

MONDAY, AUGUST 6, 1787.

JOURNAL

Monday August 6. 1787.

The House met agreeably to adjournment.

The honorable John Francis Mercer Esq, One of the Deputies from the State of Maryland, attended and took his seat.

The honorable Mr Rutledge, from the Committee to whom were referred the Proceedings of the Convention for the purpose of reporting a Constitution for the establishment of a national Government conformable to these Proceedings, informed the House that the Committee were prepared to report — The report was then delivered in at the Secretary's table, and being read once throughout and copies thereof given to the members — It was moved and seconded to adjourn till wednesday morning

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

The house then adjourned till to-morrow morning at 11 o'Clock A. M.

DETAIL OF AYES AND NOES

[Beginning of 8th loose sheet]

	New Hampshire	Massachusetts	Rhode Island	Connecticut	New York	New Jersey	Pennsylvania	Delaware	Maryland	Virginia	North Carolina	South Carolina	Georgia	Questions	Ayes	Noes	Divided
[232]	no	no		no			aye		aye	aye	no	no		To adjourn till wednesday	3	5	

Monday

MADISON

August 6

MADISON

Monday August 6th. In Convention

(Mr. John Francis Mercer from Maryland took his seat.)¹

Mr. Rutledge (delivered in) the Report of the Committee of detail as follows;² (a printed copy being at the same time furnished to each member.)³

“We the people of the States of New Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, do ordain, declare, and establish the following Constitution for the Government of Ourselves and our Posterity.

Article I

The stile of the [this] Government shall be. “The United States of America”

II

The Government shall consist of supreme legislative, executive, and judicial powers.

III

The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives and a Senate; each of which shall [,] in all cases [,] have a negative on the other. The Legislature shall meet on the first Monday in December [in] every year.

¹ Taken from *Journal*.

² Madison originally recorded simply, “The House adjd after receiving from Mr. Rutledge the report . . . as follows;”. The additions were taken from *Journal*.

³ Madison copied the report into his *Debates*, and it is his transcript which is given in the text. Differences in the printed report from this copy are noted in the text by square brackets or in foot-notes.

Several copies of the original printed report are in existence, and a number of facsimiles printed by Peter Force. The reprint is readily distinguished: the original report numbered the 6th and 7th articles both VI; the facsimile numbers the 7th and 8th articles both VII.

Monday

MADISON

August 6

IV

Sect. 1. The members of the House of Representatives shall be chosen every second year, by the people of the several States comprehended within this Union. The qualifications of the electors shall be the same, from time to time, as those of the electors in the several States, of the most numerous branch of their own legislatures.

Sect. 2. Every member of the House of Representatives shall be of the age of twenty five years at least; shall have been a citizen of [in] the United States for at least three years before his election; and shall be, at the time of his election, a resident of the State in which he shall be chosen.

Sect. 3. The House of Representatives shall, at its first formation, and until the number of citizens and inhabitants shall be taken in the manner herein after described, consist of sixty five Members, of whom three shall be chosen in New Hampshire, eight in Massachusetts, one in Rhode-Island and Providence Plantations, five in Connecticut, six in New-York, four in New-Jersey, eight in Pennsylvania, one in Delaware, six in Maryland, ten in Virginia, five in North-Carolina, five in South-Carolina, and three in Georgia.

Sect. 4. As the proportions of numbers in [the] different States will alter from time to time; as some of the States may hereafter be divided; as others may be enlarged by addition of territory; as two or more States may be united; as new States will be erected within the limits of the United States, the Legislature shall, in each of these cases, regulate the number of representatives by the number of inhabitants, according to the provisions herein after made, at the rate of one for every forty thousand.

Sect. 5. All bills for raising or appropriating money, and for fixing the salaries of the officers of the Government, shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No money shall be drawn from the public Treasury, but in pursuance of appropriations that shall originate in the House of Representatives.

Sect. 6. The House of Representatives shall have the sole

Monday

MADISON

August 6

power of impeachment. It shall choose its Speaker and other officers.

Sect. 7. Vacancies in the House of Representatives shall be supplied by writs of election from the executive authority of the State, in the representation from which it shall happen.

V

Sect. 1. The Senate of the United States shall be chosen by the Legislatures of the several States. Each Legislature shall chuse two members. Vacancies may be supplied by the Executive until the next meeting of the Legislature. Each member shall have one vote.

Sect. 2. The Senators shall be chosen for six years; but immediately after the first election they shall be divided, by lot, into three classes, as nearly as may be, numbered one, two and three. The seats of the members of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, of the third class at the expiration of the sixth year, so that a third part of the members may be chosen every second year.

