

FRIDAY, JUNE 8, 1787.

JOURNAL

Friday June 8. 1787

The Order of the day being read

The House resolved itself into a Committee of the whole House to consider of the State of the American union

Mr President left the Chair

Mr Gorham took the Chair of the Committee

Mr President resumed the Chair

Mr Gorham reported from the Committee that the Committee had made a further progress in the matter to them referred; and had directed Him to move that they may have leave to sit again.

Resolved that this House will to-morrow again resolve itself into a Committee of the whole House to consider of the State of the american union.

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

In a Committee of the whole House

Friday June 8. 1787.

Mr Gorham in the Chair

It was moved by Mr C Pinckney seconded by Mr Madison to strike out the following words in the 6th resolution adopted by the Committee namely

“to negative all laws passed by the several States contravening, in the opinion of the national legislature, the articles of union; or any treaties subsisting under the authority of the union.”

— and to insert the following words in their place namely “to negative all laws which to them shall appear improper.”

And on the question to strike out

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it passed in the negative. [Ayes—3; noes—7; divided—1.]¹
It was moved by Mr Gerry seconded by Mr King to reconsider that clause of the seventh resolution, adopted by the Committee, which respects the appointment of the national Executive

On the question to reconsider

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

and to-morrow was assigned for the reconsideration

It was then moved by Mr C Pinckney seconded by Mr Rutledge that the following resolution be added after the 4th resolution adopted by the Committee namely.

Resolved That the States be divided into three Classes—the first Class to have three members, the second two, and the third One member each—that an estimate be taken of the comparative importance of each State, at fixed periods, so as to ascertain the number of members they may from time to time be entitled to.

Before any debate was had, or determination taken on Mr Pinckney's proposition—it was moved and seconded that the Committee do now rise, report a further progress, and request leave to sit again.

The Committee then rose.

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
[34]	aye	no	no	no	no	aye	dd	no	aye	no	no	no	no	for vesting the national legislature with a negative on all State laws which shall appear to them improper	3	7	1
[35]	aye	no	aye	aye	aye	aye	aye	aye	aye	no	aye	aye	aye	To reconsider the mode of appointing the executive	9	2	

¹ Vote 34, Detail of Ayes and Noes.

² Vote 35, Detail of Ayes and Noes.

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Friday June 8th. In Committee of the Whole.

On a reconsideration of the clause giving the Natl. Legislature a negative on such laws of the States as might be contrary to the articles of Union, or Treaties with foreign nations,³

Mr. Pinkney moved "that the National Legislature shd. have authority to negative all Laws which they shd. judge to be improper". He urged that such a universality of the power was indispensably necessary to render it effectual; that the States must be kept in due subordination to the nation; that if the States were left to act of themselves in any case, it wd. be impossible to defend the national prerogatives, however extensive they might be on paper; that the acts of Congress had been defeated by this means; nor had foreign treaties escaped repeated violations; that this universal negative was in fact the corner stone of an efficient national Govt.; that under the British Govt. the negative of the Crown had been found beneficial, and the *States* are more one nation now, than the *Colonies* were then.

Mr. (Madison) seconded the motion. He could not but regard an indefinite power to negative legislative acts of the States as absolutely necessary to a perfect system. Experience had evinced a constant tendency in the States to encroach on the federal authority; to violate national Treaties, to infringe the rights & interests of each other; to oppress the weaker party within their respective jurisdictions. A negative was the mildest expedient that could be devised for preventing these mischiefs. The existence of such a check would prevent attempts to commit them. Should no such precaution be engrafted, the only remedy wd. lie in an appeal to coercion. Was such a remedy eligible? was it practicable? Could the national resources, if exerted to the utmost enforce a national decree agst. Massts. abetted perhaps by several

³ Upon this subject, see above May 31, below July 17, August 23, and Appendix A, XLI, LXXIV, CXXXVII, CCXCVI, CCCXXVI, CCCLXXXIII, CCCLXXXVIII, CCCXCI, CCCXCII, CCCCI.

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of her neighbours? It wd. not be possible. A; small proportion of the Community in a compact situation, acting on the defensive, and at one of its extremities might at any time bid defiance to the National authority. Any Govt. for the U. States formed on the supposed practicability of using force agst. the (unconstitutional proceedings)⁴ of the States, wd. prove as visionary & fallacious as the Govt. of Congs. The negative wd. render the use of force unnecessary. The States cd. of themselves then pass no operative act, any more than one branch of a Legislature where there are two branches, can proceed without the other. But in order to give the negative this efficacy, it must extend to all cases. A discrimination wd. only be a fresh source of contention between the two authorities. In a word, to recur to the illustrations borrowed from the planetary System, This prerogative of the General Govt. is the great pervading principle that must controul the centrifugal tendency of the States; which, without it, will continually fly out of their proper orbits and destroy the order & harmony of the political system.

