

and the House, having resolved to resume the subject in Committee tomorrow,

Adjourned to 10 o'clock.

*Thursday, May 31*

William Pierce from Georgia took his seat.

In Committee of the whole on M<sup>r</sup> Randolph's propositions.

The 3<sup>d</sup> Resolution "that the national Legislature ought to consist of two branches" was agreed to without debate or dissent, except that of Pennsylvania, given probably from complaisance to Doc<sup>t</sup> Franklin who was understood to be partial to a single House of Legislation.

Resol: 4. first clause "that the members of the first branch of the National Legislature ought to be elected by the people of the several States" being taken up,

M<sup>r</sup> SHERMAN opposed the election by the people, insisting that it ought to be by the State Legislatures. The people he said, immediately should have as little to do as may be about the Government. They want information and are constantly liable to be misled.

M<sup>r</sup> GERRY. The evils we experience flow from the excess of democracy. The people do not want virtue, but are the dupes of pretended patriots. In Mass<sup>ts</sup> it had been fully confirmed by experience that they are daily misled into the most baneful measures and opinions by the false reports circulated by designing men, and which no one on the spot can refute. One principal evil arises from the want of due provision for those employed in the administration of Govern<sup>mt</sup>. It would seem to be a maxim of democracy to starve the public servants. He mentioned the popular clamour in Mass<sup>ts</sup> for the reduction of salaries and the attack made on that of the Gov<sup>t</sup> though secured by the spirit of the Constitution itself. He had he said been too republican heretofore: he was still however republican, but had been taught by experience the danger of the levelling spirit.

M<sup>r</sup> MASON argued strongly for an election of the larger

branch by the people. It was to be the grand depository of the democratic principle of the Gov<sup>t</sup>. It was, so to speak, to be our House of Commons—It ought to know & sympathise with every part of the community; and ought therefore to be taken not only from different parts of the whole republic, but also from different districts of the larger members of it, which had in several instances particularly in Virg<sup>a</sup>, different interests and views arising from difference of produce, of habits &c &c. He admitted that we had been too democratic, but was afraid we s<sup>d</sup> incautiously run into the opposite extreme. We ought to attend to the rights of every class of the people. He had often wondered at the indifference of the superior classes of society to this dictate of humanity & policy; considering that however affluent their circumstances, or elevated their situations, might be, the course of a few years, not only might but certainly would, distribute their posterity throughout the lowest classes of Society. Every selfish motive therefore, every family attachment, ought to recommend such a system of policy as would provide no less carefully for the rights and happiness of the lowest than of the highest orders of Citizens.

M<sup>r</sup> WILSON contended strenuously for drawing the most numerous branch of the Legislature immediately from the people. He was for raising the federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible. No government could long subsist without the confidence of the people. In a republican Government this confidence was peculiarly essential. He also thought it wrong to increase the weight of the State Legislatures by making them the electors of the national Legislature. All interference between the general and local Govern<sup>mt</sup>s should be obviated as much as possible. On examination it would be found that the opposition of States to federal measures had proceeded much more from the officers of the States, than from the people at large.

M<sup>r</sup> MADISON considered the popular election of one branch of the National Legislature as essential to every plan of free Government. He observed that in some of the States one branch of the Legislature was composed of men already removed from



the people by an intervening body of electors. That if the first branch of the general legislature should be elected by the State Legislatures, the second branch elected by the first—the Executive by the second together with the first; and other appointments again made for subordinate purposes by the Executive, the people would be lost sight of altogether; and the necessary sympathy between them and their rulers and officers, too little felt. He was an advocate for the policy of refining the popular appointments by successive filtrations, but thought it might be pushed too far. He wished the expedient to be resorted to only in the appointment of the second branch of the Legislature, and in the Executive & judiciary branches of the Government. He thought too that the great fabric to be raised would be more stable and durable, if it should rest on the solid foundation of the people themselves, than if it should stand merely on the pillars of the Legislatures.

Mr GERRY did not like the election by the people. The maxims taken from the British constitution were often fallacious when applied to our situation, which was extremely different. Experience he said had shewn that the State legislatures drawn immediately from the people did not always possess their confidence. He had no objection however to an election by the people if it were so qualified that men of honor & character might not be unwilling to be joined in the appointments. He seemed to think the people might nominate a certain number out of which the State legislatures should be bound to choose.

