

MONDAY, JULY 23, 1787.

JOURNAL

Monday July 23rd. 1787.

The honorable John Langdon and Nicholas Gillman Esquires, Deputies from the State of New Hampshire, attended and took their seats

The following credentials were produced and read —  
(Here insert the credentials of the Deputies of the State of New Hamr <sup>1</sup>

On the question to agree to the 17th resolution, as reported from the Committee of the whole House, namely

“That provision ought to be made for the amendment of “the articles of union, whensoever it shall seem necessary”

it passed unanimously in the affirmative.

It was moved and seconded to add after the word “States” in the 18 resolution, the words “and of the national government”

which passed in the affirmative

On the question to agree to the 18th resolution as amended namely

“That the legislative, Executive, and Judiciary Powers “within the several States, and of the national Government, “ought to be bound by oath to support the articles of union”

It passed unanimously in the affirmative

It was moved and seconded to strike the following words out of the 19th resolution reported from the Committee of the whole House namely

“to an Assembly or assemblies of representatives, recommended by the several Legislatures, to be expressly chosen “by the people to consider and decide thereon”

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

---

<sup>1</sup> See Appendix B.

*Monday*

JOURNAL

*July 23*

On the question to agree to the 19th resolution as reported from the Committee of the whole House, namely

Resolved that the amendments which shall be offered to the confederation by the Convention ought at a proper time or times after the approbation of Congress to be submitted to an assembly or assemblies of representatives, recommended by the several Legislatures, to be expressly chosen by the People to consider and decide thereon

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

It was moved and seconded to agree to the following resolution, namely

Resolved that the representation in the second Branch of the Legislature of the United States consist of        Members from each State, who shall vote per capita.

It was moved and seconded to fill up the blank with the word "Three"

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

It was moved and seconded to fill up the blank with the number "Two"

which was unanimously agreed to [Ayes—10; noes—0.]

On the question to agree to the resolution as filled up —

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

It was moved and seconded to reconsider that clause of the resolution respecting the appointment of the supreme Executive.

which passed in the affirmative [Ayes — 7; noes — 3.] and to-morrow was assigned for the reconsideration. [Ayes — 8; noes — 2.]

[To adjourn. Ayes — 0; noes — 10.]<sup>2</sup>

It was moved and seconded that the proceedings of the Convention for the establishment of a national government, except what respects the Supreme Executive, be referred to a Committee for the purpose of reporting a Constitution conformably to the Proceedings aforesaid — which passed unanimously in the affirmative [Ayes — 10; noes — 0.]

---

<sup>2</sup> Vote 210, Detail of Ayes and Noes, which gives an obviously wrong summary of the vote.

DETAIL OF AYES AND NOES

	New Hampshire	Massachusetts	Rhode Island	Connecticut	New York	New Jersey	Pennsylvania	Delaware	Maryland	Virginia	North Carolina	South Carolina	Georgia	Questions	Ayes	Noes	Divided
[203]	no	no		aye			no	aye	aye	no	no	no	no	To strike out the words "an assembly or assemblies of representatives recommended by the sev[er]al Legislatures to be expressly chosen by the People to consider and decide thereon" in the last resolution	3	7	
[204]	aye	aye		aye			aye	no	aye	aye	aye	aye	aye	To agree to the last resolution	9	1	
[205]	no	no		no			aye	no	no	no	no	no	no	To fill up the blank in the resolution respecting the number of representatives in ye 2 branch wh "three.	1	9	
[206]	aye	aye		aye			aye	aye	aye	aye	aye	aye	aye	To fill up the blank with the word "Two" unanimous	9	1	
[207]	aye	aye		aye			aye	aye	no	aye	aye	aye	aye	To agree to the resolution respecting the number of representatives in the 2nd branch and the manner of voting	9	1	
[208]	aye	aye		aye			no	aye	no	no	aye	aye	aye	To reconsider the clause respecting the appointment of the supreme Executive.	7	3	
[209]	aye	aye		no			no	aye	aye	aye	aye	aye	aye	To reconsider the clause respecting the Executive to-morrow	8	2	
[210]	no	no		no			no	no	no	no	no	no	no	To adjourn.	10		
[211]	aye	aye		aye			aye	aye	aye	aye	aye	aye	aye	To agree to refer the Proceedings of the Convention to a Committee	1	9	
[212]	no	no		no			no	aye	no	no	no	no	no	That the Committee consist of a Member from each State	5	5	
[213]	aye	aye		aye			no	no	aye	no	no	no	no	That the Committee consist of Seven	10		
[214]	aye	aye		aye			aye	aye	aye	aye	aye	aye	aye	That the Committee consist of five, unanimous	10		

*Monday*

MADISON

*July 23*

On the question that the Committee consist of a Member from each State

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

On the question that the Committee consist of Seven

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

On the question that the Committee consist of five

it passed unanimously in the affirmative. [Ayes — 10; noes — 0.]

