert “three fourths of” before “the several Sts” which was agreed to nem: con:

Mr. Madison moved to postpone the consideration of the amended proposition in order to take up the following,

“The Legislature of the U— S— whenever two thirds of both Houses shall deem necessary, or on the application of two thirds of the Legislatures of the several States, shall propose amendments to this Constitution, which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three fourths at least of the Legislatures of the several States, or by Conventions in three fourths thereof, as one or the other mode of ratification may be proposed by the Legislature of the U. S:”

Mr. Hamilton 2ded. the motion.

Mr. Rutledge said he never could agree to give a power by which the articles relating to slaves might be altered by the States not interested in that property and prejudiced against it. In order to obviate this objection, these words were added to the proposition: “\* provided that no amendments which may be made prior to the year 1808. shall in any manner affect the 4 & 5 sections of the VII article”—<sup>3</sup> The postponement being agreed to,

On the question On the proposition of Mr. Madison & Mr. Hamilton as amended

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

Mr. Gerry moved to reconsider art: XXI & XXII from the latter of which “for the approbation of Congs.” had been struck out.<sup>4</sup> He objected to proceeding to change the Govern-

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\* <The Printed Journal makes the succeeding proviso as to sections 4 & 5 of art: VII, moved by Mr. Rutledge, part of the proposition of Mr. Madison.>

<sup>2</sup> Madison originally recorded both Massachusetts and New Jersey as voting “ay”. This made the total vote on the question affirmative. Later he revised his record to conform to *Journal*.

<sup>3</sup> See Appendix A, CCCXXXII.

<sup>4</sup> “from . . . out” possibly a later insertion.

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ment without the approbation of Congress as being improper and giving just umbrage to that body. He repeated his objections also to an annulment of the confederation with so little scruple or formality.<sup>6</sup>

Mr. Hamilton concurred with Mr. Gerry as to the indecorum of not requiring the approbation of Congress. He considered this as a necessary ingredient in the transaction. He thought it wrong also to allow nine States as provided by art XXI. to institute a new Government on the ruins of the existing one. He wd propose as a better modification of the two articles (XXI & XXII) that the plan should be sent to Congress in order that the same if approved by them, may be communicated to the State Legislatures, to the end that they may refer it to State Conventions; each Legislature declaring that if the convention of the State should think the plan ought to take effect among nine ratifying States, the same shd take effect accordingly.

Mr. Gorham— Some States will say that 'nine States shall be sufficient to establish the plan— others will require unanimity for the purpose— And the different and conditional ratifications will defeat the plan altogether.

Mr. Hamilton— No Convention convinced of the necessity of the plan will refuse to give it effect on the adoption by nine States. He thought this mode less exceptionable than the one proposed in the article, and would attain the same end,

Mr Fitzimmons remarked that the words “for their approbation” had been struck out in order to save Congress from the necessity of an Act inconsistent with the Articles of Confederation under which they held their authority.

Mr. Randolph declared if no change should be made in this part of the plan, he should be obliged to dissent from the whole of it. He had from the beginning he said been convinced that radical changes in the system of the Union were necessary. Under this conviction he had brought forward a set of republican propositions as the basis and outline of a

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<sup>6</sup> See Appendix A, CXCLX.

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reform. These Republican propositions had however, much to his regret been widely, and in his opinion, irreconcilably departed from — In this state of things it was his idea and he accordingly meant to propose, that the State Conventions shd. be at liberty to offer amendments to the plan, — and that these should be submitted to a second General Convention, with full power to settle the Constitution finally— He did not expect to succeed in this proposition, but the discharge of his duty in making the attempt, would give quiet to his own mind.

Mr. Wilson was against a reconsideration for any of the purposes which had been mentioned.

Mr King thought it would be more respectful to Congress to submit the plan generally to them; than in such a form as expressly and necessarily to require their approbation or disapprobation. The assent of nine States he considered as sufficient; and that it was more proper to make this a part of the Constitution itself, than to provide for it by a supplemental or distinct recommendation.

Mr. Gerry urged the indecency and pernicious tendency of dissolving in so slight a manner, the solemn obligations of the articles of confederation. If nine out of thirteen can dissolve the compact, Six out of nine will be just as able to dissolve the new one hereafter.

Mr. Sherman was in favor of Mr. King's idea of submitting the plan generally to Congress. He thought nine States ought to be made sufficient: but that it would be best to make it a separate act and in some such form as that intimated by Col: Hamilton, than to make it a particular article of the Constitution.

On the question for reconsidering the two articles. XXI & XXII —

N. H. divd. Mas. no Ct. ay. N. J. ay. Pa. no Del. ay. Md. ay— Va. ay. N. C. ay. S. C. no .Geo. ay. [Ayes — 7; noes — 3; divided — 1.]<sup>6</sup>

<sup>6</sup>The votes of Massachusetts, Pennsylvania, and South Carolina were changed from "ay" to "no". In the case of South Carolina this may have been a later revision, in the case of the other two, probably not.