Sect. 3. Every member of the Senate shall be of the age of thirty years at least; shall have been a citizen in the United States for at least four years before his election; and shall be, at the time of his election, a resident of the State for which he shall be chosen.

Sect. 4. The Senate shall chuse its own President and other officers.

VI

Sect. 1. The times and places and [the] manner of holding the elections of the members of each House shall be prescribed by the Legislature of each State; but their provisions concerning them may, at any time, be altered by the Legislature of the United States.

Sect. 2. The Legislature of the United States shall have authority to establish such uniform qualifications of the members of each House, with regard to property, as to the said Legislature shall seem expedient.

Monday

MADISON

August 6

Sect. 3. In each House a majority of the members shall constitute a quorum to do business; but a smaller number may adjourn from day to day.

Sect. 4. Each House shall be the judge of the elections, returns and qualifications of its own members.

Sect. 5. Freedom of speech and debate in the Legislature shall not be impeached or questioned in any Court or place out of the Legislature; and the members of each House shall, in all cases, except treason [,] felony and breach of the peace, be privileged from arrest during their attendance at Congress, and in going to and returning from it.

Sect. 6. Each House may determine the rules of its proceedings; may punish its members for disorderly behaviour; and may expel a member.

Sect. 7. The House of Representatives, and the Senate, when it shall be acting in a legislative capacity, shall keep a Journal of their proceedings, and shall, from time to time, publish them: and the yeas and nays of the members of each House, on any question, shall [,] at the desire of one-fifth part of the members present, be entered on the journal.

Sect. 8. Neither House, without the consent of the other, shall adjourn for more than three days, nor to any other place than that at which the two Houses are sitting. But this regulation shall not extend to the Senate, when it shall exercise the powers mentioned in the article.

Sect. 9. The members of each House shall be ineligible to, and incapable of holding any office under the authority of the United States, during the time for which they shall respectively be elected: and the members of the Senate shall be ineligible to, and incapable of holding any such office for one year afterwards.

Sect. 10. The members of each House shall receive a compensation for their services, to be ascertained and paid by the State, in which they shall be chosen,

Sect. 11. The enacting stile of the laws of the United States shall be, "Be it enacted by the Senate and Representatives in Congress assembled".⁴

⁴ Printed copy reads: "Be it enacted, and it is hereby enacted by the House of Representatives, and by the Senate of the United States, in Congress assembled."

The Records for August 15 indicate that section 11 was adopted without amend-

Monday

MADISON

August 6

Sect. 12. Each House shall possess the right of originating bills, except in the cases beforementioned.

Sect. 13. Every bill, which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States for his revision: if, upon such revision, he approve of it, he shall signify his approbation by signing it: But if, upon such revision, it shall appear to him improper for being passed into a law, he shall return it, together with his objections against it, to that House in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider the bill. But if after such reconsideration, two thirds of that House shall, notwithstanding the objections of the President, agree to pass it, it shall together with his objections, be sent to the other House, by which it shall likewise be reconsidered, and [,] if approved by two thirds of the other House also, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays; and the names of the persons voting for or against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within seven days after it shall have been presented to him, it shall be a law, unless the legislature by their adjournment, prevent its return; in which case it shall not be a law.

VII [VI] ⁵

Sect. 1. The Legislature of the United States shall have the power to lay and collect taxes, duties, imposts and excises;

To regulate commerce with foreign nations, and among the several States;

ment, but the Washington and Brearley copies of the report of the Committee of Detail show a change in wording in accordance with Madison's text. A probable explanation of this is that the Committee of Detail made this modification after the Report was in print.

⁵ In the printed copy, the number VI was repeated, consequently Article VII and all subsequent articles were misnumbered. It is important to remember this in noting subsequent references to articles by number.

Monday

MADISON

August 6

To establish an uniform rule of naturalization throughout the United States;

To coin money;

To regulate the value of foreign coin;

To fix the standard of weights and measures;

To establish Post-offices;

To borrow money, and emit bills on the credit of the United States;

To appoint a Treasurer by ballot;

To constitute tribunals inferior to the Supreme Court;

To make rules concerning captures on land and water;

To declare the law and punishment of piracies and felonies committed on the high seas, and the punishment of counterfeiting the coin of the United States, and of offences against the law of nations;

To subdue a rebellion in any State, on the application of its legislature;

To make war;

To raise armies;

To build and equip fleets;

To call forth the aid of the militia, in order to execute the laws of the Union, enforce treaties, suppress insurrections, and repel invasions;

And to make all laws that shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested, by this Constitution, in the government of the United States, or in any department or officer thereof;

Sect. 2. Treason against the United States shall consist only in levying war against the United States, or any of them; and in adhering to the enemies of the United States, or any of them. The Legislature of the United States shall have power to declare the punishment of treason. No person shall be convicted of treason, unless on the testimony of two witnesses. No attainder of treason shall work corruption of bloods nor forfeiture, except during the life of the person attainted.

