

**YOU ARE THERE AT THE CONSTITUTIONAL CONVENTION OF
1787**

How Shall Our Government Be Structured?

**A Play in Three Acts In Which The Delegates Use Consensus To Design
an Amalgamated Form of Self-Government**

I. Prologue, Part 1: Background	1
II. Prologue, Part 2: A Dictionary of Words Used in the “Notes”	3
III. Prologue, Part 3: The Proposals Debated by the Delegates	4
IV. Act I: Nationalism Via Proportional Representation or Federalism via Equal Representation of States? Selected Debates from the <u>Notes</u>	8
Wednesday, May 30, In the Committee of the Whole	8
Tuesday, June 19, In Committee of the Whole on the Propositions of Mr. Patterson	12
Friday, June 29, In Convention	23
Monday, July 2, In Convention	31
V. Act II: Compromise Proposed: Will It Do?	36
Thursday, July 5, in Convention	36
Saturday, July 7, In Convention	43
VI. Act III, Scene I: Time To Decide	47
Saturday, July 14, In Convention	47
Monday, July 16, In Convention	55

VII. Act III, Scene 2: It is Final	59
Tuesday, July 17, In Convention	59
VIII. Epilogue, Scene 1: “Republicanism and Federalism” <u>Federalist Papers</u> , No. 39 (Madison)	60
IX. Epilogue, Scene 2: Does the Seventeenth Amendment Undo a Key Compromise Reached by The Founders?	65

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I. PROLOGUE, PART 1: Background

a. The Articles of Confederation was structured as a permanent union of the (former) colonies. Its design was a unicameral Congress. There was no Executive or Judicial Branch.

In the Congress, each State had one vote. *In other words, in policymaking, the Confederation design made each State the equal of every other:*

“ In determining questions in the United States, in Congress assembled, each State will have one vote.” (Articles of Confederation, [1777], Art. V).

b. Dissatisfaction with the ability of the Articles of Confederation to provide long-term stability for the new country led Congress in 1787 to authorize a Constitutional Convention. For an explanation of why the Convention was called, *see*, James Madison’s “Preface to Debates in the Convention” written by him between 1830-1836. The “Preface” now accompanies Madison’s “Notes of Debates in the Federal Convention of 1787 reported by James Madison”.

c. The Convention began on May 14, but lacked a quorum (*i.e.*, a sufficient number to make binding decisions) due to an insufficient number of delegates until May 25, 1787. The delegates worked until September 17, 1787.

Delegates from the state of Delaware arrived on May 25, 1787. The Delaware State legislature that appointed them had limited their authority, however - they had no power to vote in favor of any proposal to alter of Article V of the Articles of Confederation, which provided that each State had an equal vote on policy questions]. [Notes, at May 25, 1787]

The delegates from Pennsylvania, on the other hand, urged that:

“the large States should unite in firmly refusing to small states an equal vote, as unreasonable, and as enabling the small states to negative every good system of Government, which must in the nature of things, be founded on a violation of that equality.”

The delegates from Virginia had a different view:

“the members from Virginia, conceiving that such an attempt might beget fatal altercations between the large and small States, and that it would be easier to prevail on the latter, in the course of deliberations, to give up their equality for the sake of an effective Government, than on taking the field of discussion to disarm themselves [*i.e.*, the smaller states] of the right and thereby throw themselves on the mercy of the large States, discountenances and stifled the project” [Notes, May 28, 1787 (Madison’s footnote)].

This incident highlights the core problem the delegates faced – what should the design of the central government be? A design based on the equality of the States gave the smaller states representation in the central government that - while equal to that of every other State - was greater than it would otherwise be in a so-called “proportional” system, in which the State’s representation in the central government was based on its population. The larger States wanted representation in the central government based on the proportional system. Proportional representation would decrease the influence of the smaller states and increase the influence of the larger states in the central government, however.

But! No new constitution was possible unless the smaller states agreed! The struggle over the new government’s basic design was the core debate of the Constitutional Convention.

After much debate over the course of weeks, the delegates reached an agreement on this issue until July 17. The final draft of the Constitution was completed on September 17, 1787 and ratified by the States thereafter. Delaware was the first State to ratify the Constitution, on Dec. 7, 1787. The first large state to ratify was Pennsylvania, on December 12, 1787.

II. PROLOGUE, PART 2: A Dictionary of Words Used in the Notes:

- National Legislature = the policymaking branch of the new central Government. Equivalent to Congress today (bicameral) and to Congress (unicameral) in the Articles of Confederation
- First Branch = our current House of Representatives in a bicameral Congress
- Second Branch = our current Senate in a bicameral Congress
- Proportional Representation = a legislative body elected by population
- Equal Representation = Each State has the same representation (*i.e.* each State has the same number of votes in Congress).
- National Government = a national (or central) government based entirely on a representative government selected entirely by popular vote
- Federal Government = a national (or central) government based entirely on a representative government selected entirely by State Legislatures.
- Resd or Resold = shorthand for “resolved” which is how a proposal to be debated is expressed and thereafter voted upon.
- Rights of Suffrage = refers to voting and who is qualified to vote
- Cong = Abbreviation for Congress. Congress is the name of the policymaking making branch of the Government.

III. PROLOGUE, PART III: The Proposals Debated by the Delegates

a. Randolph Plan (Va.):

“2. Resd. therefore that the rights of suffrage in the National Legislature ought to be proportioned to the Quotas of contribution [*i.e.*, wealth capable of being taxed], or to the number of free inhabitants, as the one or the other rule may seem best in different cases.

3. Resd. that the National Legislature ought to consist of two branches.

4. Resd. that the members of the first branch of the National Legislature ought to be elected by the people of the several States

5. Resold. that the members of the second branch of the National Legislature ought to be elected by those of the first, [*i.e.*, the Representatives in the First Branch select the members of the Second Branch] out of a proper number of persons nominated by the individual Legislatures,” [Notes, May 27, 1787].

b. Pinckney Plan (SC):

“Mr. PINKNEY ..., moved "that the first branch of the national Legislature be elected by the State Legislatures, and not by the people." contending that the people were less fit Judges in such a case, and that the Legislatures would be less likely to promote the adoption of the new Government, if they were to be excluded from all share in it.” [Notes, June 6, 1787].

c. Report of the Committee of the Whole on Mr. Randolph’s Propositions (*a/k/a.*, Va Plan):

“REPORT OF THE COMMITTEE OF WHOLE ON MR. RANDOLPH'S PROPOSITIONS

2. Resold. that the National Legislature ought to consist of two branches.

3. Resd. that the members of the first branch of the National Legislature ought to be elected by the people of the several States....

4. Resd. that the members of the second branch of the Natl. Legislature ought to be chosen by the individual Legislatures,..." [Notes, June 13, 1787].

d. NJ Plan (Paterson):

"1. Resd. that the articles of Confederation ought to be so revised, corrected & enlarged, as to render the federal Constitution adequate to the exigencies of Government, & the preservation of the Union.

2. Resd. that in addition to the powers vested in the U. States in Congress, by the present existing articles of Confederation, they be authorized to pass acts for raising a revenue, by levying a duty or duties on all goods or merchandizes of foreign growth or manufacture, imported into any part of the U. States, by Stamps on paper, vellum or parchment, and by a postage on all letters or packages passing through the general post-office, to be applied to such federal purposes as they shall deem proper & expedient; to make rules & regulations for the collection thereof; and the same from time to time, to alter & amend in such manner as they shall think proper: to pass Acts for the regulation of trade & commerce as well with foreign nations as with each other: provided that all punishments, fines, forfeitures & penalties to be incurred for contravening such acts rules and regulations shall be adjudged by the Common law Judiciaries of the State in which any offence contrary to the true intent & meaning of such Acts rules & regulations shall have been committed or perpetrated, with liberty of commencing in the first instance all suits & prosecutions for that purpose in the superior common law Judiciary in such State, subject nevertheless, for the correction of all errors, both in law & fact in rendering Judgment, to an appeal to the Judiciary of the U. States.

3. Resd. that whenever requisitions shall be necessary, instead of the rule for making requisitions mentioned in the articles of Confederation, the United States in Congs. be authorized to make such requisitions in proportion to the whole number of white & other free citizens & inhabitants of every age sex and condition including those bound to servitude for a term of years & three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes; that if such requisitions be not complied with, in the time specified

therein, to direct the collection thereof in the non complying States & for that purpose to devise and pass acts directing & authorizing the same; provided that none of the powers hereby vested in the U. States in Congs. shall be exercised without the consent of at least _____ States, and in that proportion if the number of Confederated States should hereafter be increased or diminished.” [Notes, June 15].

e. Report of the Committee of the Whole on Va (Randolph) Plan:

“On the question moved by Mr. King whether the Committee should rise & Mr. Randolphs propositions be re-reported without alteration, which was in fact a question whether Mr. R's should be adhered to as preferable to those of Mr. Patterson:

Massts. ay. Cont ay. N. Y. no. N. J. no. Pa. ay. Del. no. Md. divid. Va. ay. N. C. ay. S. C. ay. Geo. ay. (*i.e.*, NJ Plan is voted down).

[State of the resolutions submitted to the consideration of the House by the honorable Mr. Randolph, as altered, amended, and agreed to, in a Committee of the whole House].

“1. Resolved that it is the opinion of this Committee that a national government ought to be established consisting of a Supreme Legislative, Judiciary, and Executive.

2. Resolved. that the national Legislature ought to consist of Two Branches.

3. Resolved that the members of the first branch of the national Legislature ought to be elected by the People of the several States....

4. Resolved. that the members of the second Branch of the national Legislature ought to be chosen by the individual Legislatures”. [Notes, June 19, 1787].

f. Report of “The Committee to whom was referred the 8th. Resol. of the Report from the Committee of the whole House, and so much of the 7th. as has not been decided on, submit the following Report:

That the subsequent propositions be recommended to the Convention *on condition* that both shall be generally adopted. [emphasis added].

1. That in the 1st. branch of the Legislature each of the States now in the Union shall be allowed 1 member for every 40,000 inhabitants of the description reported in the 7th. Resolution of the Come. of the whole House: that each State not containing that number shall be allowed 1 member: that all bills for raising or appropriating money, and for fixing the Salaries of the officers of the Govern. of the U. States shall originate in the 1st. branch of the Legislature, and shall not be altered or amended by the 2d. branch: and that no money shall be drawn from the public Treasury. but in pursuance of appropriations to be orginated in the 1st. branch"

II. That in the 2d. branch each State shall have an equal vote." [Notes, July 5, 1787]

IV. ACT I: Nationalism Via Proportional Representation or Federalism
Via Equal Representation of States?
Selected Debates From the "Notes":

WEDNESDAY MAY 30 IN THE COMMITTEE OF THE WHOLE

Roger Sherman (from Connecticut) took his seat.

The House went into Committee of the Whole on the State of the Union. Mr. Gorham was elected to the Chair by Ballot.