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Mr. Hamilton then moved to postpone art XXI in order to take up the following, containing the ideas he had above expressed. viz

Resolved that the foregoing plan of a Constitution be transmitted to the U. S. in Congress assembled, in order that if the same shall be agreed to by them, it may be communicated to the Legislatures of the several States, to the end that they may provide for its final ratification by referring the same to the Consideration of a Convention of Deputies in each State to be chosen by the people thereof, and that it be recommended to the said Legislatures in their respective acts for organizing such convention to declare, that if the said Convention shall approve of the said Constitution, such approbation shall be binding and conclusive upon the State, and further that if the said Convention should be of opinion that the same upon the assent of any nine States thereto, ought to take effect between the States so assenting, such opinion shall thereupon be also binding upon such State, and the said Constitution shall take effect between the States assenting thereto”

Mr. Gerry 2ded. the motion.

Mr. Wilson. This motion being seconded, it is necessary now to speak freely He expressed in strong terms his disapprobation of the expedient proposed, particularly the suspending the plan of the Convention on the approbation of Congress. He declared it to be worse than folly to rely on the concurrence of the Rhode Island members of Congs. in the plan. Maryland had voted on this floor; for requiring the unanimous assent of the 13 States to the proposed change in the federal System. N—York has not been represented for a long time past in the Convention. Many individual deputies from other States have spoken much against the plan. Under these circumstances Can it be safe to make the assent of Congress necessary. After spending four or five months in the laborious & arduous task of forming a Government for our Country, we are ourselves at the close throwing insuperable obstacles in the way of its success.

Mr. Clymer thought that the mode proposed by Mr.

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Hamilton would fetter & embarrass Congs. as much as the original one, since it equally involved a breach of the articles of Confederation.

Mr. King concurred with Mr. Clymer. If Congress can accede to one mode, they can to the other. If the approbation of Congress be made necessary, and they should not approve, the State Legislatures will not propose the plan to Conventions; or if the States themselves are to provide that nine States shall suffice to establish the System, that provision will be omitted, every thing will go into confusion, and all our labor be lost.

Mr. Rutledge viewed the matter in the same light with Mr. King

On the question to postpone in order to take up Col: Hamiltons motion

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

(A Question being then taken on the article XXI. It was agreed to, unanimously.)<sup>7</sup>

Col: Hamilton withdrew the remainder of the motion to postpone art XXII, observing that his purpose was defeated by the vote just given;

Mr. Williamson & Mr. Gerry moved to re-instate the words "for the approbation of Congress" in art: XXII. which was disagreed to nem: con:

Mr. Randolph took this opportunity to state his objections to the System. They turned on the Senate's being made the Court of Impeachment for trying the Executive — on the necessity of  $\frac{3}{4}$  instead of  $\frac{2}{3}$  of each house to overrule the negative of the President — on the smallness of the number of the Representative branch, — on the want of limitation to a standing army — on the general clause concerning necessary and proper laws — on the want of some particular restraint on Navigation acts — on the power to lay duties on exports — on the Authority of the general Legislature to interpose

<sup>7</sup> Taken from *Journal*.

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on the application of the *Executives* of the States — on the want of a more definite boundary between the General & State Legislatures — and between the General and State Judiciaries — on the the unqualified power of the President to pardon treasons — on the want of some limit to the power of the Legislature in regulating their own compensations. With these difficulties in his mind, what course he asked was he to pursue? Was he to promote the establishment of a plan which he verily believed would end in Tyranny? He was unwilling he said to impede the wishes and Judgment of the Convention— but he must keep himself free, in case he should be honored with a Seat in the Convention of his State, to act according to the dictates of his judgment. The only mode in which his embarrassments could be removed, was that of submitting the plan to Congs. to go from them to the State Legislatures, and from these to State Conventions having power to adopt reject or amend; the process to close with another general Convention with full power to adopt or reject the alterations proposed by the State Conventions, and to establish finally the Government— He accordingly proposed a Resolution to this effect.

Docr Franklin zded. the motion

Col: Mason urged & obtained that the motion should lie on the table for a day or two to see what steps might be taken with regard to the parts of the system objected to by Mr Randolph

Mr Pinkney moved “that it be an instruction to the Committee for revising the stile and arrangement of the articles agreed on, to prepare an Address to the people, to accompany the present Constitution, and to be laid with the same before the U— States in Congress”

\* The motion itself was referred to the Committee. nem: con:

\* Mr. Randolph moved to refer to the Committee also a motion relating to pardons in cases of Treason — which was agreed to nem: con:

Adjourned

\* (These motions not entered in the printed Journal.)