Sect. 3. The proportions of direct taxation shall be regulated by the whole number of white and other free citizens

Monday

MADISON

August 6

and inhabitants, of every age, sex and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, (except Indians not paying taxes) which number shall, within six years after the first meeting of the Legislature, and within the term of every ten years afterwards, be taken in such manner as the said Legislature shall direct.

Sect. 4. No tax or duty shall be laid by the Legislature on articles exported from any State; nor on the migration or importation of such persons as the several States shall think proper to admit; nor shall such migration or importation be prohibited.

Sect- 5. No capitation tax shall be laid, unless in proportion to the Census hereinbefore directed to be taken.

Sect- 6. No navigation act shall be passed without the assent of two thirds of the members present in each House.

Sect. 7. The United States shall not grant any title of Nobility.

VIII [VII]

The Acts of the Legislature of the United States made in pursuance of this Constitution, and all treaties made under the authority of the United States shall be the supreme law of the several States, and of their citizens and inhabitants; and the judges in the several States shall be bound thereby in their decisions; anything in the Constitutions or laws of the several States to the contrary notwithstanding.

IX [VIII]

Sect 1. The Senate of the United States shall have power to make treaties, and to appoint Ambassadors, and Judges of the supreme Court.

Sect. 2. In all disputes and controversies now subsisting, or that may hereafter subsist between two or more States, respecting jurisdiction or territory, the Senate shall possess the following powers. Whenever the Legislature, or the Executive authority, or lawful Agent of any State, in con-

Monday

MADISON

August 6

troversy with another, shall by memorial to the Senate, state the matter in question, and apply for a hearing; notice of such memorial and application shall be given by order of the Senate, to the Legislature or the Executive authority of the other State in Controversy. The Senate shall also assign a day for the appearance of the parties, by their agents, before the House. The Agents shall be directed to appoint, by joint consent, commissioners or judges to constitute a Court for hearing and determining the matter in question. But if the Agents cannot agree, the Senate shall name three persons out of each of the several States; and from the list of such persons each party shall alternately strike out one, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as the Senate shall direct, shall in their presence, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them shall be commissioners or Judges to hear and finally determine the controversy; provided a majority of the Judges, who shall hear the cause, agree in the determination. If either party shall neglect to attend at the day assigned, without shewing sufficient reasons for not attending, or being present shall refuse to strike, the Senate shall proceed to nominate three persons out of each State, and the Clerk of the Senate shall strike in behalf of the party absent or refusing. If any of the parties shall refuse to submit to the authority of such Court; or shall not appear to prosecute or defend their claim or cause, the Court shall nevertheless proceed to pronounce judgment. The judgment shall be final and conclusive. The proceedings shall be transmitted to the President of the Senate, and shall be lodged among the public records, for the security of the parties concerned. Every Commissioner shall, before he sit in judgment, take an oath, to be administred by one of the Judges of the Supreme or Superior Court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question according to the best of his judgment, without favor, affection, or hope of reward."

Sect. 3. All controversies concerning lands claimed under

Monday

MADISON

August 6

different grants of two or more States, whose jurisdictions, as they respect such lands shall have been decided or adjusted subsequent to such grants, or any of them, shall, on application to the Senate, be finally determined, as near as may be, in the same manner as is before prescribed for deciding controversies between different States.

X [IX]

Sect. 1. The Executive Power of the United States shall be vested in a single person. His stile shall be "The President of the United States of America;" and his title shall be, "His Excellency". He shall be elected by ballot by the Legislature. He shall hold his office during the term of seven years; but shall not be elected a second time.

Sect. 2. He shall, from time to time, give information to the Legislature, of the state of the Union: he may recommend to their consideration such measures as he shall judge necessary, and expedient: he may convene them on extraordinary occasions. In case of disagreement between the two Houses, with regard to the time of adjournment, he may adjourn them to such time as he thinks proper: he shall take care that the laws of the United States be duly and faithfully executed: he shall commission all the officers of the United States; and shall appoint officers in all cases not otherwise provided for by this Constitution. He shall receive Ambassadors, and may correspond with the supreme Executives of the several States. He shall have power to grant reprieves and pardons; but his pardon shall not be pleadable in bar of an impeachment. He shall be commander in chief of the Army and Navy of the United States, and of the Militia of the Several States. He shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during his continuance in office. Before he shall enter on the duties of his department, he shall take the following oath or affirmation, "I ————— solemnly swear, "(or affirm) that that I will faithfully execute the office of "President of the United States of America." He shall be

Monday

MADISON

August 6

removed from his office on impeachment by the House of Representatives, and conviction in the supreme Court, of treason, bribery, or corruption. In case of his removal as aforesaid, death, resignation, or disability to discharge the powers and duties of his office, the President of the Senate shall exercise those powers and duties, until another President of the United States be chosen, or until the disability of the President be removed.