The propositions of Mr. RANDOLPH which had been referred to the Committee being taken up. He moved on the suggestion of Mr. G. Morris, that the first of his propositions to wit "Resolved that the articles of Confederation ought to be so corrected & enlarged, as to accomplish the objects proposed by their institution; namely, common defence, security of liberty & general welfare: -- should be postponed, in order to consider the 3 following:

...

3. that a national Government ought to be established consisting of a supreme Legislative, Executive & Judiciary. The motion for postponing was seconded by Mr. GOVr. MORRIS and unanimously agreed to.

Some verbal criticisms were raised agst. the first proposition, and it was agreed on motion of Mr. BUTLER seconded by Mr. RANDOLPH, to pass on to the third, which underwent a discussion, less however on its general merits than on the force and extent of the particular terms national & supreme.

Mr. CHARLES PINKNEY wished to know of Mr. Randolph whether he meant to abolish the State Governrs. altogether. Mr. R. replied that he meant by these general propositions merely to introduce the particular ones which explained the outlines of the system he had in view.

Mr. BUTLER said he had not made up his mind on the subject, and was open to the light which discussion might throw on it. After some general observations he concluded with saying that he had opposed the grant of powers to Congs. heretofore, because the whole power was vested in one body. The proposed distribution of the powers into different bodies

changed the case, and would induce him to go great lengths.

Genl. PINKNEY expressed a doubt whether the act of Congs. Recommending the Convention, or the Commissions of the Deputies to it, could authorise a discussion of a System founded on different principles from the federal Constitution.

Mr. GERRY seemed to entertain the same doubt.

Mr. GOVr. MORRIS explained the distinction between a federal and national, supreme, Govt.; the former being a mere compact resting on the good faith of the parties; the latter having a compleat and compulsive operation. He contended that in all Communities there must be one supreme power, and one only.

Mr. MASON observed that the present confederation was not only deficient in not providing for coercion & punishment agst. delinquent States; but argued very cogently that punishment could not in the nature of things be executed on the States collectively, and therefore that such a Govt. was necessary as could directly operate on individuals, and would punish those only whose guilt required it.

Mr. SHERMAN who took his seat today, admitted that the Confederation had not given sufficient power to Congs. and that additional powers were necessary; particularly that of raising money which he said would involve many other powers. He admitted also that the General & particular jurisdictions ought in no case to be concurrent. He seemed however not be disposed to make too great inroads on the existing system; intimating as one reason that it would be wrong to lose every amendment, by inserting such as would not be agreed to by the States.

It was moved by Mr. READ 2ded. by Mr. Chs. COTESWORTH PINKNEY, to postpone the 3d. proposition last offered by Mr. Randolph viz that a national Government ought to be established consisting of a supreme Legislative Executive and Judiciary," in order to take up the following -- viz. "Resolved that in order to carry into execution the Design of the States in forming this Convention, and to accomplish the objects proposed by the Confederation a more effective Government consisting of a Legislative, Executive and Judiciary ought to be established."

The motion to postpone for this purpose was lost:

**Yeas Massachusetts, Connecticut, Delaware, S. Carolina -- 4
Nays. N. Y. Pennsylvania, Virginia, North Carolina -- 4.**

On the question as moved by Mr. Butler, on the third proposition it was resolved in Committee of the whole that a national governt. ought to be established consisting of a supreme Legislative Executive & Judiciary." Massts. being ay -- Connect. -- no. N. York divided [Col. Hamilton ay Mr. Yates no] Pena. ay. Delaware ay. Virga. ay. N. C. ay. S. C. ay.

...

Mr. RANDOLPH and Mr. MADISON then moved the following resolution -- "that the rights of suffrage in the national Legislature ought to be proportioned." It was moved and 2ded. to amend it by adding "and not according to the present system" -- which was agreed to. It was then moved and 2ded. to alter the resolution so as to read "that the rights of suffrage in the national Legislature ought not to be according to the present system." It was then moved & 2ded. to postpone the Resolution moved by Mr. Randolph & Mr. Madison, which being agreed to:

Mr. MADISON, moved, in order to get over the difficulties, the following resolution -- "that the equality of suffrage established by the articles of Confederation ought not to prevail in the national Legislature, and that an equitable ratio of representation ought to be substituted." This was 2ded. by Mr. GOVr. MORRIS, and being generally relished, would have been agreed to; when,

Mr. REED moved that the whole clause relating to the point of Representation be postponed; reminding the Come. that the deputies from Delaware were restrained by their commission from assenting to any change of the rule of suffrage, and in case such a change should be fixed on, it might become their duty to retire from the Convention.

Mr. GOVr. MORRIS observed that the valuable assistance of those members could not be lost without real concern, and that so early a proof of discord in the Convention as a secession of a State, would add much to

the regret; that the change proposed was however so fundamental an article in a national Govt. that it could not be dispensed with.

Mr. MADISON observed that whatever reason might have existed for the equality of suffrage when the Union was a federal one among sovereign States, it must cease when a national Governmt. should be put into the place. In the former case, the acts of Congs. depended so much for their efficacy on the cooperation of the States, that these had a weight both within & without Congress, nearly in proportion to their extent and importance. In the latter case, as the acts of the Genl. Govt. would take effect without the intervention of the State legislatures, a vote from a small State wd. have the same efficacy & importance as a vote from a large one, and there was the same reason for different numbers of representatives from different States, as from Counties of different extents within particular States. He suggested as an expedient for at once taking the sense of the members on this point and saving the Delaware deputies from embarrassment, that the question should be taken in Committee, and the clause on report to the House be postponed without a question there. This however did not appear to satisfy Mr. Read. By several it was observed that no just construction of the Act of Delaware, could require or justify a secession of her deputies, even if the resolution were to be carried thro' the House as well as the Committee. It was finally agreed however that the clause should be postponed: it being understood that in the event the proposed change of representation would certainly be agreed to, no objection or difficulty being started from any other quarter than from Delaware.

The motion of Mr. Read to postpone being agreed to,

The Committee then rose. The Chairman reported progress, and the House having resolved to resume the subject in Committee tomorrow,

Adjourned to 10 OClock. [Notes, May 30, 1787].

“TEUSDAY JUNE 19th. IN COMMITTEE OF WHOLE ON THE PROPOSITIONS OF MR. PATTERSON

...

Mr. PATTERSON's plan was again at large before the Committee.

Mr. MADISON. Much stress had been laid by some gentlemen on the want of power in the Convention to propose any other than a federal plan. To what had been answered by others, he would only add, that neither of the characteristics attached to a federal plan would support this objection. One characteristic, was that in a federal Government, the power was exercised not on the people individually; but on the people collectively, on the States. Yet in some instances as in piracies, captures &c. the existing Confederacy, and in many instances, the amendments to it proposed by Mr. Patterson, must operate immediately on individuals. The other characteristic was that a federal Govt. derived its appointments not immediately from the people, but from the States which they respectively composed. Here too were facts on the other side. In two of the States, Connect. and Rh. Island, the delegates to Congs. were chosen, not by the Legislatures, but by the people at large; and the plan of Mr. P. intended no change in this particular.

It had been alledged [by Mr. Patterson], that the Confederation having been formed by unanimous consent, could be dissolved by unanimous Consent only. Does this doctrine result from the nature of compacts? does it arise from any particular stipulation in the articles of Confederation? If we consider the federal union as analogous to the fundamental compact by which individuals compose one Society, and which must in its theoretic origin at least, have been the unanimous act of the component members, it can not be said that no dissolution of the compact can be effected without unanimous consent. A breach of the fundamental principles of the compact by a part of the Society would certainly absolve the other part from their obligations to it. If the breach of any article by any of the parties, does not set the others at liberty, it is because, the contrary is implied in the compact itself, and particularly by that law of it, which gives an indefinite authority to the majority to bind the whole in all cases. This latter circumstance shews that we are not to consider the federal Union as analogous to the social compact of individuals: for if it were so, a Majority would have a right to bind the rest, and even to form a new Constitution for the

whole, which the Gentn. from N. Jersey would be among the last to admit. If we consider the federal Union as analogous not to the social compacts among individual men: but to the conventions among individual States. What is the doctrine resulting from these conventions? Clearly, according to the Expositors of the law of Nations, that a breach of any one article, by any one party, leaves all the other parties at liberty, to consider the whole convention as dissolved, unless they choose rather to compel the delinquent party to repair the breach. In some treaties indeed it is expressly stipulated that a violation of particular articles shall not have this consequence, and even that particular articles shall remain in force during war, which in general is understood to dissolve all subsisting Treaties. But are there any exceptions of this sort to the Articles of confederation? So far from it that there is not even an express stipulation that force shall be used to compell an offending member of the Union to discharge its duty. He observed that the violations of the federal articles had been numerous & notorious. Among the most notorious was an act of N. Jersey herself; by which she expressly refused to comply with a constitutional requisition of Congs. and yielded no farther to the expostulations of their deputies, than barely to rescind her vote of refusal without passing any positive act of compliance. He did not wish to draw any rigid inferences from these observations. He thought it proper however that the true nature of the existing confederacy should be investigated, and he was not anxious to strengthen the foundations on which it now stands. Proceeding to the consideration of Mr. Patterson's plan, he stated the object of a proper plan to be twofold. 1. to preserve the Union. 2. to provide a Governmt. that will remedy the evils felt by the States both in their united and individual capacities. Examine Mr. P.s plan, & say whether it promises satisfaction in these respects.

1. Will it prevent those violations of the law of nations & of Treaties which if not prevented must involve us in the calamities of foreign wars? The tendency of the States to these violations has been manifested in sundry instances. The files of Congs. contain complaints already, from almost every nation with which treaties have been formed. Hitherto indulgence has been shewn to us. This can not be the permanent disposition of foreign nations. A rupture with other powers is among the greatest of national calamities. It ought therefore to be effectually provided that no part of a nation shall have it in its power to bring them on the whole. The existing Confederacy does not sufficiently

provide against this evil. The proposed amendment to it does not supply the omission. It leaves the will of the States as uncontrouled as ever.