To-morrow assigned for appointing the Committee.  
and then the house adjourned till to-morrow at 11 o'clock.

## MADISON

Monday, July. 23. in Convention.

(Mr. John Langdon & Mr. Nicholas Gilman from N. Hampshire took their seats.)<sup>3</sup>

Resoln: 17. that provision ought to be made for future amendments of the articles of Union. Agreed to nem con.

Resoln. 18. "requiring the Legis: Execut: & Judy. of the States to be bound by oath to support the articles of Union". taken into consideration.

Mr. Williamson suggests that a reciprocal oath should be required from the National officers, to support the Governments of the States.

Mr. Gerry moved to insert as an amendmt. that the oath of the Officers of the National Government also should extend to the support of the Natl. Govt. which was agreed to nem. con.

Mr. Wilson said he was never fond of oaths, considering them as a left handed security only. A good Govt. did not need them. and a bad one could not or ought not to be supported. He was afraid they might too much trammel the the Members of the Existing Govt in case future alterations should be necessary; and prove an obstacle to Resol: 17. just agd. to.<sup>4</sup>

Mr. Ghorum did not know that oaths would be of much

<sup>3</sup> Taken from *Journal*.

<sup>4</sup> See Appendix A, CXCII.

*Monday*

MADISON

*July 23*

use; but could see no inconsistency between them and the 17. Resol: or any regular amendt. of the Constitution. The oath could only require fidelity to the existing Constitution. A constitutional alteration of the Constitution, could never be regarded as a breach of the Constitution, or of any oath to support it.

Mr Gerry thought with Mr. Ghorum there could be no shadow of inconsistency in the case. Nor could he see any other harm that could result from the Resolution. On the other side he thought one good effect would be produced by it. Hitherto the officers of (the two) Governments had considered them as distinct from, not as parts of the-General System, & had in all cases of interference given a preference to the State Govts. The proposed oaths will cure that error. —

The Resoln. (18). was agreed to nem. con. —

Resol: 19. referring the new Constitution to Assemblies to be chosen by the people for the express purpose of ratifying it" was next taken into consideration.

Mr. Elseworth moved that it be referred to the Legislatures of the States for ratification. Mr. Patterson 2ded. the motion.

Col. Mason considered a reference of the plan to the authority of the people as one of the most important and essential of the Resolutions. The Legislatures have no power to ratify it. They are the mere creatures of the State Constitutions, and cannot be greater than their creators. And he knew of no power in any of the Constitutions, he knew there was no power in some of them, that could be competent to this object. Whither then must we resort? To the people with whom all power remains that has not been given up in the Constitutions derived from them. It was of great moment he observed that this doctrine should be cherished as the basis of free Government. Another strong reason was that admitting the Legislatures to have a competent authority, it would be wrong to refer the plan to them, because succeeding Legislatures having equal authority could undo the acts of their predecessors; and the National Govt. would stand in each State on the weak and tottering foundation of an Act of Assembly. There was a remaining consideration of some weight.

---

*Monday*

MADISON

*July 23*

---

In some of the States the Govts. were (not) derived from the clear & undisputed authority of the people. This was the case in Virginia. Some of the best & wisest citizens considered the Constitution as established by an assumed authority. A National Constitution derived from such a source would be exposed to the severest criticisms.

Mr Randolph. One idea has pervaded all (our) proceedings, to wit, that opposition as well from the States as from individuals, will be made to the System to be proposed. Will it not then be highly imprudent, to furnish any unnecessary pretext by the mode of ratifying it. Added to other objections agst. a ratification by Legislative authority only, it may be remarked that there have been instances in which the authority of the Common law has been set up in particular States agst. that of the Confederation which has had no higher sanction than Legislative ratification. — Whose opposition will be most likely to be excited agst. the System? That of the local demagogues who will be degraded by it from the importance they now hold. These will spare no efforts to impede that progress in the popular mind which will be necessary to the adoption of the plan, and which every member will find to have taken place in his own, if he will compare his present opinions with those brought with him into the Convention. It is of great importance therefore that the consideration of this subject should be transferred from the Legislatures where this class of men, have their full influence to a field in which their efforts can be less mischievous. It is moreover worthy of consideration that some of the States are averse to any change in their Constitution, and will not take the requisite steps, unless expressly called upon to refer the question to the people.