Mr. Williamson was agst. giving a power that might restrain the States from regulating their internal police.

Mr. Gerry cd. not see the extent of such a power, and was agst. every power that was not necessary. He thought a remonstrance agst. unreasonable acts of the States wd. reclaim them. If it shd.*not force might be resorted to. He had no objection to authorize a negative to paper money and similar measures. When the confederation was depending before Congress, Massachusetts was then for inserting the power of emitting paper money amg. the exclusive powers of Congress. He observed that the proposed negative wd. extend to the regulations of the militia, a matter on which the existence of a State might depend. The Natl. Legislature with such a power may enslave the States. Such an idea as this will never be acceded to. It has never been suggested or conceived among the people. No speculative projector, and there are eno' of that character among us, in politics as well as in other things, has

⁴ Originally "misdeeds".

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in any pamphlet or newspaper thrown out the idea. The States too have different interests and are ignorant of each other's interests. The negative therefore will be abused, New States too having separate views from the old States will never come into the Union, They may even be under some foreign influence; are they in such case to participate in the negative on the will of the other States?

Mr. Sherman thought the cases in which the negative ought to be exercised, might be defined. He wished the point might not be decided till a trial at least shd. be made for that purpose

Mr. Wilson would not say what modifications of the proposed power might be practicable or expedient. But however novel it might appear the principal of it when viewed with a close & steady eye, is right. There is no instance in which the laws say that the individuals shd. be bound in one case, & at liberty to judge whether he will obey or disobey in another. The cases are parallel, Abuses of the power over the individual person may happen as well as over the individual States. Federal liberty is to States, what civil liberty, is to private individuals. And States are not more unwilling to purchase it, by the necessary concession of their political sovereignty, that the savage is to purchase Civil liberty by the surrender of the personal sovereignty. which he enjoys in a State of nature. A definition of the cases in which the Negative should be exercised, is impracticable. A discretion must be left on one side or the other? Will it not be most safely lodged on the side of the Natl. Govt.? — Among the first sentiments expressed in the first Congs. one was that Virga. is no more. That Massts. is no [more], that Pa. is no more &c. We are now one nation of brethren. We must bury all local interests & distinctions. This language continued for some time. The tables at length began to turn. No sooner were the State Govts. formed than their jealousy & ambition began to display themselves. Each endeavoured to cut a slice from the common loaf, to add to its own morsel, till at length the confederation became frittered down to the impotent condition in which it now stands. Review the progress of the articles of Confederation thro' Congress & compare the first & last

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draught of it. To correct its vices is the business of this convention. One of its vices is the want of an effectual controul in the whole over its parts. What danger is there that the whole will unnecessarily sacrifice a part? But reverse the case, and leave the whole at the mercy of each part, and will not the general interest be continually sacrificed to local interests?

Mr. Dickenson deemed it impossible to draw a line between the cases proper & improper for the exercise of the negative. We must take our choice of two things. We must either subject the States to the danger of being injured by the power of the Natl. Govt. or the latter to the danger of being injured by that of the States. He thought the danger greater from the States. To leave the power doubtful, would be opening another spring of discord, and he was for shutting as many of them as possible.

Mr. Bedford. In answer to his colleagues question, where wd. be the danger to the States from this power, would refer him to the smallness of his own State which may be injured at pleasure without redress. It was meant he found to strip the small States of their equal right of suffrage. In this case Delaware would have about $\frac{1}{9}$ (for its) share in the General Councils, whilst Pa. & Va. would possess $\frac{1}{3}$ of the whole. Is there no difference of interests, no rivalry of commerce, of manufactures? Will not these large States crush the small ones whenever they stand in the way of their ambitions or interested views. This shows the impossibility of adopting such a system as that on the table, or any other founded on a change in the principle of representation. And after all, if a State does not obey the law of the new System, must not force be resorted to as the only ultimate remedy, in this as in any other system. It seems as if Pa. & Va. by the conduct of their deputies wished to provide a system in which they would have an enormous & monstrous influence. Besides, How can it be thought that the proposed negative can be exercised? are the laws of the States to be suspended in the most urgent cases until they can be sent seven or eight hundred miles, and undergo the deliberations of a body who may be incapable of

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Judging of them? Is the National Legislature too to sit continually in order to revise the laws of the States?