2. Will it prevent encroachments on the federal authority? A tendency to such encroachments has been sufficiently exemplified, among ourselves, as well in every other confederated republic antient and Modern. By the federal articles, transactions with the Indians appertain to Congs. Yet in several instances, the States have entered into treaties & wars with them. In like manner no two or more States can form among themselves any treaties &c. without the consent of Congs. Yet Virga. & Maryd. in one instance -- Pena. & N. Jersey in another, have entered into compacts, without previous application or subsequent apology. No State again can of right raise troops in time of peace without the like consent. Of all cases of the league, this seems to require the most scrupulous observance. Has not Massts, notwithstanding, the most powerful member of the Union, already raised a body of troops? Is she not now augmenting them, without having even deigned to apprise Congs. of Her intention? In fine -- Have we not seen the public land dealt out to Cont. to bribe her acquiescence in the decree constitutionally awarded agst. her claim on the territory of Pena.? for no other possible motive can account for the policy of Congs. in that measure? -- If we recur to the examples of other confederacies, we shall find in all of them the same tendency of the parts to encroach on the authority of the whole. He then reviewed the Amphyctionic & Achaean confederacies among the antients, and the Helvetic, Germanic & Belgic among the moderns, tracing their analogy to the U. States -- in the constitution and extent of their federal authorities -- in the tendency of the particular members to usurp on these authorities; and to bring confusion & ruin on the whole. -- He observed that the plan of Mr. Pat-son besides omitting a controul over the States as a general defence of the federal prerogatives was particularly defective in two of its provisions. 1. Its ratification was not to be by the people at large, but by the legislatures. It could not therefore render the Acts of Congs. in pursuance of their powers, even legally paramount to the Acts of the States. 2. It gave to the federal Tribunal an appellate jurisdiction only -- even in the criminal cases enumerated, The necessity of any such provision supposed a danger of undue acquittals in the State tribunals. Of what avail cd. an appellate tribunal be, after an acquittal? Besides in most if not all of the States, the Executives have by their respective Constitutions the right

of pardg. How could this be taken from them by a legislative ratification only?

3. Will it prevent trespasses of the States on each other? Of the e enough has been already seen. He instanced Acts of Virga. & Maryland which give a preference to their own Citizens in cases where the Citizens of other States are entitled to equality of privileges by the Articles of Confederation. He considered the emissions of paper money & other kindred measures as also aggressions. The States relatively to one another being each of them either Debtor or Creditor; The creditor States must suffer unjustly from every emission by the debtor States. We have seen retaliating acts on this subject which threatened danger not to the harmony only, but the tranquility of the Union. The plan of Mr. Paterson, not giving even a negative on the acts of the States, left them as much at liberty as ever to execute their unrighteous projects agst. each other.

4. Will it secure the internal tranquility of the States themselves? The insurrections in Massts. admonished all the States of the danger to which they were exposed. Yet the plan of Mr. P. contained no provisions for supplying the defect of the Confederation on this point. According to the Republican theory indeed, Right & power being both vested in the majority, are held to be synonymous. According to fact & experience, a minority may in an appeal to force be an overmatch for the majority. 1. If the minority happen to include all such as possess the skill & habits of military life, with such as possess the great pecuniary resources, one third may conquer the remaining two thirds. 2. one third of those who participate in the choice of rulers may be rendered a majority by the accession of those whose poverty disqualifies them from a suffrage, & who for obvious reasons may be more ready to join the standard of sedition than that of the established Government. 3. where slavery exists, the Republican Theory becomes still more fallacious.

5. Will it secure a good internal legislation & administration to the particular States? In developing the evils which vitiate the political system of the U.S. it is proper to take into view those which prevail within the States individually as well as those which affect them collectively: Since the former indirectly affect the whole; and there is great reason to believe that the pressure of them had a full share in

the motives which produced the present Convention. Under this head he enumerated and animadverted on 1. the multiplicity of the laws passed by the several States. 2. the mutability of their laws. 3. the injustice of them. 4. the impotence of them: observing that Mr. Patterson's plan contained no remedy for this dreadful class of evils, and could not therefore be received as an adequate provision for the exigences of the Community.

6. Will it secure the Union agst. the influence of foreign powers over its members. He pretended not to say that any such influence had yet been tried: but it was naturally to be expected that occasions would produce it. As lessons which claimed particular attention, he cited the intrigues practised among the Amphyctionic Confederates first by the Kings of Persia, and afterwards fatally by Philip of Macedon: among the Achaeans, first by Macedon & afterwards no less fatally by Rome: among the Swiss by Austria, France & the lesser neighbouring powers: among the members of the Germanic Body by France, England, Spain & Russia -- : and in the Belgic Republic, by all the great neighbouring powers. The plan of Mr. Patterson, not giving to the general Councils any negative on the will of the particular States, left the door open for the like pernicious machinations among ourselves.

7. He begged the smaller States which were most attached to Mr. Patterson's plan to consider the situation in which it would leave them. In the first place they would continue to bear the whole expence of maintaining their Delegates in Congress. It ought not to be said that if they were willing to bear this burden, no others had a right to complain. As far as it led the small States to forbear keeping up a representation, by which the public business was delayed, it was evidently a matter of common concern. An examination of the minutes of Congress would satisfy every one that the public business had been frequently delayed by this cause; and that the States most frequently unrepresented in Congs. were not the larger States. He reminded the convention of another consequence of leaving on a small State the burden of maintaining a Representation in Congs. During a considerable period of the War, one of the Representatives of Delaware, in whom alone before the signing of the Confederation the entire vote of that State and after that event one half of its vote, frequently resided, was a Citizen & Resident of Pena. and held an office in his own State incompatible with an appointment from it to Conga. During another period, the same State

was represented by three delegates two of whom were citizens of Penna. and the third a Citizen of New Jersey. These expedients must have been intended to avoid the burden of supporting delegates from their own State. But whatever might have been ye. cause, was not in effect the vote of one State doubled, and the influence of another increased by it? In the 2d. place The coercion, on which the efficacy of the plan depends, can never be exerted but on themselves. The larger States will be impregnable, the smaller only can feel the vengeance of it. He illustrated the position by the history of the Amphyctionic Confederates: and the ban of the German Empire. It was the cobweb wch. could entangle the weak, but would be the sport of the strong.

8. He begged them to consider the situation in which they would remain in case their pertinacious adherence to an inadmissible plan, should prevent the adoption of any plan. The contemplation of such an event was painful; but it would be prudent to submit to the task of examining it at a distance, that the means of escaping it might be the more readily embraced. Let the Union of the States be dissolved, and one of two consequences must happen. Either the States must remain individually independent & sovereign; or two or more Confederacies must be formed among them. In the first event would the small States be more secure agst. the ambition & power of their larger neighbours, than they would be under a general Government pervading with equal energy every part of the Empire, and having an equal interest in protecting every part agst. every other part? In the second, can the smaller expect that their larger neighbours would confederate with them on the principle of the present confederacy, which gives to each member, an equal suffrage; or that they would exact less severe concessions from the smaller States, than are proposed in the scheme of Mr. Randolph?

The great difficulty lies in the affair of Representation; and if this could be adjusted, all others would be surmountable. It was admitted by both the gentlemen from N. Jersey [Mr. Brearly and Mr. Patterson] that it would not be just to allow Virga. which was 16 times as large as Delaware an equal vote only. Their language was that it would not be safe for Delaware to allow Virga. 16 times as many votes. The expedient proposed by them was that all the States should be thrown into one mass and a new partition be made into 13 equal parts. Would such a scheme be practicable? The dissimilarities existing in the rules of property, as well as in the manners, habits and prejudices of the different

States, amounted to a prohibition of the attempt. It had been found impossible for the power of one of the most absolute princes in Europe [K. of France] directed by the wisdom of one of the most enlightened and patriotic Ministers [Mr. Neckar] that any age has produced to equalize in some points only the different usages & regulations of the different provinces. But admitting a general amalgamation and repartition of the States to be practicable, and the danger apprehended by the smaller States from a proportional representation to be real; would not a particular and voluntary coalition of these with their neighbours, be less inconvenient to the whole community, and equally effectual for their own safety. If N. Jersey or Delaware conceived that an advantage would accrue to them from an equalization of the States, in which case they would necessarily form a junction with their neighbours, why might not this end be attained by leaving them at liberty by the Constitution to form such a junction whenever they pleased? And why should they wish to obtrude a like arrangement on all the States, when it was, to say the least, extremely difficult, would be obnoxious to many of the States, and when neither the inconveniency, nor the benefit of the expedient to themselves, would be lessened, by confining it to themselves. -- The prospect of many new States to the Westward was another consideration of importance. If they should come into the Union at all, they would come when they contained but few inhabitants. If they shd. be entitled to vote according to their proportions of inhabitants, all would be right & safe. Let them have an equal vote, and a more objectionable minority than ever might give law to the whole.

On a question for postponing generally the 1st. proposition of Mr. Patterson's plan, it was agreed to: N. Y. & N J. only being no --

On the question moved by Mr. King whether the Committee should rise & Mr. Randolphs propositions be re-reported without alteration, which was in fact a question whether Mr. R's should be adhered to as preferable to those of Mr. Patterson:

Massts. ay. Cont ay. N. Y. no. N. J. no. Pa. ay. Del. no. Md. divid. Va. ay. N. C. ay. S. C. ay. Geo. ay.

...

[State of the resolutions submitted to the consideration of the House by the honorable Mr. Randolph, as altered, amended, and agreed to, in a Committee of the whole House.

1. Resolved that it is the opinion of this Committee that a national government ought to be established consisting of a Supreme Legislative, Judiciary, and Executive.

2. Resolved. that the national Legislature ought to consist of Two Branches.

3. Resolved that the members of the first branch of the national Legislature ought to be elected by the People of the several States

4. Resolved. that the members of the second Branch of the national Legislature ought to be chosen by the individual Legislatures

...

7. Resolved. that the right of suffrage in the first branch of the national Legislature ought *not* to be according to the rule established in the articles of confederation: but according to some equitable ratio of representation -- namely, in proportion to the whole number of white and other free citizens 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 in each State. [emphasis added].

8. Resolved. that the right of suffrage in the second branch of the national Legislature ought to be according to the rule established for the first.

(Of Mr. Randolph's plan as reported from the Committee). the 1. propos: "that a Natl. Govt. ought to be established consisting &c." being taken up in the House.

Mr. WILSON observed that by a Natl. Govt. he did not mean one that would swallow up the State Govts. as seemed to be wished by some gentlemen. He was tenacious of the idea of preserving the latter. He thought, contrary to the opinion of [Col. Hamilton] that they might not only subsist but subsist on friendly terms with the former. They were absolutely

necessary for certain purposes which the former could not reach. All large Governments must be subdivided into lesser jurisdictions. As Examples he mentioned Persia, Rome, and particularly the divisions & subdivisions of England by Alfred.

Col. HAMILTON coincided with the proposition as it stood in the Report. He had not been understood yesterday. By an abolition of the States, he meant that no boundary could be drawn between the National & State Legislatures; that the former must therefore have indefinite authority. If it were limited at all, the rivalry of the States would gradually subvert it. Even as Corporations the extent of some of them as Va. Massts. &c. would be formidable. As States, he thought they ought to be abolished. But he admitted the necessity of leaving in them, subordinate jurisdictions. The examples of Persia & the Roman Empire, cited by [Mr. Wilson] were he thought in favor of his doctrine: the great powers delegated to the Satraps & proconsuls, having frequently produced revolts, and schemes of independence.

