WEDNESDAY, AUGUST 15, 1787.

JOURNAL

Wednesday August 15. 1787.

On the question to agree to the 11 Sect. of the 6 article as reported [1]

it passed in the affirmative

It was moved and seconded to strike out the latter part of the 12 Sect. of the 6 article,

which passed in the affirmative [2]

It was moved and seconded to amend– the 12. sect. of the 6 article as follows

"Each House shall possess the right of originating all Bills "except Bills for raising money for the purposes of revenue "or for appropriating the same and for fixing the salaries of "the Officers of Government which shall originate in the "House of representatives; but the Senate may propose or "concur with amendments as in other cases"

It was moved and seconded to postpone the consideration of the last amendment

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

It was moved and seconded to agree to the following amendmt of the 13th sect. of the 6 article.

"Every bill which shall have passed the two Houses, "shall, before it become a law, be severally presented to the "President of the United States and to the Judges of the "supreme court, for the revision of each — If, upon such "revision, they shall approve of it, they shall respectively "signify their approbation by signing it — But, if upon such "revision, it shall appear improper to either or both to be

[1] See August 6, note 4.

[2] Not reported by Madison, but confirmed by the clause being struck out in Washington's copy of the Report of the Committee of Detail.

"passed into a law; it shall be returned, with the 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 reconsid- "eration, two thirds of that House, when either the President "or a Majority of the Judges shall object, or three fourths, "where both shall object, shall agree to pass it, it shall, "together with the objections, be sent to the other House, by "which it shall likewise be reconsidered and, if approved by "two thirds, or three fourths of the other House, as the case "may be, it shall become a law"

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

It was moved and seconded to postpone the consideration of the 13th sect. of the 6th article

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

It was moved and seconded to strike out the words "two thirds" and to insert the words "three fourths" in the 13th sect. of the 6 article

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

It was moved and seconded to amend the first clause of the 13 sect. of the 6 article as follows

"No Bill or resolve of the Senate and House of repre- "sentatives shall become a Law, or have force until it shall "have been presented to the President of the United States "for his revision"

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

[No money shall be drawn from the Treasy of the U. S. but in conseq. of approns by law. withdrawn.

To adjourn Ayes — 3; noes — 7.][4]

It was moved and seconded to strike out the word "seven" and to insert the words "ten ("sundays excepted") in the 13th sect. of the 6 article

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

[3] Vote 295, Detail of Ayes and Noes, which notes that it was "Mr. Madison's amendment to the negative by addg the Judiciary".

[4] Votes 299–300, Detail of Ayes and Noes, but there is no reason beyond that of relative position (*i. e.* between Votes 298 and 301) for inserting these questions here.

On the question to agree to the 13 sect. of the 6 article as amended

it passed in the affirmative

And then the House adjourned till to-morrow at 11 o'Clock A. M.

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
[294]	aye	aye		no		no	no	no	no	aye	aye	aye	aye	To postpone the amendmt offered to the 12th section	6	5	
[295]	no	no		no		no	no	aye	aye	aye	no	no	no	To agree to Mr Madison's amendment to the negative by addg the Judiciary	3	8	
[296]	no	no		no		no	no	aye	aye	no	no	no	no	To postpone the considn of the 13. sect. 6 article	2	9	
[297]	no	no		aye		no	dd	aye	aye	aye	aye	aye	no	"three fourths," instead of "two thirds" 13 sect 6 art.	6	4	1
[298]	no	aye		no		no	no	aye	no	no	aye	no	no	To agree to the amendmt "no bill or resolve"	3	8	
[299]						withdrawn								No money shall be drawn from the Treasy of the U. S. but in conseq. of approns by law.			
[300]	no	no	no			no		aye	aye	aye	no	no	no	To adjourn			
[301]	no	no	aye			aye	aye	aye	aye	aye	aye	aye	aye	To insert ten days sundays excepted	9	2	

[End of ninth loose sheet]

MADISON

Wednesday August 15. in Convention

⟨Art: VI.⟩ sect. 11.[5] Agreed to nem. con.

⟨Art: VI⟩ Sect– 12. taken up.[6]

[5] Article VI, 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'." See August 6, note 4.

[6] Article VI, Sect. 12. "Each House shall possess the right of originating bills, except in the cases beforementioned."

Mr. Strong move⟨d⟩[7] to amend ⟨the article so as to read — "Each House shall possess the right of originating all bills, except bills for raising money for the purposes of revenue, or for appropriating the same and for fixing the salaries of the officers of the Govt. which shall originate in the House of Representatives; but the Senate may propose or concur with amendments as in other cases"⟩[8]

Col. Mason. 2ds. the motion. He was extremely earnest to take this power from the Senate, who he said could already sell the whole Country by means of Treaties.