Mr. Gerry. The arguments of Col. Mason & Mr. Randolph prove too much, they prove an unconstitutionality in the present federal (system) & even in some of the State Govts. Inferences drawn from such a source must be inadmissible. Both the State Govts. & the federal Govt. have been too long acquiesced in, to be now shaken. He considered the Confederation to be paramount to any State Constitution. The

*Monday*

MADISON

*July 23*

last article of it authorizing alterations must consequently be so as well as the others, and everything done in pursuance of the article must have the same high authority with the article. — Great confusion he was confident would result from a recurrence to the people. They would never agree on any thing. He could not see any ground to suppose that the people will do what their rulers will not. The rulers will either conform to, or influence the sense of the people.

Mr. Ghorum was agst. referring the plan to the Legislatures. 1. Men chosen by the people for the particular purpose, will discuss the subject more candidly than members of the Legislature who are to lose the power which is to be given up to the Genl. Govt. 2. Some of the Legislatures are composed of several branches. It will consequently be more difficult in these cases to get the plan through the Legislatures, than thro' a Convention. 3. in the States many of the ablest men are excluded from the Legislatures, but may be elected into a Convention. Among these may be ranked many of the Clergy who are generally friends to good Government. Their services were found to be valuable in the formation & establishment of the Constitution of Massachs. 4. the Legislatures will be interrupted with a variety of little business. by artfully pressing which, designing men will find means to delay from year to year, if not to frustrate altogether the national system. 5 — If the last art: of the Confederation is to be pursued the unanimous concurrence of the States will be necessary. But will any one say. that all the States are to suffer themselves to be ruined, if Rho. Island should persist in her opposition to general measures. Some other States might also tread in her steps. The present advantage which N. York seems to be so much attached to, of taxing her neighbours (by the regulation of her trade), makes it very probable, that she will be of the number. It would therefore deserve serious consideration whether provision ought not to be made for giving effect to the System without waiting for the unanimous concurrence of the States.

Mr. Elseworth. If there be any Legislatures who should find themselves incompetent to the ratification, he should be

---

*Monday*

MADISON

*July 23*

---

content to let them advise with their constituents and pursue such a mode as wd be competent. He thought more was to be expected from the Legislatures than from the people. The prevailing wish of the people in the Eastern States is to get rid of the public debt; and the idea of strengthening the Natl. Govt. carries with it that of strengthening the public debt. It was said by Col. Mason 1. that the Legislatures have no authority in this case. 2. that their successors having equal authority could rescind their acts. As to the 2d. point he could not admit it to be well founded. An Act to which the States by their Legislatures, make themselves parties, becomes a compact from which no one of the parties can recede of itself. As to the 1st. point, he observed that a new sett of ideas seemed to have crept in since the articles of Confederation were established. Conventions of the people, or with power derived expressly from the people, were not then thought of. The Legislatures were considered as competent. Their ratification has been acquiesced in without complaint. To whom have Congs. applied on subsequent occasions for further powers? To the Legislatures; not to the people. The fact is that we exist at present, and we need not enquire how, as a federal Society, united by a charter one article of which is that alterations therein may be made by the Legislative authority of the States. It has been said that if the confederation is to be observed, the States must *unanimously* concur in the proposed innovations. He would answer that if such were the urgency & necessity of our situation as to warrant a new compact among a part of the States, founded on the consent of the people; the same pleas would be equally valid in favor of a partial compact, founded on the consent of the Legislatures.

Mr. Williamson thought the Resoln. (19) so expressed as that it might be submitted either to the Legislatures or to Conventions recommended by the Legislatures. He observed that some Legislatures were evidently unauthorized to ratify the system. He thought too that Conventions were to be preferred as more likely to be composed of the ablest men in the States.