Mr. KING, wished as every thing depended on this proposition, that no objections might be improperly indulged agst. the phraseology of it. He conceived that the import of the terms "States" "Sovereignty" "national" "federal," had been often used & applied in the discussions inaccurately & delusively. The States were not "Sovereigns" in the sense contended for by some. They did not possess the peculiar features of sovereignty, they could not make war, nor peace, nor alliances nor treaties. Considering them as political Beings, they were dumb, for they could not speak to any foreign Sovereign whatever. They were deaf, for they could not hear any propositions from such Sovereign. They had not even the organs or faculties of defence or offence, for they could not of themselves raise troops, or equip vessels, for war. On the other side, if the Union of the States comprizes the idea of a confederation, it comprizes that also of consolidation. A Union of the States is a Union of the men composing them, from whence a national character results to the whole. Congs. can act alone without the States -- they can act & their acts will be binding agst. the Instructions of the States. If they declare war: war is de jure declared -- captures made in pursuance of it are lawful -- No acts of the States can vary the situation, or prevent the judicial consequences. If the States therefore retained some portion of their sovereignty, they had certainly divested themselves of essential portions of it. If they formed a confederacy in some respects

-- they formed a Nation in others -- The Convention could clearly deliberate on & propose any alterations that Congs. could have done under ye. federal articles, and could not Congs. propose by virtue of the last article, a change in any article whatever: and as well that relating to the equality of suffrage, as any other. He made these remarks to obviate some scruples which had been expressed. He doubted much the practicability of annihilating the States; but thought that much of their power ought to be taken from them.

Mr. MARTIN , said he considered that the separation from G. B. placed the 13 States in a state of Nature towards each other; that they would have remained in that state till this time, but for the confederation; that they entered into the confederation on the footing of equality; that they met now to to amend it on the same footing; and that he could never accede to a plan that would introduce an inequality and lay 10 States at the mercy of Va. Massts. and Penna.

Mr. WILSON, could not admit the doctrine that when the Colonies became independent of G. Britain, they became independent also of each other. He read the declaration of Independence, observing thereon that the United Colonies were declared to be free & independent States; and inferring that they were independent, not individually but Unitedly and that they were confederated as they were independent, States.

Col. HAMILTON, assented to the doctrine of Mr. Wilson. He denied the doctrine that the States were thrown into a State of Nature He was not yet prepared to admit the doctrine that the Confederacy, could be dissolved by partial infractions of it. He admitted that the States met now on an equal footing but could see no inference from that against concerting a change of the system in this particular. He took this occasion of observing for the purpose of appeasing the fears of the small States, that two circumstances would render them secure under a National Govt. in which they might lose the equality of rank they now held: one was the local situation of the 3 largest States Virga. Masts. & Pa. They were separated from each other by distance of place, and equally so, by all the peculiarities which distinguish the interests of one State from those of another. No combination therefore could be dreaded. In the second place, as there was a gradation in the States from Va. the largest down to Delaware the smallest, it would always happen that ambitious combinations among a few States might & wd. be

counteracted by defensive combinations of greater extent among the rest. No combination has been seen among large Counties merely as such, agst. lesser Counties. The more close the Union of the States, and the more compleat the authority of the whole: the less opportunity will be allowed the stronger States to injure the weaker.

Adjd.” [Notes, June 19, 1797].

FRIDAY JUNE 29th. IN CONVENTION

DOctr. JOHNSON. The controversy must be endless whilst Gentlemen differ in the grounds of their arguments; Those on one side considering the States as districts of people composing one political Society; those on the other considering them as so many political societies. The fact is that the States do exist as political Societies, and a Govt. is to be formed for them in their political capacity, as well as for the individuals composing them. Does it not seem to follow, that if the States as such are to exist they must be armed with some power of self-defence. This is the idea of [Col. Mason] who appears to have looked to the bottom of this matter. Besides the Aristocratic and other interests, which ought to have the means of defending themselves, the States have their interests as such, and are equally entitled to like means. On the whole he thought that as in some respects the States are to be considered in their political capacity, and in others as districts of individual citizens, the two ideas embraced on different sides, instead of being opposed to each other, ought to be combined; that in one branch the people, ought to be represented in the other the States.

Mr. GHORUM. The States as now confederated have no doubt a right to refuse to be consolidated, or to be formed into any new system. But he wished the small States which seemed most ready to object, to consider which are to give up most, they or the larger ones. He conceived that a rupture of the Union wd. be an event unhappy for all, but surely the large States would be least unable to take care of themselves, and to make connections with one another. The weak therefore were most interested in establishing some general system for maintaining order. If among individuals, composed partly of weak, and partly of strong, the former most need the protection of law & Government, the case is exactly the same with weak & powerful States. What would be the situation of Delaware (for these things he found must be spoken out, & it might as well be done first as last) what wd. be the situation of Delaware in case of a separation of the States? Would she not lie at the mercy of Pennsylvania? would not her true interest lie in being consolidated with her, and ought she not now to wish for such a union with Pa. under one Govt. as will put it out of the power of Pa. to oppress her? Nothing can be more ideal than the danger apprehended by the States, from their being formed into one nation. Massts. was originally three colonies, viz old Massts. Plymouth -- & the province of Mayne. These

apprehensions existed then. An incorporation took place; all parties were safe & satisfied; and every distinction is now forgotten. The case was similar with Connecticut & Newhaven. The dread of union was reciprocal; the consequence of it equally salutary and satisfactory. In like manner N. Jersey has been made one society out of two parts. Should a separation of the States take place, the fate of N. Jersey wd. be worst of all. She has no foreign commerce & can have but little. Pa. & N. York will continue to levy taxes on her consumption. If she consults her interest she wd. beg of all things to be annihilated. The apprehensions of the small States ought to be appeased by another reflection. Massts. will be divided. The province of Maine is already considered as approaching the term of its annexation to it; and Pa. will probably not increase, considering the present state of her population, & other events that may happen. On the whole he considered a Union of the States as necessary to their happiness, & a firm Genl. Govt. as necessary to their Union. He shd. consider it as his duty if his colleagues viewed the matter in the same light he did to stay here as long as any other State would remain with them, in order to agree on some plan that could with propriety be recommended to the people.

Mr. ELSWORTH, did not despair. He still trusted that some good plan of Govt. wd. be devised & adopted.

Mr. READ. He shd. have no objection to the system if it were truly national, but it has too much of a federal mixture in it. The little States he thought had not much to fear. He suspected that the large States felt their want of energy, & wished for a Genl. Govt. to supply the defect. Massts. was evidently labouring under her weakness and he believed Delaware wd. not be in much danger if in her neighbourhood. Delaware had enjoyed tranquility & he flattered himself wd. continue to do so. He was not however so selfish as not to wish for a good Genl. Govt. In order to obtain one the whole States must be incorporated. If the States remain, the representatives of the large ones will stick together, and carry every thing before them. The Executive also will be chosen under the influence of this partiality, and will betray it in his administration. These jealousies are inseparable from the scheme of leaving the States in existence. They must be done away. The ungranted lands also which have been assumed by particular States must also [4] be given up. He repeated his approbation of the plan of Mr. Hamilton, & wished it to be substituted in place of that on the table.

Mr. MADISON agreed with Doctr. Johnson, that the mixed nature of the Govt. ought to be kept in view; but thought too much stress was laid on the rank of the States as political societies. There was a gradation, he observed from the smallest corporation, with the most limited powers, to the largest empire with the most perfect sovereignty. He pointed out the limitations on the sovereignty of the States, as now confederated their laws in relation to the paramount law of the Confederacy were analogous to that of bye laws to the supreme law within a State. Under the proposed Govt. the powers of the States will be much farther reduced. According to the views of every member, the Genl. Govt. will have powers far beyond those exercised by the British Parliament, when the States were part of the British Empire. It will in particular have the power, without the consent of the State Legislatures, to levy money directly on the people themselves; and therefore not to divest such unequal portions of the people as composed the several States, of an equal voice, would subject the system to the reproaches & evils which have resulted from the vicious representation in G. B.

He entreated the gentlemen representing the small States to renounce a principle wch. was confessedly unjust, which cd. never be admitted, & if admitted must infuse mortality into a Constitution which we wished to last forever. He prayed them to ponder well the consequences of suffering the Confederacy to go to pieces. It had been sd. that the want of energy in the large states wd. be a security to the small. It was forgotten that this want of energy proceeded from the supposed security of the States agst. all external danger. Let each state depend on itself for its security, & let apprehensions arise arise of danger, from distant powers or from neighbouring States, & the languishing condition of all the States, large as well as small, wd. soon be transformed into vigorous & high toned Govts. His great fear was that their Govts. wd. then have too much energy, that these might not only be formidable in the large to the small States, but fatal to the internal liberty of all. The same causes which have rendered the old world the Theatre of incessant wars, & have banished liberty from the face of it, wd. soon produce the same effects here. The weakness & jealousy of the small States wd. quickly introduce some regular military force agst. sudden danger from their powerful neighbours. The example wd. be followed by others, and wd. soon become universal. In time of actual war, great discretionary powers are constantly given to the

Executive Magistrate. Constant apprehension of war, has the same tendency to render the head too large for the body. A standing military force, with an overgrown Executive will not long be safe companions to liberty. The means of defence agst. foreign danger, have been always the instruments of tyranny at home. Among the Romans it was a standing maxim to excite a war, whenever a revolt was apprehended. Throughout all Europe, the armies kept up under the pretext of defending, have enslaved the people. It is perhaps questionable, whether the best concerted system of absolute power in Europe cd. maintain itself, in a situation, where no alarms of external danger cd. tame the people to the domestic yoke. The insular situation of G. Britain was the principal cause of her being an exception to the general fate of Europe. It has rendered less defence necessary, and admitted a kind of defence wch. cd. not be used for the purpose of oppression. -- These consequences he conceived ought to be apprehended whether the States should run into a total separation from each other, or shd. enter into partial confederacies. Either event wd. be truly deplorable; & those who might be accessory to either, could never be forgiven by their Country, nor by themselves.

Mr. HAMILTON observed that individuals forming political Societies modify their rights differently, with regard to suffrage. Examples of it are found in all the States. In all of them some individuals are deprived of the right altogether, not having the requisite qualification of property. In some of the States the right of suffrage is allowed in some cases and refused in others. To vote for a member in one branch, a certain quantum of property, to vote for a member in another branch of the Legislature, a higher quantum of property is required. In like manner States may modify their right of suffrage differently, the larger exercising a larger, the smaller a smaller share of it. But as States are a collection of individual men which ought we to respect most, the rights of the people composing them, or of the artificial beings resulting from the composition. Nothing could be more preposterous or absurd than to sacrifice the former to the latter. It has been sd. that if the smaller States renounce their equality, they renounce at the same time their liberty. The truth is it is a contest for power, not for liberty. Will the men composing the small States be less free than those composing the larger. The State of Delaware having 40,000 souls will lose power, if she has 1/10 only of the votes allowed to Pa. having 400,000: but will the people of Del: be less free, if each citizen has an equal vote with each citizen of Pa. He admitted that common residence

within the same State would produce a certain degree of attachment; and that this principle might have a certain influence in public affairs. He thought however that this might by some precautions be in a great measure excluded: and that no material inconvenience could result from it, as there could not be any ground for combination among the States whose influence was most dreaded. The only considerable distinction of interests, lay between the carrying & non-carrying States, which divide instead of uniting the largest States. No considerable inconvenience had been found from the division of the State of N. York into different districts of different sizes.