Mr Ghorum urged the amendment as of great importance. The Senate will first acquire the habit of preparing money bills, and then the practice will grow into an exclusive right of preparing them.

Mr. Gouvernr. Morris opposed it as unnecessary and inconvenient.

Mr. Williamson– some think this restriction on the Senate essential to liberty — others think it of no importance. Why should not the former be indulged. he was for an efficient and stable Govt: but many would not strengthen the Senate if not restricted in the case of money bills. The friends of the Senate would therefore lose more than they would gain by refusing to gratify the other side. He moved to postpone the subject till the powers of the Senate should be gone over.

Mr. Rutlidge 2ds. the motion.

Mr. Mercer should hereafter be agst. returning to a reconsideration of this section. He contended, (alluding to Mr. Mason's observations) that the Senate ought not to have the power of treaties. This power belonged to the Executive department; adding that Treaties would not be final so as to alter the laws of the land, till ratified by legislative authority. This was the case of Treaties in Great Britain; particularly the late Treaty of Commerce with France.

Col. Mason. did not say that a Treaty would repeal a law; but that the Senate by means of treaty might alienate territory &c. without legislative sanction. The cessions of the Brit-

[7] The Journal reports a previous motion, see above note 2.

[8] Revised from *Journal.*

ish Islands in W– Indies by Treaty alone were an example – If Spain should possess herself of Georgia therefore the Senate might by treaty dismember the Union. He wished the motion to be decided now, that the friends of it might know how to conduct themselves.

On question for postponing Sect: 12. ⟨it passed in the affirmative.⟩

N. H. ay. Mas. ay Ct. no. ⟨N. J. no⟩ Pena no. ⟨Del. no⟩ Maryd. no. Va. ay. N. C. ay. S. C. ay– Geo. ay. — [Ayes — 6; noes — 5.][9]

Mr. Ma⟨dison⟩ moved that all acts before they become laws should be submitted both to the Executive and Supreme Judiciary Departments, that if either of these should object ⅔ of each House, if both should object, ¾ of each House, should be necessary to overrule the objections and give to the acts the force of law. — ⟨See the motion at large in the Journal of this date, page 258 [253]. & insert it here.⟩

Mr. Wilson seconds the motion

Mr. Pinkney opposed the interference of the Judges in the Legislative business: it will involve them in parties, and give a previous tincture to their opinions.

Mr. Mercer heartily approved the motion. It as an axiom that the Judiciary ought to be separate from the Legislative: but equally so that it ought to be independent of that department. The true policy of the axiom is that legislative usurpation and oppression may be obviated. He disapproved of the Doctrine that the Judges as expositors of the Constitution should have authority to declare a law void. He thought laws ought to be well and cautiously made, and then to be uncontroulable.

Mr. Gerry. This motion comes to the same thing with what has been already negatived.

Question on the motion of Mr M⟨adison⟩

N– H. no. Mass. no. Ct. no. N. J. no. Pa. no. Del. ay. Maryd. ay. Virga. ay. N. C. no. S. C. no. Geo. no. [Ayes — 3; noes — 8.]

[9] Revised from *Journal.*

Mr. Govr. Morris regretted that something like the proposed check could not be agreed to. He dwelt on the importance of public Credit, and the difficulty of supporting it without some strong barrier against the instability of legislative Assemblies. He suggested the idea of requiring three fourths of each house to *repeal* laws where the President should not concur. He had no great reliance on the revisionary power as the Executive was now to be constituted (elected by the Congress). The legislature will contrive to soften down the President. He recited the history of paper emissions, and the perseverance of the legislative assemblies in repeating them, with all the distressing effects ⟨of such measures⟩ before their eyes. Were the National legislature formed, and a war was now to break out, this ruinous expedient would be again resorted to, if not guarded against. The requiring ¾ to repeal would, though not a compleat remedy, prevent the hasty passage of laws, and the frequency of those repeals which destroy faith in the public, and which are among our greatest calamities. —

Mr Dickenson was strongly impressed with the remark of Mr. Mercer as to the power of the Judges to set aside the law. He thought no such power ought to exist. He was at the same time at a loss what expedient to substitute. The Justiciary of Aragon he observed became by degrees the lawgiver.