XI [X]

Sect. 1. The Judicial Power of the United States shall be vested in one Supreme Court, and in such inferior Courts as shall, when necessary, from time to time, be constituted by the Legislature of the United States.

Sect. 2. The Judges of the Supreme Court, and of the Inferior Courts, shall hold their offices during good behaviour. They shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Sect. 3. The Jurisdiction of the Supreme Court shall extend to all cases arising under laws passed by the Legislature of the United States; to all cases affecting Ambassadors, other Public Ministers and Consuls; to the trial of impeachments of Officers of the United States; to all cases of Admiralty and maritime jurisdiction; to controversies between two or more States, (except such as shall regard Territory or Jurisdiction) between a State and Citizens of another State, between Citizens of different States, and between a State or the Citizens thereof and foreign States, citizens or subjects. In cases of impeachment, cases affecting Ambassadors, other Public Ministers and Consuls, and those in which a State shall be party, this jurisdiction shall be original. In all the other cases before mentioned, it shall be appellate, with such exceptions and under such regulations as the Legislature shall make. The Legislature may assign any part of the jurisdiction above mentioned (except the trial of the President of the United States) in the manner, and

Monday

MADISON

August 6

under the limitations which it shall think proper, to such Inferior Courts, as it shall constitute from time to time.

Sect. 4. The trial of all criminal offences (except in cases of impeachments) shall be in the State where they shall be committed; and shall be by Jury.

Sect. 5. Judgment, in cases of Impeachment, shall not extend further than to removal from Office, and disqualification to hold and enjoy any office of honour, trust or profit, under the United States. But the party convicted shall, nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

XII [XI]

No State shall coin money; nor grant letters of marque and reprisals; nor enter into any treaty, alliance, or confederation; nor grant any title of Nobility.

XIII [XII]

No State, without the consent of the Legislature of the United States, shall emit bills of credit, or make any thing but specie a tender in payment of debts; nor lay imposts or duties on imports; nor keep troops or ships of war in time of peace; nor enter into any agreement or compact with another State, or with any foreign power; nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent, as not to admit of delay, until the Legislature of the United States can be consulted.

XIV [XIII]

The Citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

XV [XIV]

Any person charged with treason, felony or high misdemeanor in any State, who shall flee from justice, and shall be found in any other State, shall, on demand of the Execu-

Monday

MADISON

August 6

tive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of the offence.

XVI [XV]

Full faith shall be given in each State to the acts of the Legislatures, and to the records and judicial proceedings of the Courts and Magistrates of every other State.

XVII [XVI]

New States lawfully constituted or established within the limits of the United States may be admitted, by the Legislature, into this Government; but to such admission the consent of two thirds of the members present in each House shall be necessary. If a new State shall arise within the limits of any of the present States, the consent of the Legislatures of such States shall be also necessary to its admission. If the admission be consented to, the new States shall be admitted on the same terms with the original States. But the Legislature may make conditions with the new States, concerning the public debt which shall be then subsisting.

XVIII [XVII]

The United States shall guaranty to each State a Republican form of Government; and shall protect each State against foreign invasions, and, on the application of its Legislature, against domestic violence.

XIX [XVIII]

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 United States shall call a Convention for that purpose.

XX [XIX]

The members of the Legislatures, and the Executive and Judicial officers of the United States, and of the several States, shall be bound by oath to support this Constitution.

Monday

MADISON

August 6

XXI [XX]

The ratifications of the Conventions of States shall be sufficient for organizing this Constitution.

XXII [XXI]

This Constitution shall be laid before the United States in Congress assembled, for their approbation; and it is the opinion of this Convention, that it should be afterwards submitted to a Convention chosen, under the recommendation of its legislature, in order to receive the ratification of such Convention.