Some of the consequences of a dissolution of the Union, and the establishment of partial confederacies, had been pointed out. He would add another of a most serious nature. Alliances will immediately be formed with different rival & hostile nations of Europe, who will foment disturbances among ourselves, and make us parties to all their own quarrels. Foreign Nations having American dominions are & must be jealous of us. Their representatives betray the utmost anxiety for our fate, & for the result of this meeting, which must have an essential influence on it. -- It had been said that respectability in the eyes of foreign Nations was not the object at which we aimed; that the proper object of republican Government was domestic tranquility & happiness. This was an ideal distinction. No Government could give us tranquility & happiness at home, which did not possess sufficient stability and strength to make us respectable abroad. This was the critical moment for forming such a Government. We should run every risk in trusting to future amendments. As yet we retain the habits of union. We are weak & sensible of our weakness. Henceforward the motives will become feebler, and the difficulties greater. It is a miracle that we were now here exercising our tranquil & free deliberations on the subject. It would be madness to trust to future miracles. A thousand causes must obstruct a reproduction of them.

Mr. PIERCE considered the equality of votes under the Confederation as the great source of the public difficulties. The members of Congress were advocates for local advantages. State distinctions must be sacrificed as far as the general good required, but without destroying the States. Tho' from a small State he felt himself a Citizen of the U. S.

Mr. GERRY urged that we never were independent States, were not such

now, & never could be even on the principles of the Confederation. The States & the advocates for them were intoxicated with the idea of their sovereignty. He was a member of Congress at the time the federal articles were formed. The injustice of allowing each State an equal vote was long insisted on. He voted for it, but it was agst. his Judgment, and under the pressure of public danger, and the obstinacy of the lesser States. The present confederation he considered as dissolving. The fate of the Union will be decided by the Convention. If they do not agree on something, few delegates will probably be appointed to Congs. If they do Congs. will probably be kept up till the new System should be adopted. He lamented that instead of coming here like a band of brothers, belonging to the same family, we seemed to have brought with us the spirit of political negociators.

Mr. L. MARTIN. remarked that the language of the States being sovereign & independent, was once familiar & understood; though it seemed now so strange & obscure. He read those passages in the articles of Confederation, which describe them in that language.

...

On the motion to agree to the clause as reported, "that the rule of suffrage in the 1st. branch ought not to be according to that established by the articles of Confederation.

Mass. ay. Cont. no. N. Y. no. N. J. no. Pa. ay. Del. no. Md. divid. Va. ay. N. C. ay. S. C. ay. Geo. ay.

DOCr. JOHNSON & Mr. ELSEWORTH moved to postpone the residue of the clause, & take up -- ye. 8 -- Resol:

On question.

Mas. no. Cont. ay. N. Y. ay. N. J. ay. Pa. ay. Del. no. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay.

Mr. ELSEWORTH moved that the rule of suffrage in the 2d. branch be the same with that established by the articles of confederation." He was not sorry on the whole he said that the vote just passed, had determined against this rule in the first branch. He hoped it would become a ground

of compromise with regard to the 2d. branch. We were partly national; partly federal. The proportional representation in the first branch was conformable to the national principle & would secure the large States agst. the small. An equality of voices was conformable to the federal principle and was necessary to secure the Small States agst. the large. He trusted that on this middle ground a compromise would take place. He did not see that it could on any other. And if no compromise should take place, our meeting would not only be in vain but worse than in vain. To the Eastward he was sure Massts. was the only State that would listen to a proposition for excluding the States as equal political Societies, from an equal voice in both branches. The others would risk every consequence rather than part with so dear a right. An attempt to deprive them of it, was at once cutting the body of America in two, and as he supposed would be the case, somewhere about this part of it. The large States he conceived would notwithstanding the equality of votes, have an influence that would maintain their superiority. Holland, as had been admitted [by Mr. Madison] had, notwithstanding a like equality in the Dutch Confederacy, a prevailing influence in the public measures. The power of self-defence was essential to the small States. Nature had given it to the smallest insect of the creation. He could never admit that there was no danger of combinations among the large States. They will like individuals find out and avail themselves of the advantage to be gained by it. It was true the danger would be greater, if they were contiguous and had a more immediate [20] common interest. A defensive combination of the small States was rendered more difficult by their greater number. He would mention another consideration of great weight. The existing confederation was founded on the equality of the States in the article of suffrage: was it meant to pay no regard to this antecedent plighted faith. Let a strong Executive, a Judiciary & Legislative power be created; but Let not too much be attempted; by which all may be lost. He was not in general a half-way man, yet he preferred doing half the good we could, rather than do nothing at all. The other half may be added, when the necessity shall be more fully experienced.

Mr. BALDWIN could have wished that the powers of the General Legislature had been defined, before the mode of constituting it had been agitated. He should vote against the motion of Mr. Elseworth, tho' he did not like the Resolution as it stood in the Report of the Committee of the whole. He thought the second branch ought to be the representation of property,

and that in forming it therefore some reference ought to be had to the relative wealth of their Constituents, and to the principles on which the Senate of Massts. was constituted. He concurred with those who thought it wd. be impossible for the Genl. Legislature to extend its cares to the local matters of the States.

Adjd.” [Notes, June 29, 1787].

“MONDAY JULY 2nd. IN CONVENTION

On the question for allowing each State one vote in the second branch as moved by Mr. Elseworth, Massts. no. Cont. ay. N. Y. ay. N. J. ay. Pa. no. Del. ay. Md. ay. Mr. Jenifer being not present Mr. Martin alone voted Va no. N. C. no. S. C. no. Geo. divd. Mr. Houston no. Mr. Baldwin ay.

Mr. PINKNEY thought an equality of votes in the 2d. branch inadmissible. At the same time candor obliged him to admit that the large States would feel a partiality for their own Citizens & give them a preference, in appointments: that they might also find some common points in their commercial interests, and promote treaties favorable to them. There is a real distinction the Northern & Southn. interests. N. Carola. S. Carol: & Geo. in their Rice & Indigo had a peculiar interest which might be sacrificed. How then shall the larger States be prevented from administering the Genl. Govt. as they please, without being themselves unduly subjected to the will of the smaller? By allowing them some but not a full proportion. He was extremely anxious that something should be done, considering this as the last appeal to a regular experiment. Congs. have failed in almost every effort for an amendment of the federal System. Nothing has prevented a dissolution of it, but the appointmt. of this Convention; & he could not express his alarms for the consequences of such an event He read his motion, to form the States into classes, with an apportionment of Senators among them, [see art. 4, of his plan].

General PINKNEY. was willing the motion might be considered. He did not entirely approve it. He liked better the motion of Docr. Franklin [which see Saturday June 30]. Some compromise seemed to be necessary: the States being exactly divided on the question for an equality of votes in the 2d. branch. He proposed that a Committee consisting of a member from each State should be appointed to devise & report some compromise.

Mr. L. MARTIN had no objection to a commitment, but no modifications whatever could reconcile the Smaller States to the least diminution of their equal Sovereignty.

Mr. SHARMAN. We are now at a full stop, and nobody he supposed meant that we shd. break up without doing something. A committee he thought

most likely to hit on some expedient.

Mr. Govr. MORRIS. thought a Come. adviseable as the Convention had been equally divided. He had a stronger reason also. The mode of appointing the 2d. branch tended he was sure to defeat the object of it. What is this object? to check the precipitation, changeableness, and excesses of the first branch. Every man of observation had seen in the democratic branches of the State Legislatures, precipitation -- in Congress changeableness, in every department excesses agst. personal liberty private property & personal safety. What qualities are necessary to constitute a check in this case? Abilities and virtue, are equally necessary in both branches. Something more then is now wanted. 1. the checking branch must have a personal interest in checking the other branch, one interest must be opposed to another interest. Vices as they exist, must be turned agst. each other. 2. It must have great personal property, it must have the aristocratic spirit; it must love to lord it thro' pride, pride is indeed the great principle that actuates both the poor & the rich. It is this principle which in the former resists, in the latter abuses authority. 3. It should be independent. In Religion the Creature is apt to forget its Creator. That it is otherwise in political affairs, the late debates here are an unhappy proof. The aristocratic body, should be as independent & as firm as the democratic. If the members of it are to revert to a dependence on the democratic choice, the democratic scale will preponderate. All the guards contrived by America have not restrained the Senatorial branches of the Legislatures from a servile complaisance to the democratic. If the 2d. branch is to be dependent we are better without it. To make it independent, it should be for life. It will then do wrong, it will be said. He believed so: He hoped so. The Rich will strive to establish their dominion & enslave the rest. They always did. They always will. The proper security agst them is to form them into a separate interest. The two forces will then controul each other. Let the rich mix with the poor and in a Commercial Country, they will establish an oligarchy. Take away commerce, and the democracy will triumph. Thus it has been all the world over. So it will be among us. Reason tells us we are but men: and we are not to expect any particular interference of Heaven in our favor. By thus combining & setting apart, the aristocratic interest, the popular interest will be combined agst. it. There will be a mutual check and mutual security. 4. An independence for life, involves the necessary permanency. If we change our measures no body will trust us:

and how avoid a change of measures, but by avoiding a change of men. Ask any man if he confides in Congs. if he confides in the State of Pena. if he will lend his money or enter into contract? He will tell you no. He sees no stability. He can repose no confidence. If G. B. were to explain her refusal to treat with us, the same reasoning would be employed. -- He disliked the exclusion of the 2d. branch from holding offices. It is dangerous. It is like the imprudent exclusion of the military officers during the war, from civil appointments. It deprives the Executive of the principal source of influence. If danger be apprehended from the Executive what a lift-handed way is this of obviating it? If the son, the brother or the friend can be appointed, the danger may be even increased, as the disqualified father &c. can then boast of a disinterestedness which he does not possess. Besides shall the best, the most able, the most virtuous citizens not be permitted to hold offices? Who then are to hold them? He was also agst. paying the Senators. They will pay themselves if they can. If they can not they will be rich and can do without it. Of such the 2d. branch ought to consist; and none but such can compose it if they are not to be paid -- He contended that the Executive should appoint the Senate & fill up vacancies. This gets rid of the difficulty in the present question. You may begin with any ratio you please; it will come to the same thing. The members being independt. & for life, may be taken as well from one place as from another. -- It should be considered too how the scheme could be carried through the States. He hoped there was strength of mind eno' in this House to look truth in the face. He did not hesitate therefore to say that loaves & fishes must bribe the Demagogues. They must be made to expect higher offices under the general than the State Govts. A Senate for life will be a noble bait. Without such captivating prospects, the popular leaders will oppose & defeat the plan. He perceived that the 1st. branch was to be chosen by the people of the States: the 2d. by those chosen by the people. Is not here a Govt. by the States. A Governnt. by Compact between Virga. in the 1st. & 2d. branch; Masts. in the 1st. & 2d. branch &c. This is going back to mere treaty. It is no Govt. at all. It is altogether dependent on the States, and will act over again the part which Congs. has acted. A firm Governnt. alone can protect our liberties. He fears the influence of the rich. They will have the same effect here as elsewhere if we do not by such a Govt. keep them within their proper sphere. We should remember that the people never act from reason alone. The Rich will take advantage of their passions & make these the instruments for oppressing them. The Result of the Contest will be a

violent aristocracy, or a more violent despotism. The schemes of the Rich will be favored by the extent of the Country. The people in such distant parts can not communicate & act in concert. They will be the dupes of those who have more knowledge & intercourse. The only security agst. encroachments will be a select & sagacious body of men, instituted to watch agst. them on all sides. He meant only to hint these observations, without grounding any motion on them.