Monday

MADISON

July 23

Mr. Govr. Morris considered the inference of Mr. Elsworth from the plea of necessity as applied to the establishment of a new System on ye. consent of the people of a part of the States, in favor of a like establishnt. on the consent of a part of the Legislatures as a non sequitur. If the Confederation is to be pursued no alteration can be made without the unanimous consent of the Legislatures: Legislative alterations not conformable to the federal compact, would clearly not be valid. The Judges would consider them as null & void. Whereas in case of an appeal to the people of the U. S., the supreme authority, the federal compact may be altered by a *majority of them*; in like manner as the Constitution of a particular State may be altered by a majority of the people of the State. The amendmt. moved by Mr. Elsworth erroneously supposes that we are proceeding on the basis of the Confederation. This Convention is unknown to the Confederation.

Mr. King thought with Mr. Elsworth that the Legislatures had a competent authority, the acquiescence of the people of America in the Confederation, being equivalent to a formal ratification by the people. He thought with Mr. E— also that the plea of necessity was as valid in the one case as in the other. At the same time he preferred a reference to the authority of the people expressly delegated to Conventions, as the most certain means of obviating all disputes & doubts concerning the legitimacy of the new Constitution; as well as the most likely means of drawing forth the best men in the States to decide on it. He remarked that among other objections made in the State of N. York to granting powers to Congs. one had been that such powers as would operate within the State, could not be reconciled to the Constitution; and therefore were not grantible by the Legislative authority. He considered it as of some consequence also to get rid of the scruples which some members of the States Legislatures might derive from their oaths to support & maintain the existing Constitutions.

Mr. (Madison) thought it clear that the Legislatures were incompetent to the proposed changes. These changes would make essential inroads on the State Constitutions, and it would be a novel & dangerous doctrine that a Legislature

Monday

MADISON

July 23

could change the constitution under which it held its existence. There might indeed be some Constitutions within the Union, which had given, a power to the Legislature to concur in alterations of the federal Compact. But there were certainly some which had not; and in the case of these, a ratification must of necessity be obtained from the people. He considered the difference between a system founded on the Legislatures only, and one founded on the people, to be the true difference between a *league* or *treaty*, and a *Constitution*. The former in point of *moral obligation* might be as inviolable as the latter. In point of *political operation*, there were two important distinctions in favor of the latter. 1. A law violating a treaty ratified by a preexisting law, might be respected by the Judges as a law, though an unwise or perfidious one. A law violating a constitution established by the people themselves, would be considered by the Judges as null & void. 2. The doctrine laid down by the law of Nations in the case of treaties is that a breach of any one article by any of the parties, frees the other parties from their engagements. In the case of a union of people under one Constitution, the nature of the pact has always been understood to exclude such an interpretation. Comparing the two modes in point of expediency he thought all the considerations which recommended this Convention in preference to Congress for proposing the reform were in favor of State Conventions in preference to the Legislatures for examining and adopting it.

On question on Mr Elseworth's motion to refer the plan to the Legislatures of the States

N. H. no. Mas. no. Ct. ay. Pa. no- Del. ay- Md. ay. Va. no. N- C- no. S. C- no. Geo. no. [Ayes — 3; noes — 7.]

Mr. Govr. Morris moved that the reference of the plan be made to one general Convention, chosen & authorized by the people to consider, *amend*, & establish the same. — Not seconded.

On question for agreeing to Resolution 19, touching the mode of Ratification (as reported from the Committee of the Whole; viz, to refer the Constn. after the approbation of Congs. to assemblies chosen by the people.<sup>5</sup>

<sup>5</sup> Revised from *Journal*.

Monday

MADISON

July 23

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

Mr. Govr. Morris & Mr. King moved that the representation in the second branch consist of \_\_\_\_\_ members from each State, who shall vote per capita.<sup>6</sup>

Mr Elseworth said he had alway approved of voting in that mode.

Mr. Govr. Morris moved to fill the *blank* with *three*. He wished the Senate to be a pretty numerous body. If two members only should be allowed to each State, and a majority be made a quorum the power would be lodged in 14 members, which was too small a number for such a trust.

Mr Ghorum preferred two to three members for the blank. A small number was most convenient for deciding on peace & war &c. which he expected would be vested in the 2d. branch. The number of States will also increase. Kentucky, Vermont, the province of Mayne & Franklin will probably soon be added to the present number. He presumed also that some of the largest States would be divided. The strength of the general Govt. will lie not in the largeness, but in the smallness of the States.

Col. Mason thought 3 from each State including new States would make the 2d. branch too numerous. Besides other objections, the additional expence ought always to form one, where it was not absolutely necessary.

Mr. Williamson. If the number be too great, the distant States will not be on an equal footing with the nearer States. The latter can more easily send & support their ablest Citizens. He approved of the voting per capita.