(Mr.) (Madison) observed that the difficulties which had been started were worthy of attention and ought to be answered before the question was put. The case of laws of urgent necessity must be provided for by some emanation of the power from the Natl. Govt. into each State so far as to give a temporary assent at least. This was the practice in Royal Colonies before the Revolution and would not have been inconvenient; if the supreme power of negating had been faithful to the American interest, and had possessed the necessary information. He supposed that the negative might be very properly lodged in the senate alone, and that the more numerous & expensive branch therefore might not be obliged to sit constantly.—He asked Mr. B. what would be the consequence to the small States of a dissolution of the Union wch. seemed likely to happen if no effectual substitute was made for the defective System existing, and he did not conceive any effectual system could be substituted on any other basis than that of a proportional suffrage? If the large States possessed the Avarice & ambition with which they were charged, would the small ones in their neighbourhood, be more secure when all controul of a Genl. Govt. was withdrawn.

Mr. Butler was vehement agst. the Negative in the proposed extent, as cutting off all hope of equal justice to the distant States. The people there would not he was sure give it a hearing.

On the question for extending the negative power to all cases as proposd. by (Mr. P. & Mr. M —) Mas. ay. Cont. no. N. Y. no. N. J. no. Pa. ay. Del. divd. Mr. Reed & Mr. Dickenson ay. Mr. Bedford & Mr. Basset no. Maryd. no. Va. ay. Mr. R. Mr. Mason no. Mr. Blair, Doctr. Mc. Cg. Mr. M. ay. Genl. W. not consulted. N. C. no. S. C. no Geo. no. [Ayes — 3; noes — 7; divided — 1.]

(On motion of Mr. Gerry and Mr. King tomorrow was assigned for reconsidering the mode of appointing the National Executive: the reconsideration being voted for by all the States except Connecticut & N. Carolina.

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Mr. Pinkney and Mr. Rutledge moved to add to Resoln. 4. agreed to by the Come. the following, viz. "that the States be divided into three classes, the 1st. class to have 3 members, the 2d. two. & the 3d. one member each; that an estimate be taken of the comparative importance of each State at fixed periods, so as to ascertain the number of members they may from time to time be entitled to" The Committee then rose and the House adjourned.)⁵

Y A T E S

FRIDAY, JUNE 8, 1787.

Met pursuant to adjournment — 11 states.

Mr. Pinkney moved, *That the national legislature shall have the power of negating all laws to be passed by the state legislatures which they may judge improper*, in the room of the clause as it stood reported.

He grounds his motion on the necessity of one supreme controlling power, and he considers this as the *corner-stone* of the present system; and hence the necessity of retrenching the state authorities in order to preserve the good government of the national council.

Mr. Williamson against the motion. The national legislature ought to possess the power of negating such laws only as will encroach on the national government.

Mr. Madison wished that the line of jurisprudence could be drawn — he would be for it — but upon reflection he finds it impossible, and therefore he is for the amendment. If the clause remains without the amendment it is inefficient — The judges of the state must give the state laws their operation, although the law abridges the rights of the national government — how is it to be repealed? By the power who made it? How shall you compel them? By force? To prevent this disagreeable expedient, the power of negating is absolutely necessary — this is the only attractive principle which will retain its centrifugal force, and without this the planets will fly from their orbits.⁶

⁵ Taken from *Journal*.

⁶ Compare Genet's interpretation of this speech in Appendix A, CCCX.

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Mr. Gerry supposes that this power ought to extend to all laws already made; but the preferable mode would be to designate the powers of the national legislature, to which the negative ought to apply — he has no objection to restrain the laws which may be made for issuing paper money. Upon the whole he does not choose on this important trust, *to take a leap in the dark.*⁶

Mr. Pinkney supposes that the proposed amendment had no retrospect to the state laws already made. The adoption of the new government must operate as a complete repeal of all the constitutions and state laws, as far as they are inconsistent with the new government.

Mr. Wilson supposes the surrender of the rights of a federal government to be a surrender of sovereignty. True, we may define some of the rights, but when we come near the line it cannot be found. One general excepting clause must therefore apply to the whole. In the beginning of our troubles, congress themselves were as one state — dissensions or state interests were not known — they gradually crept in after the formation of the constitution, and each took to himself a slice. The original draft of confederation was drawn on the first ideas, and the draft concluded on how different!

Mr. Bedford was against the motion, and states the proportion of the intended representation of the number 90: Delaware 1 — Pennsylvania and Virginia one third. On this computation where is the weight of the small states when the interest of the one is in competition with the other on trade, manufactures and agriculture? When he sees this mode of government so strongly advocated by the members of the great states, he must suppose it a question of *interest*.