Mr. RANDOLPH favored the commitment though he did not expect much benefit from the expedient. He animadverted on the warm & rash language of Mr. Bedford on Saturday; reminded the small States that if the large States should combine some danger of which he did not deny there would be a check in the revisionary power of the Executive, and intimated that in order to render this still more effectual, he would agree that in the choice of the Executive each State should have an equal vote. He was persuaded that two such opposite bodies as Mr. Morris had planned, could never long co-exist. Dissentions would arise as has been seen even between the Senate and H. of Delegates in Maryland, appeals would be made to the people; and in a little time, commotions would be the result -- He was far from thinking the large States could subsist of themselves any more than the small; an avulsion would involve the whole in ruin, and he was determined to pursue such a scheme of Government as would secure us agst. such a calamity.

Mr. STRONG was for the Commitment; and hoped the mode of constituting both branches would be referred. If they should be established on different principles, contentions would prevail, and there would never be a concurrence in necessary measures. DOCr. **WILLIAMSON**. If we do not concede on both sides, our business must soon be at an end. He approved of the Commitment, supposing that as the Come. wd. be a smaller body, a compromise would be pursued with more coolness.

Mr. WILSON objected to the Committee, because it would decide according to that very rule of voting which was opposed on one side. Experience in Congs. had also proved the inutility of Committees consisting of members from each State.

Mr. LANSING wd. not oppose the commitment, though expecting little advantage from it.

Mr. MADISON opposed the Commitment. He had rarely seen any other effect than delay from such Committees in Congs. Any scheme of compromise that could be proposed in the Committee might as easily be proposed in the House; and the report of the Committee when it contained merely the opinion of the Come. would neither shorten the discussion, nor influence the decision of the House.

Mr. GERRY was for the Commitmt. Something must be done, or we shall disappoint not only America, but the whole world. He suggested a consideration of the State we should be thrown into by the failure of the Union. We should be without an Umpire to decide controversies and must be at the mercy of events. What too is to become of our treaties -- what of our foreign debts, what of our domestic? We must make concessions on both sides. Without these the Constitutions of the several States would never have been formed.

On the question "for committing," generally:

Masts. ay. Cont. ay. N. Y. ay. N. J. no. P. ay. Del. no. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay.

On the question for committing "to a member from each State."

Massts. ay. Cont. ay. N. Y. ay. N. J. ay. Pa. no. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay. [16]

The Committee elected by ballot, were Mr. Gerry, Mr. Elseworth, Mr. Yates, Mr. Patterson, Dr. Franklin, Mr. Bedford, Mr. Martin, Mr. Mason, Mr. Davy, Mr. Rutledge, Mr. Baldwin.

That time might be given to the Committee, and to such as chose to attend to the celebrations on the anniversary of Independence, the Convention adjourned till Thursday." [Notes, July 2, 1787].

V. ACT II: Compromise Proposed: Take It or We Are Done Here?

THURSDAY JULY 5th. IN CONVENTION

Mr. GERRY delivered in from the Committee appointed on Monday last the following Report.

"The Committee to whom was referred the 8th. Resol. of the Report from the Committee of the whole House, and so much of the 7th. as has not been decided on, submit the following Report: That the subsequent propositions be recommended to the Convention **on condition that both shall be generally adopted.**

1. That in the 1st. branch of the Legislature each of the States now in the Union shall be allowed 1 member for every 40,000 inhabitants of the description reported in the 7th. Resolution of the Come. of the whole House: that each State not containing that number shall be allowed 1 member: that all bills for raising or appropriating money, and for fixing the Salaries of the officers of the Govrnt. of the U. States shall originate in the 1st. branch of the Legislature, and shall not be altered or amended by the 2d. branch: and that no money shall be drawn from the public Treasury. but in pursuance of appropriations to be orginated in the 1st. branch"

II. That in the 2d. branch each State shall have an equal vote."

Mr. GHORUM observed that as the report consisted of propositions mutually conditional he wished to hear some explanations touching the grounds on which the conditions were estimated.

Mr. GERRY. The Committee were of different opinions as well as the Deputations from which the Come. were taken, and agreed to the Report merely in order that some ground of accomodation might be proposed. Those opposed to the equality of votes have only assented conditionally; and if the other side do not generally agree will not be under any obligation to support the Report.

Mr. WILSON thought the Committee had exceeded their powers.

Mr. MARTIN was for taking the question on the whole report.

Mr. WILSON was for a division of the question: otherwise it wd. be a leap in the dark.

Mr. MADISON. could not regard the exclusive privilege of originating money bills as any concession on the side of the small States. Experience proved that it had no effect. If seven States in the upper branch wished a bill to be originated, they might surely find some member from some of the same States in the lower branch who would originate it. The restriction as to amendments was of as little consequence. Amendments could be handed privately by the Senate to members in the other house. Bills could be negatived that they might be sent up in the desired shape. If the Senate should yield to the obstinacy of the 1st. branch the use of that body as a check would be lost. If the 1st. branch should yield to that of the Senate, the privilege would be nugatory. Experience had also shewn both in G. B. and the States having a similar regulation that it was a source of frequent & obstinate altercations. These considerations had produced a rejection of a like motion on a former occasion when judged by its own merits. It could not therefore be deemed any concession on the present, and left in force all the objections which had prevailed agst. allowing each State an equal voice. He conceived that the Convention was reduced to the alternative of either departing from justice in order to conciliate the smaller States, and the minority of the people of the U. S. or of displeasing these by justly gratifying the larger States and the majority of the people. He could not himself hesitate as to the option he ought to make. The Convention with justice & the majority of the people on their side, had nothing to fear. With injustice and the minority on their side they had every thing to fear. It was in vain to purchase concord in the Convention on terms which would perpetuate discord among their Constituents. The Convention ought to pursue a plan which would bear the test of examination, which would be espoused & supported by the enlightened and impartial part of America, & which they could themselves vindicate and urge. It should be considered that altho' at first many may judge of the system recommended, by their opinion of the Convention, yet finally all will judge of the Convention by the System. The merits of the System alone can finally & effectually obtain the public suffrage. He was not apprehensive that the people of the small States would obstinately refuse to accede to a Govt. founded on just principles, and promising them substantial protection. He could not

suspect that Delaware would brave the consequences of seeking her fortunes apart from the other States, rather than submit to such a Govt. much less could he suspect that she would pursue the rash policy of courting foreign support, which the warmth of one of her representatives [Mr. Bedford] had suggested, or if she shd. that any foreign nation wd. be so rash as to hearken to the overture. As little could he suspect that the people of N. Jersey notwithstanding the decided tone of the gentlemen from that State, would choose rather to stand on their own legs, and bid defiance to events, than to acquiesce under an establishment founded on principles the justice of which they could not dispute, and absolutely necessary to redeem them from the exactions levied on them by the commerce of the neighbouring States. A review of other States would prove that there was as little reason to apprehend an inflexible opposition elsewhere. Harmony in the Convention was no doubt much to be desired. Satisfaction to all the States, in the first instance still more so. But if the principal States comprehending a majority of the people of the U. S. should concur in a just & judicious plan, he had the firmest hopes, that all the other States would by degrees accede to it.

Mr. BUTLER said he could not let down his idea of the people, of America so far as to believe they would from mere respect to the Convention adopt a plan evidently unjust. He did not consider the privilege concerning money bills as of any consequence. He urged that the 2d. branch ought to represent the States according to their property.

Mr. GOVr. MORRIS. thought the form as well as the matter of the Report objectionable. It seemed in the first place to render amendments impracticable. In the next place, it seemed to involve a pledge to agree to the 2d. part if the 1st. shd. be agreed to. He conceived the whole aspect of it to be wrong. He came here as a Representative of America; he flattered himself he came here in some degree as a Representative of the whole human race; for the whole human race will be affected by the proceedings of this Convention. He wished gentlemen to extend their views beyond the present moment of time; beyond the narrow limits of place from which they derive their political origin. If he were to believe some things which he had heard, he should suppose that we were assembled to truck and bargain for our particular States. He can-not descend to think that any gentlemen are really actuated by these views. We must look forward to the effects of what we do. These alone ought to

guide us. Much has been said of the sentiments of the people. They were unknown. They could not be known. All that we can infer is that if the plan we recommend be reasonable & right; all who have reasonable minds and sound intentions will embrace it, notwithstanding what had been said by some gentlemen. Let us suppose that the larger States shall agree; and that the smaller refuse: and let us trace the consequences. The opponents of the system in the smaller States will no doubt make a party, and a noise for a time, but the ties of interest, of kindred & of common habits which connect them with the other States will be too strong to be easily broken. In N. Jersey particularly he was sure a great many would follow the sentiments of Penna. & N. York. This Country must be united. If persuasion does not unite it, the sword will. He begged that this consideration might have its due weight. The scenes of horror attending civil commotion can not be described, and the conclusion of them will be worse than the term of their continuance. The stronger party will then make traitors of the weaker; and the Gallows & Halter will finish the work of the sword. How far foreign powers would be ready to take part in the confusions he would not say. Threats that they will be invited have it seems been thrown out. He drew the melancholy picture of foreign intrusions as exhibited in the History of Germany, & urged it as a standing lesson to other nations. He trusted that the Gentlemen who may have hazarded such expressions, did not entertain them till they reached their own lips. But returning to the Report he could not think it in any respect calculated for the public good. As the 2d. branch is now constituted, there will be constant disputes & appeals to the States which will undermine the Genl. Government & controul & annihilate the 1st. branch. Suppose that the delegates from Masss. & Rho 1. in the Upper House disagree, and that the former are outvoted. What Results? they will immediately declare that their State will not abide by the decision, and make such representations as will produce that effect. The same may happen as to Virga. & other States. Of what avail then will be what is on paper. State attachments, and State importance have been the bane of this Country. We can not annihilate; but we may perhaps take out the teeth of the serpents. He wished our ideas to be enlarged to the true interest of man, instead of being circumscribed within the narrow compass of a particular Spot. And after all how little can be the motive yielded by selfishness for such a policy. Who can say whether he himself, much less whether his children, will the next year be an inhabitant of this or that State.