XXIII [XXII]

To introduce this government, it is the opinion of this Convention, that each assenting Convention should notify its assent and ratification to the United States in Congress assembled; that Congress, after receiving the assent and ratification of the Conventions of States, should appoint and publish a day, as early as may be, and appoint a place for commencing proceedings under this Constitution; that after such publication, the Legislatures of the several States should elect members of the Senate, and direct the election of members of the House of Representatives; and that the members of the Legislature should meet at the time and place assigned by Congress, and should, as soon as may be, after their meeting, choose the President of the United States, and proceed to execute this Constitution."

(A motion was made to adjourn till Wednesday, in order to give leisure to examine the Report; which passed in the Negative — N. H. no. Mas — no. Ct. no. Pa. ay Md. ay. Virg. ay. N. C. no. S — C. no ⁶

The ⁶ House then adjourned till tomorrow 11 OC.)⁷

⁶ Taken from *Journal*.

⁷ See further Appendix A, LXXVIII, LXXIX. Martin stated that "many of the members being absent, we adjourned to the next day." (Appendix A, CXC).

Monday

McHENRY

August 6

McHENRY

Augt. 6. Convention met. present 8 States. Report delivered in by Mr. Rutledge. read. Convention adjourned till to-morrow to give the members an opportunity to consider the report.

Proposed to Mr. D. Carrol, Mr. Jenifer — Mr. Mercer and Mr. Martin, to meet to confer on the report, and to p[r]epare ourselves to act in unison.⁸

Met at Mr. Carrolls lodgings in the afternoon. I repeated the object of our meeting, and proposed that we should take the report up by paragraphs and give our opinions thereon. Mr. Mercer wished to know of me whether I thought Maryland would embrace such a system. I told him I did not know, but I presumed the people would not object to a wise system. He extended this idea to the other gentlemen. Mr. Martin said they would not; That he was against the system, that a compromise only had enabled its abettors to bring it into its present stage — that had Mr. Jenifer voted with him, things would have taken a different turn. Mr. Jenifer said he voted with him till he saw it was in vain to oppose its progress. I begged the gentlemen to observe some order to enable us to do the business we had convened upon. I wished that we could be unanimous — and would make a proposition to effect it. — I would join the deputation in bringing on a motion to postpone the report, to try the affections of the house to an amendment of the confederation without altering the sovereignty of suffrage; which failing we should then agree to render the system reported as perfect as we could, in the mean while to consider our motion to fail and proceed to confer upon the report agreeably to the intention of our meeting. I. E. That we should now and at our future meetings alter the report to our own judgement to be able to appear unanimous in case our motion failed. —

Mr. Carrol could not agree to this proposition, because he did not think the confederation could be amended to answer

⁸ See Appendix A, CLXXXIX and CXCI.

Monday

McHENRY

August 6

its intentions. I thought that it was susceptible of a revision which would sufficiently invigorate it for the exigencies of the times. Mr. Mercer thought otherwise as did Mr. Jenifer. This proposition to conciliate the deputation was rejected.

Mr. Martin in the course of the conversation observed that he was against two branches — that we was against the people electing the representatives of the national government. That he wished to see the States governments rendered capable of the most vigorous exertions, and so knit together by a confederation as to act together on national emergencies.

Finding that we could come to no conclusions I recommended meeting again to-morrow, for unless we could appear in the convention with some degree of unanimity it would be unnecessary to remain in it, sacrificing time and money without being able to render any service. They agreed to meet to-morrow, except Mr. Martin who said he was going to New York and would not be back till monday following.

It being of importance to know and to fix the opinions of my colleagues on the most consequential articles of the new system; I prepared the following propositions, for that purpose viz.

Art. IV. Sec. 5. Will you use your best endeavours to obtain for the senate an equal authority over money bills with the house of representatives.?

Art. VII. Sect. 6. Will you use your best endeavours to have it made a part of the system that “no navigation act shall be passed without the assent of two thirds of the representation from each State?

In case these alterations cannot be obtained will you give your assent to the 5 sect. of the IV article and 6 sect. of the VII. article as they stand in the report?

Will you also, (in case these alterations are not obtained) agree that the ratification of the conventions of nine States shall be sufficient for organizing the new constitutions?

N. B.^o Saw Mr. Mercer make out a list of the members names who had attended or were attending in convention

^o Inserted from a previous page, according to marks which show place for insertion.

Monday

McHENRY

August 6

with for and against marked opposite most of them — asked carelessly what question occasioned his being so particular upon which he told me laughing that it was no question but that those marked with a for were for a king. I then asked him how he knew that to which he said no matter the thing is so. I took a copy with his permission, and Mr. Martin seeing me about it asked What it was. I told him, in the words Mr. Mercer had told me, when he begged me to let him copy the list which I did.¹⁰

¹⁰ See Appendix A, CCIII and CCXI.