Mr. Govr. Morris, suggested the expedient of an absolute negative in the Executive. He could not agree that the Judiciary which was part of the Executive, should be bound to say that a direct violation of the Constitution was law. A controul over the legislature might have its inconveniences. But view the danger on the other side. The most virtuous citizens will often as members of a legislative body concur in measures which afterwards in their private capacity they will be ashamed of. Encroachments of the popular branch of the Government ought to be guarded agst. The Ephori at Sparta became in the end absolute. The Report of the Council of Censors in Pennsylva points out the many invasions of the legislative department on the Executive numerous as the

latter* is, within the short term of seven years, and in a State where a strong party is opposed to the Constitution, and watching every occasion of turning the public resentments agst. it. If the Executive be overturned by the popular branch, as happened in England, the tyranny of one man will ensue – In Rome where the Aristocracy overturned the throne, the consequence was different. He enlarged on the tendency of the legislative Authority to usurp on the Executive and wished the section to be postponed, in order to consider of some more effectual check than requiring $\frac{2}{3}$ only to overrule the negative of the Executive.

Mr Sherman. Can one man be trusted better than all the others if they all agree? This was neither wise nor safe. He disapproved of Judges meddling in politics and parties. We have gone far enough in forming the negative as it now stands.

Mr. Carrol– when the negative to be overruled by $\frac{2}{3}$ only was agreed to, the *quorum* was not fixed. He remarked that as a majority was now to be the quorum, 17, in the larger, and 8 in the smaller house might carry points. The Advantage that might be taken of this seemed to call for greater impediments to improper laws. He thought the controuling power however of the Executive could not be well decided, till it was seen how the formation of that department would be finally regulated. He wished the consideration of the matter to be postponed.

Mr. Ghorum saw no end to these difficulties and postponements. Some could not agree to the form of Government before the powers were defined. Others could not agree to the powers till it was seen how the Government was to be formed. He thought a majority as large a quorum as was necessary. It was the quorum almost every where fixt in the U. States.

Mr. Wilson; after viewing the subject with all the coolness and attention possible was most apprehensive of a dissolution of the Govt from the legislature swallowing up all the other powers. He remarked that the prejudices agst the Executive

* The Executive consists at this time of abt. 20 members.

resulted from a misapplication of the adage that the parliament was the palladium of liberty. Where the Executive was really formidable, *King* and *Tyrant*, were naturally associated in the minds of people; not *legislature* and *tyranny*. But where the Executive was not formidable, the two last were most properly associated. After the destruction of the King in Great Britain, a more pure and unmixed tyranny sprang up in the parliament than had been exercised by the monarch. He insisted that we had not guarded agst. the danger on this side by a sufficient self-defensive power either to the Executive or Judiciary department–

Mr Rutlidge was strenuous agst postponing; and complained much of the tediousness of the proceedings.

Mr Elseworth held the same language. We grow more & more skeptical as we proceed. If we do not decide soon, we shall be unable to come to any decision.

The question for postponement passed in the negative: ⟨Del: & Maryd only being in the affirmative.⟩[10]

Mr. Williamson moved to change " $\frac{2}{3}$ of each house" into "$\frac{3}{4}$" as requisite to overrule the dissent of the President. He saw no danger in this, and preferred giving the power to the Presidt. alone, to admitting the Judges into the business of legislation.

Mr. Wilson 2ds. the motion; referring to and repeating the ideas of Mr. Carroll.

On this motion for $\frac{3}{4}$. ⟨instead of two thirds; it passed in the affirmative⟩[11]

N– H– no– Mas. no. Ct. ⟨ay⟩ N– J. no. Pena. divd. Del– ay. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. no. [Ayes — 6; noes — 4; divided — 1.][12]

Mr. ⟨Madison,⟩ observing that if the negative of the President was confined to *bills;* it would be evaded by acts under the form and name of Resolutions, votes &c — proposed that or resolve should be added after "*bill*" in the beginning of sect 13. with an exception as to votes of adjournment &c.

[10] Taken from *Journal.*

[11] Revised from *Journal.*

[12] Madison originally recorded Connecticut's vote as "no", which made the total vote a negative. The vote was changed to conform to *Journal.*

— after a short and rather confused conversation on the subject, the question was put & rejected, the States being as follows,

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

"*Ten* days (Sundays excepted)" instead of "*seven*" were allowed to the President for returning bills with his objections ⟨N. H. & Mas: only voting agst. it. The 13 sect: of art. VI as amended was then agreed to.⟩ [13]

Adjourned.[14]

McHENRY

August 15.

Sect. 11. agreed to.

Sect. 12 postponed.

Sect. 13. Agreed to with the alteration of $\frac{3}{4}$ of each house instead of *two thirds.*

[13] Taken from *Journal.*

[14] See further, Appendix A, LXXXIV.