

WEDNESDAY, SEPTEMBER 12, 1787.

JOURNAL

Wednesday September 12. 1787.

The honorable Mr Johnson from the Committee of revision informed the House that the Committee were prepared to report the Constitution as revised and arranged.

The report was then delivered in at the Secretary's table¹— and having been once read throughout.

Ordered that the Members be furnished with printed copies thereof.¹

The draught of a letter to Congress being at the same time reported — was read once throughout, and afterwards agreed to by paragraphs.

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

which passed in the affirmative

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

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

It was moved and seconded to appoint a Committee to prepare a Bill of rights

which passed in the negative [Ayes — 0; noes — 10.]²

¹ No copy found among the secretary's papers.

² Vote 511, Detail of Ayes and Noes. From this point on the records of the Journal are more unsatisfactory than ever, and it is impossible to reach any satisfactory conclusion with regard to the various questions and votes. At the request of John Quincy Adams, when he was preparing the Journal for publication, Madison first sent him extracts from his notes of the last two days, and later, as far as he was able, filled in the blanks of a list of ayes and noes submitted to him by Adams. See Appendix A, CCCXXIV, CCCXXVIII, CCCXXX, CCCXXXVII.

Wednesday

JOURNAL

September 12

It was moved and seconded to reconsider the 13th article in order to add the following clause

at the end of the 13 article.

“Provided nothing herein contained shall be construed to restrain any State from laying duties upon exports, for the sole purpose of defraying the charges of inspecting, packing, storing, and indemnifying the losses in keeping the Commodities, in the care of public Officers, before exportation”

It was agreed to reconsider³

DETAIL OF AYES AND NOES

	New Hampshire	Massachusetts	Rhode Island	Connecticut	New York	New Jersey	Pennsylvania	Delaware	Maryland	Virginia	No Carolina	So Carolina	Georgia	Questions	ayes	noes	divided
[510]	dd	no	aye	aye	no	no	aye	no	aye	aye	aye	aye	aye	3rds of the Legislature instead of 4ths to repass a law.			
[511]	no		no	no	no	no	no	no	no	no	no	no	no	To appoint a Committee to prepare a Bill of rights	0	10	
[512]	aye		aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye				
[513]	no		aye	no	aye	no	aye	aye	aye	aye	aye	aye	aye	To agree to Commodities	7	3	

LETTER TO CONGRESS³⁰

We have now the Honor to submit to the Consideration of the United States in Congress assembled that Constitution which has appeared to us the most advisable.

The Friends of our Country have long seen and desired that the Power of making war Peace and Treaties, that of levying Money & regulating Commerce and the correspondent executive and judicial Authorities should be fully and effectually vested in the general Government of the Union.

³ Vote 512, Detail of Ayes and Noes, might be assigned to this question. *Journal* (p. 369) assigns Vote 513. Votes 512 and 513 may belong under September 13.

³⁰ This document was among the papers of the Convention turned over to the Secretary of State by President Washington in 1796. It is in the handwriting of Gouverneur Morris.

Wednesday

JOURNAL

September 12

But the Impropriety of delegating such extensive Trust to one Body of Men is evident. Hence results the Necessity of a different Organization.

It is obviously impracticable - - - in the foederal Govern- ment of these States to secure all Rights of independent Sovereignty to each and yet provide for the Interest and Safety of all. Individuals entering into Society must give up a Share of Liberty to preserve the Rest. The Magnitude of the Sacrifice must depend as well on Situation and Circumstances as on the Object to be obtained. It is at all Times difficult to draw with Precision the Line between those Rights which must be surrendered and those which may be reserved And on the present Occasion this Difficulty was encreased by a Difference among the several States as to their Situation Extent Habits and particular Interests.

In all our Deliberations on this Subject we kept steadily in our View that which appears to us the greatest Interest of every true American The Consolidation²⁵ of our Union in which is involved our Prosperity Felicity Safety perhaps our national Existence. This important Consideration seriously and deeply impressed on our Minds led each State in the Convention to be less rigid on Points of inferior Magnitude than might have been otherwise expected. And thus the Constitution which we now present is the Result of a Spirit of Amity and of that mutual Deference & Concession which the Peculiarity of our political Situation rendered indispensable.*

That it will meet the full and entire approbation of every State is not perhaps to be expected But each will doubtless consider that had her Interests been alone consulted the Consequences might have been particularly disagreeable or injurious to others. That it is liable to as few Exceptions as could reasonably have been expected we hope and believe That it may promote the lasting Welfare of that Country so dear to us all and secure her Freedom and Happiness is our most ardent Wish —²⁶

²⁵ See Appendix A, CCCLI.

²⁶ See Appendix A, CCXXV, CCCXIII.