Mr. BEDFORD. He found that what he had said as to the small States being taken by the hand, had been misunderstood; and he rose to explain. He did not mean that the small States would court the aid & interposition of foreign powers. He meant that they would not consider the federal compact as dissolved until it should be so by the Acts of the large States. In this case The consequence of the breach of faith on their part, and the readiness of the small States to fulfill their engagements, would be that foreign Nations having demands on this Country would find it their interest to take the small States by the hand, in order to do themselves justice. This was what he meant. But no man can foresee to what extremities the small States may be driven by oppression. He observed also in apology that some allowance ought to be made for the habits of his profession in which warmth was natural & sometimes necessary. But is there not an apology in what was said by [Mr. Govr. Morris] that the sword is to unite: by Mr. Ghorum that Delaware must be annexed to Penna. and N. Jersey divided between Penna. and N. York. To hear such language without emotion, would be to renounce the feelings of a man and the duty of a Citizen -- As to the propositions of the Committee, the lesser States have thought it necessary to have a security somewhere. This has been thought necessary for the Executive Magistrate of the proposed Govt. who has a sort of negative on the laws; and is it not of more importance that the States should be protected, than that the Executive branch of the Govt. shd. be protected. In order to obtain this, the smaller States have conceded as to the constitution of the first branch, and as to money bills. If they be not gratified by correspondent concessions as to the 2d. branch is it to be supposed they will ever accede to the plan; and what will be the consequence if nothing should be done! The condition of the U. States requires that something should be immediately done. It will be better that a defective plan should be adopted, than that none should be recommended. He saw no reason why defects might not be supplied by meetings 10, 15, or 20 years hence.

Mr. ELSEWORTH said he had not attended the proceedings of the Committee, but was ready to accede to the compromise they had reported. Some compromise was necessary; and he saw none more convenient or reasonable.

Mr. WILLIAMSON hoped that the expressions of individuals would not be

taken for the sense of their colleagues, much less of their States which was not & could not be known. He hoped also that the meaning of those expressions would not be misconstrued or exaggerated. He did not conceive that [Mr. Govr. Morris] meant that the sword ought to be drawn agst. the smaller States. He only pointed out the probable consequences of anarchy in the U. S. A similar exposition ought to be given of the expressions [of Mr. Ghorum]. He was ready to hear the Report discussed; but thought the propositions contained in it, the most objectionable of any he had yet heard.

Mr. PATTERSON said that he had when the Report was agreed to in the Come. reserved to himself the right of freely discussing it. He acknowledged that the warmth complained of was improper; but he thought the Sword & the Gallows as little calculated to produce conviction. He complained of the manner in which Mr. M -- & Mr. Govr. Morris had treated the small States.

Mr. GERRY. Tho' he had assented to the Report in the Committee, he had very material objections to it. We were however in a peculiar situation. We were neither the same Nation nor different Nations. We ought not therefore to pursue the one or the other of these ideas too closely. If no compromise should take place what will be the consequence. A secession he foresaw would take place; for some gentlemen seem decided on it; two different plans will be proposed; and the result no man could foresee. If we do not come to some agreement among ourselves some foreign sword will probably do the work for us.

Mr. MASON. The Report was meant not as specific propositions to be adopted; but merely as a general ground of accomodation. There must be some accomodation on this point, or we shall make little further progress in the work. Accomodation was the object of the House in the appointment of the Committee; and of the Committee in the Report they had made. And however liable the Report might be to objections, he thought it preferable to an appeal to the world by the different sides, as had been talked of by some Gentlemen. It could not be more inconvenient to any gentleman to remain absent from his private affairs, than it was for him: but he would bury his bones in this City rather than expose his Country to the Consequences of a dissolution of the Convention without any thing being done.

The 1st. proposition in the report for fixing the representation in the 1st. branch, one member for every 40,000 inhabitants, being taken up.

Mr. GOVr. MORRIS objected to that scale of apportionment. He thought property ought to be taken into the estimate as well as the number of inhabitants. Life & liberty were generally said to be of more value, than property. An accurate view of the matter would nevertheless prove that property was the main object of Society. The savage State was more favorable to liberty than the Civilized; and sufficiently so to life. It was preferred by all men who had not acquired a taste for property; it was only renounced for the sake of property which could only be secured by the restraints of regular Government. These ideas might appear to some new, but they were nevertheless just. If property then was the main object of Govt. certainly it ought to be one measure of the influence due to those who were to be affected by the Governmt. He looked forward also to that range of New States which wd. soon be formed in the West. He thought the rule of representation ought to be so fixed as to secure to the Atlantic States a prevalence in the National Councils. The new States will know less of the public interest than these, will have an interest in many respects different, in particular will be little scrupulous of involving the Community in wars the burdens & operations of which would fall chiefly on the maritime States. Provision ought therefore to be made to prevent the maritime States from being hereafter outvoted by them. He thought this might be easily done by irrevocably fixing the number of representatives which the Atlantic States should respectively have, and the number which each new State will have. This wd. not be unjust, as the Western settlers wd. previously know the conditions on which they were to possess their lands. It would be politic as it would recommend the plan to the present as well as future interest of the States which must decide the fate of it.

...

Adjd” [Notes, July 5, 1787].

“SATURDAY JULY 7. IN CONVENTION

"Shall the clause allowing each State one vote in the 2d. branch, stand as part of the Report"? being taken up

Mr. GERRY. This is the critical question. He had rather agree to it than have no accomodation. A Governnt. short of a proper national plan, if generally acceptable, would be preferable to a proper one which if it could be carried at all, would operate on discontented States. He thought it would be best to suspend the question till the Comme. yesterday appointed, should make report.

Mr. SHERMAN Supposed that it was the wish of every one that some Genl. Govt. should be established. An equal vote in the 2d. branch would, he thought, be most likely to give it the necessary vigor. The small States have more vigor in their Govts. than the large ones, the more influence therefore the large ones have, the weaker will be the Govt. In the large States it will be most difficult to collect the real & fair sense of the people. Fallacy & undue influence will be practiced with most success: and improper men will most easily get into office. If they vote by States in the 2d. branch, and each State has an equal vote, there must be always a majority of States as well as a majority of the people on the side of public measures, & the Govt. will have decision and efficacy. If this be not the case in the 2d. branch there may be a majority of the [4] States agst. public measures, and the difficulty of compelling them to abide by the public determination, will render the Government feebler than it has ever yet been.

Mr. WILSON was not deficient in a conciliating temper, but firmness was sometimes a duty of higher obligation. Conciliation was also misapplied in this instance. It was pursued here rather among the Representatives, than among the Constituents; and it wd. be of little consequence, if not established among the latter; and there could be little hope of its being established among them if the foundation should not be laid in justice and right.

On Question shall the words stand as part of the Report?

Massts. divd. Cont. ay. N. Y. ay. N. J. ay. Pa. no. Del. ay. Md. ay. Va.

no. N. C. ay. S. C. no. Geo. divd. [Note. Several votes were given here in the affirmative or were divd. because another final question was to be taken on the whole report.]

Mr. GERRY thought it would be proper to proceed to enumerate & define the powers to be vested in the Genl. Govt. before a question on the report should be taken, as to the rule of representation in the 2d. branch.

Mr. MADISON, observed that it wd. be impossible to say what powers could be safely & properly vested in the Govt. before it was known, in what manner the States were to be represented in it. He was apprehensive that if a just representation were not the basis of the Govt. it would happen, as it did when the Articles of Confederation were depending, that every effectual prerogative would be withdrawn or withheld, and the New Govt. wd. be rendered as impotent and as shortlived as the old.

Mr. PATTERSON would not decide whether the privilege concerning money bills were a valuable consideration or not: But he considered the mode & rule of representation in the 1st. branch as fully so. and that after the establishment of that point, the small States would never be able to defend themselves without an equality of votes in the 2d. branch. There was no other ground of accomodation. His resolution was fixt. He would meet the large States on that Ground and no other. For himself he should vote agst. the Report, because it yielded too much.

Mr. GOVr. MORRIS. He had no resolution unalterably fixed except to do what should finally appear to him right. He was agst. the Report because it maintained the improper Constitution of the 2d. branch. It made it another Congress, a mere whisp of straw. It had been sd. [by Mr. Gerry] that the new Governnt. would be partly national, partly federal; that it ought in the first quality to protect individuals; in the second, the States. But in what quality was it to protect the aggregate interest of the whole. Among the many provisions which had been urged, he had seen none for supporting the dignity and splendor of the American Empire. It had been one of our greatest misfortunes that the great objects of the nation had been sacrificed constantly to local views; in like manner as the general interests of States had been sacrificed to those of the Counties. What is to be the check in the Senate? none; unless it be to keep the majority of the people from injuring particular States. But

particular States ought to be injured for the sake of a majority of the people, in case their conduct should deserve it. Suppose they should insist on claims evidently unjust, and pursue them in a manner detrimental to the whole body. Suppose they should give themselves up to foreign influence. Ought they to be protected in such cases. They were originally nothing more than colonial corporations. On the declaration of Independence, a Governmt. was to be formed. The small States aware of the necessity of preventing anarchy, and taking advantage of the moment, extorted from the large ones an equality of votes. Standing now on that ground, they demand under the new system greater rights as men, than their fellow Citizens of the large States. The proper answer to them is that the same necessity of which they formerly took advantage, does not now exist, and that the large States are at liberty now to consider what is right, rather than what may be expedient. We must have an efficient Govt. and if there be an efficiency in the local Govts. the former is impossible. Germany alone proves it. Notwithstanding their common diet, notwithstanding the great prerogatives of the Emperor as head of the Empire, and his vast resources, as sovereign of his particular dominions, no union is maintained: foreign influence disturbs every internal operation, & there is no energy whatever in the general Governmt. Whence does this proceed? From the energy of the local authorities; from its being considered of more consequence to support the Prince of Hesse, than the Happiness of the people of Germany. Do Gentlemen wish this to be ye case here. Good God, Sir, is it possible they can so delude themselves. What if all the Charters & Constitutions of the States were thrown into the fire, and all their demagogues into the ocean. What would it be to the happiness of America. And will not this be the case here if we pursue the train in wch. the business lies. We shall establish an Aulic Council without an Emperor to execute its decrees. The same circumstances which unite the people here, unite them in Germany. They have there a common language, a common law, common usages and manners, and a common interest in being united; yet their local jurisdictions destroy every tie. The case was the same in the Grecian States. The United Netherlands are at this time torn in factions. With these examples before our eyes shall we form establishments which must necessarily produce the same effects. It is of no consequence from what districts the 2d. branch shall be drawn, if it be so constituted as to yield an asylum agst. these evils. As it is now constituted he must be agst. its being drawn from the States in equal portions. But shall he was ready to join in devising such an

amendment of the plan, as will be most likely to secure our liberty & happiness.