Mr. Madison confesses it is not without its difficulties on many accounts—some may be removed, others modified, and some are unavoidable. May not this power be vested in the senatorial branch? they will probably be always sitting. Take the question on the other ground, who is to determine the line when drawn in doubtful cases? The state legislatures

⁶ Compare Genet's interpretation of this speech in Appendix A, CCCX.

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cannot, for they will be partial in support of their own powers — no tribunal can be found. It is impossible that the articles of confederation can be amended—they are too tottering to be invigorated—nothing but the present system, or something like it, can restore the peace and harmony of the country.

The question put on Mr. Pinkney's motion — 7 states against it — Delaware divided — Virginia, Pennsylvania and Massachusetts for it.

Adjourned to to-morrow morning.

KING

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Conee. of the whole — Mr. C. Pinckney moves to reconsider a former vote of the Comee. vesting the national Legislatr. with a negative on the State Laws in certain instances, for the purpose of vesting them with the power of a general Negative —

The interruption of the Laws and Treaties passed and entered into by Congress, by particular State laws have been sufficiently experienced, the Harmony of the Union makes this measure necessary, and the national independence must in a great Degree rest on its adoption —

Williamson — agt. the reconsideration because he thinks the State Legislatures ought to possess independent powers in cases purely local, and applying to their internal policy —

Madison — The amendment or a reconsideration for discussion seems necessary — I am of opinion that ye Genl. Govt. will not be able to compel the large and important State to rescind a popular law passed by their Legislature. If this power does not rest in the national Legisl: there will be wanting a check to the centrifugal Force which constantly operates in the several states to force them off from a common Centre, or a national point —

Gerry — this power may enable the Genl. Govt. to depress a part for the benefit of another part — it may prevent the encouragements which particular States may be disposed to

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give to particular manufactures, it may prevent the States from traing. their militia, and thereby establish a military Force & finally a Despotism —

Wilson — In the Establishment of society every man yields his life, his liberty, property & Character to the society. there is no reservation of this sort, that the individual shall be subject to one and exempt from another Law — Indeed we have seen the Legislatures in our own Country deprive the citizen of Life, of Liberty, & property we have seen Attainders, Banishment, & Confiscations.

If we mean to establish a national Govt. the States must submit themselves as individuals — the lawful Government must be supreme — either the Genl. or the State Government must be supreme — We must remember the language with wh. we began the Revolution, it was this, Virginia is no more, Massachusetts is no more — we are one in name, let us be one in Truth & Fact — Unless this power is vested in the Genl. Govt. the States will be used by foreign powers as Engines agt the Whole — New States will be soon formed, the Inhabitants may be foreigners and possess foreign affections, unless the Genl. Govt. can check their State laws they may involve the Nation in Tumult and Confusion.

Dickerson — There can be no line of separation dividing the powers of legislation between the State & Genl. Govts. The consequence is inevitable that there must be a supreme & august national Legislature — the objection that the States may be prevented from training the Militia, is obviated by the mode of appointing the Senate and the actual representation of the people —

Bedford — Agt. the amendment — Delaware now stands $\frac{1}{8}$ th of the whole — when the system of equal representation obtains Delaware will be $\frac{1}{10}$ th — Virginia & Pennsylvania will stand $\frac{2}{8}$ th — Suppose a rivalry in commerce or manufacture between Delaware and these two States; what chance has Delaware agt. them? Bounties may be given in Virgina. & Pennsylvania, and their influence in the Genl. Govt. or Legislature will prevent a negative, not so if the same measure is attempted in Delaware —

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The Committee having agreed to a reconsideration on the question to agree to the proposed amendment

Mass. Penn. & Virgin. Ay

Dela — divid —

Cont. NYk. NJ. Mar. N.C SC. & Geor. No

} lost ⁷

HAMILTON

Pinckey—For general Negative—

Gerry—Is for a negative on paper emissions—

New states will arise which cannot be controuled —
& may outweigh & controul —

Wilson — Foreign influence may infect certain corners of confederacy which ought to be restrained —

Union basis of our oppos & Ind:

Bedford — { Arithmetical calculation of proportional influence in General Government —

{ *Pensyl. & Delaware* may have rivalship in commerce — & influence of Pens — sacrifice *delaware*

If there be a negative in G G — yet if a law can pass through all the forms of S - C. it will require force to abrogate it

Butler — Will a man throw afloat his property & confide it to a government a thousand miles *distant*?

⁷ [Endorsed:] 8 June | Shall Congress have power to negative State Laws | Mass. Pen. Virgin. aye | Del. divided | Con. NY. Jers. Mar. N. & S. Car and Geor no