²⁷ [Endorsed:] Draught of the letter from the Convention to Congress, to accompany the Constitution.

Wednesday

MADISON

September 12

MADISON

Wednesday Sepr 12. 1787— In Convention

Docr. Johnson from the Committee of stile &c— reported a digest of the plan, of which printed copies were ordered to be furnished to the members— He also reported a letter to accompany the plan to, Congress. (here insert a transcript (of the former from the annexed sheet as *printed* * and of the latter from the draft as finally agreed to)†

Mr. WILLIAMSON moved to reconsider the clause requiring three fourths of each House to overrule the negative of the President, in order to strike out $\frac{3}{4}$ and insert $\frac{2}{3}$. He had he remarked himself proposed $\frac{3}{4}$ instead of $\frac{2}{3}$, but he had since been convinced that the latter proportion was the best. The former puts too much in the power of the President.

Mr. SHERMAN was of the same opinion; adding that the States would not like to see so small a minority and the President, prevailing over the general voice. In making laws regard should be had to the sense of the people. who are to be bound by them, and it was more probable that a single man should mistake or betray this sense than the Legislature

Mr Govr MORRIS. Considering the difference between the two proportions numerically, it amounts in one House to two members only; and in the other to not more than five, according to the numbers of which the Legislature is at first to be composed — It is the interest moreover of the distant States to prefer $\frac{3}{4}$ as they will be oftenest absent and need the interposing check of the President. The excess rather than the deficiency of laws was to be dreaded. The example of N. York shows that $\frac{2}{3}$ is not sufficient to answer the purpose.

Mr. HAMILTON added his testimony to the fact that $\frac{2}{3}$ in N. York had been ineffectual either where a popular object, or a legislative faction operated; of which he mentioned some instances.

* (This is a literal copy of the printed Report.† The Copy in the printed Journal contains some of the alterations subsequently made in the House.)

† There is no such transcript among the Madison Papers. A copy of the printed "report is given below."

Wednesday

MADISON

September 12

Mr. Gerry. It is necessary to consider the danger on the other side also. $\frac{3}{4}$ will be a considerable, perhaps a proper security. $\frac{2}{4}$ puts too much in the power of a few men — The primary object of the revisionary check in the President is not to protect the general interest, but to defend his own department. If $\frac{2}{4}$ be required, a few Senators having hopes from the nomination of the President to offices, will combine with him and impede proper laws. Making the vice-President Speaker increases the danger,

Mr. Williamson was less afraid of too few than of too many laws. He was most of all afraid that the repeal of bad laws might be rendered too difficult by requiring $\frac{3}{4}$ to overcome the dissent of the President.

Col: Mason had always considered this as one of the most exceptionable parts of the System. As to the numerical argument of Mr. Govr. Morris, little arithmetic was necessary to understand that $\frac{2}{4}$ was more than $\frac{3}{4}$, whatever the numbers of the Legislature might be. The example of New York depended on the real merits of the laws. The Gentlemen citing it, had no doubt given their own opinions. But perhaps there were others of opposite opinions who could equally paint the abuses on the other side. His leading view was to guard against too great an impediment to the repeal of laws.

Mr. Govr. Morris dwelt on the danger to the public interest from the instability of laws, as the most to be guarded against. On the other side there could be little danger. If one man in office will not consent when he ought, every fourth year another can be substituted. This term was not too long for fair experiments. Many good laws are not tried long enough to prove their merit. This is often the case with new laws opposed to old habits. The Inspection laws of Virginia & Maryland to which all are now so much attached were unpopular at first.

Mr. Pinkney was warmly in opposition to $\frac{2}{4}$ as putting a dangerous power in the hands of a few Senators headed by the President.

Mr. Madison. When $\frac{2}{4}$ was agreed to, the President was

Wednesday

MADISON

September 12

to be elected by the Legislature and for seven years — He is now to be elected by the people and for four years. The object of the revisionary power is twofold. 1. to defend the Executive Rights 2. to prevent popular or factious injustice. It was an important principle in this & in the State Constitutions to check legislative injustice and incroachments. The Experience of the States had demonstrated that their checks are insufficient. We must compare the danger from the weakness of $\frac{2}{3}$ with the danger from the strength of $\frac{3}{4}$. He thought on the whole the former was the greater. As to the difficulty of repeals, it was probable that in doubtful cases the policy would soon take place of limiting the duration of laws so as to require renewal instead of repeal.

The reconsideration being agreed to On the question to insert $\frac{2}{3}$ in place of $\frac{3}{4}$.