On the question for an election of the first branch of the national Legislature by the people:

Mass<sup>ts</sup> ay. Connect<sup>t</sup> div<sup>d</sup> N. York ay. N. Jersey no. Pen<sup>a</sup> ay. Delaw<sup>a</sup> div<sup>d</sup> V<sup>a</sup> ay. N. C. ay. S. C. no. Georg<sup>a</sup> ay. [Ayes, 6; noes, 2; divided, 2.]

The Committee proceeded to Resolution 5. "that the second (or senatorial) branch of the National Legislature ought to be chosen by the first branch out of persons nominated by the State Legislatures."

Not for emergency

Mr SPAIGHT contended that the 2<sup>d</sup> branch ought to be chosen by the State Legislatures and moved an amendment to that effect.

Mr BUTLER apprehended that the taking so many powers out of the hands of the States as was proposed, tended to destroy all that balance and security of interests among the States which it was necessary to preserve; and called on Mr Randolph . . . to explain the extent of his ideas, and particularly the number of members he meant to assign to this second branch.

Mr RAND[OLPH] observed that he had at the time of offering his propositions stated his ideas as far as the nature of general propositions required; that details made no part of the plan, and could not perhaps with propriety have been introduced. If he was to give an opinion as to the number of the second branch, he should say that it ought to be much smaller than that of the first; so small as to be exempt from the passionate proceedings to which numerous assemblies are liable. He observed that the general object was to provide a cure for the evils under which the U. S. laboured; that in tracing these evils to their origin every man had found it in the turbulence and follies of democracy: that some check therefore was to be sought for ag<sup>st</sup> this tendency of our Governments: and that a good Senate seemed most likely to answer the purpose.

Mr WILSON opposed both a nomination by the State Legislatures, and an election by the first branch of the national Legislature, because the second branch of the latter, ought to be independent of both. He thought both branches of the National Legislature ought to be chosen by the people, but was not prepared with a specific proposition. . . .

On the whole question for electing by the first branch out of nominations by the State Legislatures, Mass. ay. Con<sup>t</sup>. no. N. Y. no. N. Jersey. no. Pen<sup>a</sup> no. Del. no. Virg<sup>a</sup> ay. N. C. no. S. C. ay. G<sup>a</sup> no. [Ayes, 3; noes, 7.]

The sixth Resolution stating the cases in which the national Legislature ought to legislate was next taken into discussion:



On the question whether each branch sh<sup>d</sup> originate laws, there was an unanimous affirmative without debate. On the question for transferring all the Legislative powers of the existing Cong<sup>s</sup> to this Assembly, there was also a silent affirmative nem. con.

On the proposition for giving "Legislative power in all cases to which the State Legislatures were individually incompetent."

M<sup>r</sup> PINKNEY & M<sup>r</sup> RUTLEDGE objected to the vagueness of the term *incompetent*, and said they could not well decide how to vote until they should see an exact enumeration of the powers comprehended by this definition.

M<sup>r</sup> BUTLER repeated his fears that we were running into an extreme in taking away the powers of the States, and called on M<sup>r</sup> RANDOLPH for the extent of his meaning.

M<sup>r</sup> RANDOLPH disclaimed any intention to give indefinite powers to the national Legislature, declaring that he was entirely opposed to such an inroad on the State jurisdictions, and that he did not think any considerations whatever could ever change his determination. His opinion was fixed on this point.

M<sup>r</sup> MADISON said that he had brought with him into the Convention a strong bias in favor of an enumeration and definition of the powers necessary to be exercised by the national Legislature; but had also brought doubts concerning its practicability. His wishes remained unaltered; but his doubts had become stronger. What his opinion might ultimately be he could not yet tell. But he should shrink from nothing which should be found essential to such a form of Gov<sup>t</sup> as would provide for the safety, liberty, and happiness of the community. This being the end of all our deliberations, all the necessary means for attaining it must, however reluctantly, be submitted to.

On the question for giving powers, in cases to which the States are not competent, Mass<sup>as</sup> ay. Con<sup>t</sup> div<sup>d</sup> (Sharman no Elseworth ay) N. Y. ay. N. J. ay. P<sup>a</sup> ay. Del. ay. V<sup>a</sup> ay. N. C. ay. S. Carolina ay; Georg<sup>a</sup> ay. [Ayes, 9; noes, 0; divided, 1.]