On the question for filling the blank with "*three*"

N. H. no. Mas. no. Cont. no. Pa. ay. Del. no. Va. no. N. C. no. S. C. no. Geo. no. [Ayes — 1; noes — 8.]<sup>7</sup>

On question for filling it with "*two*." Agreed to nem- con,

Mr. L Martin was opposed to voting per Capita, as departing from the idea of the *States* being represented in the 2d. branch.

<sup>6</sup> See Appendix A, CLXX, CLXXI.

<sup>7</sup> Journal includes Maryland in the negative.

Monday

MADISON

July 23

Mr. Carroll, was not struck with any particular objection agst. the mode; but he did not wish so hastily to make so material an innovation.

On the question on the whole motion viz. the 2d. b. to consist of 2 members from each State and to vote per capita."

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

Mr. Houston & Mr. Spaight moved "that the appointment of the Executive by Electors chosen by the Legislatures of the States, be reconsidered." Mr. Houston urged the extreme inconveniency & the considerable expense, of drawing together men from all the States for the single purpose of electing the Chief Magistrate.

On the question which was put without any debate

N. H. ay. Mas. ay. Ct. ay. Pa. no. Del—ay. Md. no. Virga. no. N. C. ay. S. C. ay. Geo. ay. [Ayes — 7; noes — 3.]

Ordered that to morrow be assigned for the reconsideration. (Cont & Pena. no — all the rest ay —)<sup>8</sup>

Mr. Gerry moved that the proceedings of the Convention for the establishment of a Natl. Govt. (except the part relating to the Executive), be referred to a Committee to prepare & report a Constitution conformable thereto.

Genl. Pinkney reminded the Convention that if the Committee should fail to insert some security to the Southern States agst. an emancipation of slaves, and taxes on exports,<sup>9</sup> he shd. be bound by duty to his State to vote agst. their Report. — The appt. of a Come. as moved by Mr. Gerry. Agd. to nem. con.<sup>10</sup>

Shall the Come. consist of 10 members" (one from each State prest.).<sup>11</sup> — All the States were *no.* except Delaware. *ay.*

Shall it consist of 7. members.

N. H. ay Mas. ay. Ct. ay. Pa. no. Del. no. Md. ay. Va.

<sup>8</sup> Taken from *Journal*.

<sup>9</sup> Upon these questions see further August 21, note 15; August 22, note 2; and August 25, note 7.

<sup>10</sup> The idea of a Committee of Detail seems to have been generally accepted previous to this date. It is referred to in debate and in correspondence, and later no secret is made of it. See Appendix A, LXVI, LXIX, LXXIII, LXXV.

<sup>11</sup> Revised from *Journal*.

Monday

PATERSON

July 23

no. N. C. no. S. C. ay. Geo. no. [Ayes — 5; noes — 5.] The question being lost (by an equal division of Votes.)

It was agreed nem — con — that the Commttee consist of 5 members, (to be appointed tomorrow.)<sup>12</sup>

Adjourned

### PATERSON<sup>13</sup>

1. The Constitutionality of the Measure.  
Reasons.
  1. The people the Source of Power. Union —
  2. The Legr. of To-Morrow may repeal the Act of the Legr. of To-Day. So as to Convention —
  3. Some of the Constns. not well or authoritatively founded — Acquiescence.

Expediency.

2 Branches in some of the States —

Judges, etc excluded —

The very Men that will oppose — Rh. Island —

The Debt will go with the Govt. — this a prevailing Idea—

The Legr. has no Right to alter the Constn. or the Confedn. —

Not acting under the Confedn. Nothing but a Compact resting upon the 13 States.

Congress over again.

A Violation of the Compact by one of the Parties, leaves the rest at Large, and exonerated from the Agreemt.

<sup>12</sup> Taken from *Journal*.

<sup>13</sup> These notes seem to cover the debates of July 23. Down to the first blank line, *i. e.*, through the word "Acquiescence", the notes refer to the speech of Mason. "Expediency" may refer to Randolph's speech. Down to the next blank line, *i. e.*, from "Expediency" through "Rh. Island", the notes refer to the speech of Gorham. The next line, beginning with "The Debt" and ending with "Idea", refers to Ellsworth's remarks. The rest of these notes probably refer to Madison's speech.

The above assignment is based upon Professor McLaughlin's notes in *American Historical Review*, January, 1904, IX, p. 339.