N— H— divid. Mas. no. Ct. ay. N— J. ay. Pa. no. Del. no. Md. ay. Mr McHenry no. Va no. Genl. Washington Mr. Blair, Mr. Madison no. Col. Mason, Mr. Randolph ay. N— C.— ay. S— C. ay. Geo. ay. [Ayes — 6; noes — 4; divided — 1.]

Mr. Williamson, observed to the House that no provision was yet made for juries in Civil cases and suggested the necessity of it.⁵

Mr. Gorham. It is not possible to discriminate equity cases from those in which juries are proper. The Representatives of the people may be safely trusted in this matter.

Mr. Gerry urged the necessity of Juries to guard agst. corrupt Judges. He proposed that the Committee last appointed should be directed to provide a clause for securing the trial by Juries.

Col: Mason perceived the difficulty mentioned by Mr. Gorham. The jury cases cannot be specified. A general principle laid down on this and some other points would be sufficient. He wished the plan had been prefaced with a Bill of Rights, & would second a Motion if made for the purpose — It would give great quiet to the people; and with the aid of

⁵ See Appendix A, CXXV, CXLVIa, CL, CLIII, CLVIII (85-86), CLXX, CLXXXIX, CXCVIII, CXCIX, CCVI, CCXV, CCXXVIII, CCXXX.

Wednesday

MADISON

September 12

the State declarations, a bill might be prepared in a few hours.⁶

Mr Gerry concurred in the idea & moved for a Committee to prepare a Bill of Rights. Col: Mason 2ded the motion.

Mr. Sherman. was for securing the rights of the people where requisite. The State Declarations of Rights are not repealed by this Constitution; and being in force are sufficient — There are many cases where juries are proper which cannot be discriminated. The Legislature may be safely trusted.

Col: Mason. The Laws of the U. S. are to be paramount to State Bills of Rights. On the question for a Come to prepare a Bill of Rights

N. H. no. Mas. abst. Ct no. N— J— no. Pa. no. Del— no. Md no. Va no. N— C. no. S— C— no— Geo— no. [Ayes — 0; noes — 10; absent — 1.]

The Clause relating to exports being reconsidered, at the instance of Col: Mason, Who urged that the restriction on the States would prevent the incidental duties necessary for the inspection & safe-keeping of their produce, and be ruinous to the Staple States, as he called the five Southern States, he moved as follows — ‘provided nothing herein contained shall be construed to restrain any State from laying duties upon exports for the sole purpose of defraying the Charges of inspecting, packing, storing and indemnifying the losses, in keeping the commodities in the care of public officers, before exportation,’ In answer to a remark which he anticipated, to wit, that the States could provide for these expences, by a tax in some other way, he stated the inconveniency of requiring the Planters to pay a tax before the actual delivery for exportation.⁷

Mr Madison 2ded the motion — It would at least be harmless; and might have the good effect of restraining the States to bona fide duties for the purpose, as well as of authorizing explicitly such duties; tho’ perhaps the best guard against

⁶ Upon a Bill of Rights, see Appendix A, CXLV, CXLIX, CLXXIII, CLXXXIX, CXCII, CXCVIII, CCXLII.

⁷ See Appendix A, CLVIII (73), CLXXXIV, also August 25, note 13.

Monday

McHENRY

September 10-12

an abuse of the power of the States on this subject, was the right in the Genl. Government to regulate trade between State & State.

Mr Govr Morris saw no objection to the motion. He did not consider the dollar per Hhd laid on Tobo in Virga. as a duty on exportation, as no drawback would be allowed on Tobo. taken out of the Warehouse for internal consumption,

Mr. Dayton was afraid the proviso wd. enable Pennsylv. to tax N. Jersey under the idea of Inspection duties of which Pena. would Judge.

Mr. Gorham & Mr. Langdon, thought there would be no security if the proviso shd. be agreed to, for the States exporting thro' other States, agst. oppressions of the latter. How was redress to be obtained in case duties should be laid beyond the purpose expressed?

Mr. Madison — There will be the same security as in other cases — The jurisdiction of the supreme Court must be the source of redress. So far only had provision been made by the plan agst. injurious acts of the States. His own opinion was, that this was insufficient, — A negative on the State laws alone. could meet all the shapes which these could assume. But this had been overruled.

Mr Fitzimons. Incidental duties on Tobo. & flour. never have been & never can be considered as duties on exports —

Mr Dickinson. Nothing will save States in the situation of N. Hampshire N Jersey Delaware &c. from being oppressed by their Neighbors, but requiring the assent of Congs to inspection duties, He moved that this assent shd accordingly be required

Mr. Butler zded the motion.

Adjourned

McHENRY

Monday Sepr. 10, 11 and 12.

Spent in attempts to amend several parts of the system.

12 — amended the sect art from $\frac{3}{4}$ to $\frac{2}{3}$, — as it stood in the printed report at first.