The other clauses giving powers necessary to preserve harmony among the States to negative all State laws contravening in the opinion of the Nat. Leg. the articles of union, down to the last clause, (the words "or any treaties subsisting under the

authority of the Union," being added after the words "contravening &c. the articles of the Union," on motion of D<sup>r</sup> FRANKLIN) were agreed to with<sup>t</sup> debate or dissent.

The last clause of Resolution 6. authorizing an exertion of the force of the whole ag<sup>st</sup> a delinquent State came next into consideration.

M<sup>r</sup> MADISON observed that the more he reflected on the use of force, the more he doubted the practicability, the justice, and the efficacy of it when applied to people collectively and not individually.—A union of the States containing such an ingredient seemed to provide for its own destruction. The use of force ag<sup>st</sup> a State, would look more like a declaration of war, than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound. He hoped that such a system would be framed as might render this recourse unnecessary, and moved that the clause be postponed. This motion was agreed to nem. con.

The Committee then rose & the House  
Adjourned

Friday, June 1

William Houston from Georgia took his seat.

The Committee of the whole proceeded to Resolution 7. "that a national Executive be instituted, to be chosen by the national Legislature—for the term of        years &c to be ineligible thereafter, to possess the executive powers of Congress &c."

M<sup>r</sup> PINKNEY was for a vigorous Executive but was afraid the Executive powers of the existing Congress might extend to peace & war &c., which would render the Executive a monarchy, of the worst kind, to wit an elective one.

M<sup>r</sup> WILSON moved that the Executive consist of a single person. M<sup>r</sup> C. PINKNEY seconded the motion, so as to read "that a National Ex. to consist of a single person, be instituted.



A considerable pause ensuing and the Chairman asking if he should put the question, Doc<sup>r</sup> FRANKLIN observed that it was a point of great importance and wished that the gentlemen would deliver their sentiments on it before the question was put.

M<sup>r</sup> RUTLEDGE animadverted on the shyness of gentlemen on this and other subjects. He said it looked as if they supposed themselves precluded by having frankly disclosed their opinions from afterwards changing them, which he did not take to be at all the case. He said he was for vesting the Executive power in a single person, tho' he was not for giving him the power of war and peace. A single man would feel the greatest responsibility and administer the public affairs best.

M<sup>r</sup> SHERMAN said he considered the Executive magistracy as nothing more than an institution for carrying the will of the Legislature into effect, that the person or persons ought to be appointed by and accountable to the Legislature only, which was the depositary of the supreme will of the Society. As they were the best judges of the business which ought to be done by the Executive department, and consequently of the number necessary from time to time for doing it, he wished the number might not be fixed but that the legislature should be at liberty to appoint one or more as experience might dictate.

M<sup>r</sup> WILSON preferred a single magistrate, as giving most energy dispatch and responsibility to the office. He did not consider the Prerogatives of the British Monarch as a proper guide in defining the Executive powers. Some of these prerogatives were of Legislative nature. Among others that of war & peace &c. The only powers he conceived strictly Executive were those of executing the laws, and appointing officers, not appertaining to and appointed by the Legislature.

M<sup>r</sup> RANDOLPH strenuously opposed a unity in the Executive magistracy. He regarded it as the fœtus of monarchy. We had, he said no motive to be governed by the British Govern<sup>mt</sup> as our prototype. He did not mean however to throw censure on that Excellent fabric. If we were in a situation to copy it he did

not know that he should be opposed to it; but the fixt genius of the people of America required a different form of Government. He could not see why the great requisites for the Executive department, vigor, despatch & responsibility could not be found in three men, as well as in one man. The Executive ought to be independent. It ought therefore in order to support its independence to consist of more than one.

M<sup>r</sup> WILSON said that unity in the Executive, instead of being the fetus of monarchy would be the best safeguard against tyranny. He repeated that he was not governed by the British Model which was inapplicable to the situation of this Country; the extent of which was so great, and the manners so republican, that nothing but a great confederated Republic would do for it.

M<sup>r</sup> Wilson's motion for a single magistrate was postponed by common consent, the Committee seeming unprepared for any decision on it; and the first part of the clause agreed to, viz—"that a National Executive be instituted."

M<sup>r</sup> MADISON thought it would be proper, before a choice sh<sup>d</sup> be made between a unity and a plurality in the Executive, to fix the extent of the Executive authority; that, as certain powers were in their nature Executive and must be given to that department whether administered by one or more persons, a definition of their extent would assist the judgment in determining how far they might be safely entrusted to a single officer. . . .

The next clause in Resolution 7, relating to the mode of appointing, & the duration of, the Executive being under consideration,

M<sup>r</sup> WILSON said he was almost unwilling to declare the mode which he wished to take place, being apprehensive that it might appear chimerical. He would say, however, at least that in theory he was for an election by the people. Experience, particularly in N. York & Mass<sup>ts</sup>, shewed that an election of the first magistrate by the people at large, was both a convenient & successful mode. The objects of choice in such cases must be persons whose merits have general notoriety.

M<sup>r</sup> SHERMAN was for the appointment by the Legislature, and



for making him absolutely dependent on that body, as it was the will of that which was to be executed. An independence of the Executive on the supreme Legislature, was in his opinion the very essence of tyranny if there was any such thing. . . .

*Saturday, June 2. In Committee of the whole*

William Sam<sup>l</sup> Johnson from Connecticut, Daniel of St. Thomas Jennifer, from Mary<sup>d</sup> & John Lansing J<sup>r</sup> from N. York, took their seats.

. . . The mode of appoint<sup>g</sup> ye Executive was resumed.

M<sup>r</sup> WILSON made the following motion, to be substituted for the mode proposed by M<sup>r</sup> Randolph's resolution, "that the Executive Magistracy shall be elected in the following manner: That the States be divided into districts: & that the persons qualified to vote in each district for members of the first branch of the national Legislature elect members for their respective districts to be electors of the Executive magistracy, that the said Electors of the Executive magistracy meet at and they or any of them so met shall proceed to elect by ballot, but not out of their own body, person in whom the Executive authority of the national Government shall be vested."

M<sup>r</sup> WILSON repeated his arguments in favor of an election without the intervention of the States. He supposed too that this mode would produce more confidence among the people in the first magistrate, than an election by the national Legislature.

M<sup>r</sup> GERRY opposed the election by the national legislature. There would be a constant intrigue kept up for the appointment. The Legislature & the candidates w<sup>d</sup> bargain & play into one another's hands, votes would be given by the former under promises or expectations from the latter, of recompensing them by services to members of the Legislature or to their friends. He liked the principle of M<sup>r</sup> Wilson's motion, but fears it would alarm & give a handle to the State partisans, as tending to supersede altogether the State authorities. He thought the Com-

munity not yet ripe for stripping the States of their powers, even such as might not be requisite for local purposes. He was for waiting till people should feel more the necessity of it. He seemed to prefer the taking the suffrages of the States instead of Electors, or letting the Legislatures nominate, and the electors appoint. He was not clear that the people ought to act directly even in the choice of electors, being too little informed of personal characters in large districts, and liable to deceptions.

On the question for agreeing to M<sup>r</sup> Wilson's substitute, it was negatived: Mass<sup>ts</sup> no. Con<sup>t</sup> no. N. Y. no. P<sup>a</sup> ay. Del. no. Mar<sup>d</sup> ay. Virg<sup>a</sup> no. N. C. no. S. C. no. Geo<sup>a</sup> no. [Ayes, 2; noes, 8.]

On the question for electing the Executive by the national Legislature for the term of seven years, it was agreed to Mass<sup>ts</sup> ay. Con<sup>t</sup> ay. N. Y. ay. Pen<sup>a</sup> no. Del. ay. Mary<sup>d</sup> no. V<sup>a</sup> ay. N. C. ay. S. C. ay. Geo. ay. [Ayes, 8; noes, 2.]

Here Franklin moved (in a paper read for him by Wilson) that the executive serve gratuitously except for necessary expenses. To make places of honor places of profit united the passions of ambition and avarice, contended Franklin, thus sowing seeds of discord. He cited historical examples, including Washington's refusal of salary as commander in chief, to show that candidates would seek office under these conditions. Hamilton seconded with the view of bringing a respectable proposal before the Committee, but no debate ensued. "It was treated with great respect," writes Madison, "but rather for the author of it, than from any apparent conviction of its expediency or practicability."

M<sup>r</sup> DICKENSON moved "that the Executive be made removable by the National Legislature on the request of a majority of the Legislatures of individual States." It was necessary he said to place the power of removing somewhere. He had no idea of abolishing the State Governments as some gentlemen seemed inclined to do. The happiness of this Country in his opinion required considerable powers to be left in the hands of the States.

. . . M<sup>r</sup> MASON. Some mode of displacing an unfit magistrate is