Mr. SHERMAN & Mr. ELSEWORTH moved to postpone the Question on the Report from the Committee of a member from each State, in order to wait for the Report from the Come. of 5 last appointed.

Masts. ay. Cont. ay. N. Y. no. N. J. ay. Pa. ay. Del. Maryland ay. Va. no. N. C. no. S. C. no. Geo. no.

Adjd.” [Notes, July 7, 1787]

VI. ACT III, Scene 1: Time For Decision

“SATURDAY. JULY 14. IN CONVENTION

Mr. L. MARTIN called for the question on the whole report, including the parts relating to the origination of money bills, and the equality of votes in the 2d. branch.

...

Mr. RUTLIDGE proposed to reconsider the two propositions touching the originating of money bills in the first & the equality of votes in the second branch.

Mr. SHERMAN was for the question on the whole at once. It was he said a conciliatory plan, it had been considered in all its parts, a great deal of time had been spent on it, and if any part should now be altered, it would be necessary to go over the whole ground again.

Mr. L. MARTIN urged the question on the whole. He did not like many parts of it. He did not like having two branches, nor the inequality of votes in the 1st. branch. He was willing however to make trial of the plan, rather than do nothing.

Mr. WILSON traced the progress of the report through its several stages, remarking yt. when on the question concerning an equality of votes, the House was divided, our Constituents had they voted as their representatives did, would have stood as 2/3 agst. the equality, and 1/3 only in favor of it. This fact would ere long be known, and it will appear that this fundamental point has been carried by 1/3 agst. 2/3 . What hopes will our Constituents entertain when they find that the essential principles of justice have been violated in the outset of the Governmt. As to the privilege of originating money bills, it was not considered by any as of much moment, and by many as improper in itself. He hoped both clauses wd. be reconsidered. The equality of votes was a point of such critical importance, that every opportunity ought to be allowed, for discussing and collecting the mind of the Convention on it.

Mr. L. MARTIN denies that there were 2/3 agst. the equality of votes. The States that please to call themselves large, are the weakest in the

Union. Look at Masts. Look at Virga. Are they efficient States? He was for letting a separation take place if they desired it. He had rather there should be two Confederacies, than one founded on any other principle than an equality of votes in the 2d. branch at least.

Mr. WILSON was not surprised that those who say that a minority is more than the majority should say that the minority is stronger than the majority. He supposed the next assertion will be that they are richer also; though he hardly expected it would be persisted in when the States shall be called on for taxes & troops --

Mr. GERRY. also animadverted on Mr. L. Martins remarks on the weakness of Masts. He favored the reconsideration with a view not of destroying the equality of votes; but of providing that the States should vote per capita, which he said would prevent the delays & inconveniences that had been experienced in Congs. and would give a national aspect & Spirit to the management of business. He did not approve of a reconsideration of the clause relating to money bills. It was of great consequence. It was the corner stone of the accomodation. If any member of the Convention had the exclusive privilege of making propositions, would any one say that it would give him no advantage over other members. The Report was not altogether to his mind. But he would agree to it as it stood rather than throw it out altogether.

The reconsideration being tacitly agreed to.

Mr. PINKNEY moved that instead of an equality of votes, the States should be represented in the 2d. branch as follows: N. H. by. 2. members. Mas. 4. R. I. 1. Cont. 3. N.Y. 3. N.J. 2. Pa. 4. Del I. Md. 3. Virga.5. N.C.3. S.C.3. Geo. 2.making in the whole 36.

Mr. WILSON seconds the motion

Mr. DAYTON. The smaller States can never give up their equality. For himself he would in no event yield that security for their rights.

Mr. SHERMAN urged the equality of votes not so much as a security for the small States; as for the State Govts. which could not be preserved unless they were represented & had a negative in the Genl. Government. He had no objection to the members in the 2d. b. voting per capita, as

had been suggested by [Mr. Gerry]

Mr. MADISON concurred in this motion of Mr. Pinkney as a reasonable compromise.

Mr. GERRY said he should like the motion, but could see no hope of success. An accommodation must take place, and it was apparent from what had been seen that it could not do so on the ground of the motion. He was utterly against a partial confederacy, leaving other States to accede or not accede; as had been intimated.

Mr. KING said it was always with regret that he differed from his colleagues, but it was his duty to differ from [Mr. Gerry] on this occasion. He considered the proposed Government as substantially and formally, a General and National Government over the people of America. There never will be a case in which it will act as a federal Government on the States and not on the individual Citizens. And is it not a clear principle that in a free Govt. those who are to be the objects of a Govt. ought to influence the operations of it? What reason can be assigned why the same rule of representation sh. not prevail in the 2d. branch as in the 1st.? He could conceive none. On the contrary, every view of the subject that presented itself, seemed to require it. Two objections had been raised agst. it: drawn 1. from the terms of the existing compact 2. from a supposed danger to the smaller States. -- As to the first objection he thought it inapplicable. According to the existing confederation, the rule by which the public burdens is to be apportioned is fixed, and must be pursued. In the proposed Governmt. it can not be fixed, because indirect taxation is to be substituted. The Legislature therefore will have full discretion to impose taxes in such modes & proportions as they may judge expedient. As to the 2d. objection, he thought it of as little weight. The Genl. Governmt. can never wish to intrude on the State Governmts. There could be no temptation. None had been pointed out. In order to prevent the interference of measures which seemed most likely to happen, he would have no objection to throwing all the State debts into the federal debt, making one aggregate debt of about 70,000,000 of dollars, and leaving it to be discharged by the Genl. Govt. -- According to the idea of securing the State Govts. there ought to be three distinct legislative branches. The 2d. was admitted to be necessary, and was actually meant, to check the 1st. branch, to give more wisdom, system, & stability to the Govt.

and ought clearly as it was to operate on the people to be proportioned to them. For the third purpose of securing the States, there ought then to be a 3d. branch, representing the States as such, and guarding by equal votes their rights & dignities. He would not pretend to be as thoroughly acquainted with his immediate Constituents as his colleagues, but it was his firm belief that Mass. would never be prevailed on to yield to an equality of votes. In N. York (he was sorry to be obliged to say any thing relative to that State in the absence of its representatives, but the occasion required, it), in N. York he had seen that the most powerful argument used by the considerate opponents to the grant of the Impost to Congress, was pointed agst. the vicious constitution of Congs. with regard to representation & suffrage. He was sure that no Govt. could last that was not founded on just principles. He prefer'd the doing of nothing, to an allowance of an equal vote to all the States. It would be better he thought to submit to a little more confusion & convulsion, than to submit to such an evil. It was difficult to say what the views of different Gentlemen might be. Perhaps there might be some who thought no Governmt. co-extensive with the U. States could be established with a hope of its answering the purpose. Perhaps there might be other fixed opinions incompatible with the object we were pursuing. If there were, he thought it but candid that Gentlemen would speak out that we might understand one another.

Mr. STRONG. The Convention had been much divided in opinion. In order to avoid the consequences of it, an accomodation had been proposed. A committee had been appointed: and though some of the members of it were averse to an equality of votes, a Report has been made in favor of it. It is agreed on all hands that Congress are nearly at an end. If no Accomodation takes place, the Union itself must soon be dissolved. It has been suggested that if we can not come to any general agreement, the principal States may form & recommend a scheme of Government. But will the small States in that case ever accede it. Is it probable that the large States themselves will under such circumstances embrace and ratify it. He thought the small States had made a considerable concession in the article of money bills; and that they might naturally expect some concessions on the other side. From this view of the matter he was compelled to give his vote for the Report taken all together.

Mr. MADISON expressed his apprehensions that if the proper foundation of Governmt -- was destroyed, by substituting an equality in place of a proportional Representation, no proper superstructure would be raised. If the small States really wish for a Government armed with the powers necessary to secure their liberties, and to enforce obedience on the larger members as well as on themselves he could not help thinking them extremely mistaken in their means. He reminded them of the consequences of laying the existing confederation on improper principles. All the principal parties to its compilation, joined immediately in mutilating & fettering the Governmt. in such a manner that it has disappointed every hope placed on it. He appealed to the doctrine & arguments used by themselves on a former occasion. It had been very properly observed by [Mr. Patterson] that Representation was an expedient by which the meeting of the people themselves was rendered unnecessary; and that the representatives ought therefore to bear a proportion to the votes which their constituents if convened, would respectively have. Was not this remark as applicable to one branch of the Representation as to the other? But it had been said that the Governmt. would in its operation be partly federal, partly national; that altho' in the latter respect the Representatives of the people ought to be in proportion to the people: yet in the former it ought to be according to the number of States. If there was any solidity in this distinction he was ready to abide by it, if there was none it ought to be abandoned. In all cases where the Genl. Government. is to act on the people, let the people be represented and the votes be proportional. In all cases where the Governmt. is to act on the States as such, in like manner as Congs. now act on them, let the States be represented & the votes be equal. This was the true ground of compromise if there was any ground at all. But he denied that there was any ground. He called for a single instance in which the Genl. Govt. was not to operate on the people individually. The practicability of making laws, with coercive sanctions, for the States as Political bodies, had been exploded on all hands. He observed that the people of the large States would in some way or other secure to themselves a weight proportioned to the importance accruing from their superior numbers. If they could not effect it by a proportional representation in the Govt. they would probably accede to no Govt. which did not in great measure depend for its efficacy on their voluntary cooperation; in which case they would indirectly secure their object. The existing confederacy proved that where the Acts of the Genl. Govt. were to be executed by the particular Govts. the latter had

a weight in proportion to their importance. No one would say that either in Congs. or out of Congs. Delaware had equal weight with Pennsylva. If the latter was to supply ten times as much money as the former, and no compulsion could be used, it was of ten times more importance, that she should voluntarily furnish the supply. In the Dutch confederacy the votes of the Provinces were equal. But Holland which supplies about half the money, governs the whole republic. He enumerated the objections agst. an equality of votes in the 2d. branch, notwithstanding the proportional representation in the first. 1. the minority could negative the will of the majority of the people. 2. they could extort measures by making them a condition of their assent to other necessary measures. 3. they could obtrude measures on the majority by virtue of the peculiar powers which would be vested in the Senate. 4. the evil instead of being cured by time, would increase with every new State that should be admitted, as they must all be admitted on the principle of equality. 5. the perpetuity it would give to the preponderance of the Northn. agst. the Southn. Scale was a serious consideration. It seemed now to be pretty well understood that the real difference of interests lay, not between the large & small but between the N. & Southn States. The institution of slavery & its consequences formed the line of discrimination. There were 5 States on the South, 8 on the Northn. side of this line. Should a proportl. representation take place it was true, the N. side would still outnumber the other; but not in the same degree, at this time; and every day would tend towards an equilibrium.

Mr. WILSON would add a few words only. If equality in the 2d. branch was an error that time would correct, he should be less anxious to exclude it being sensible that perfection was unattainable in any plan; but being a fundamental and a perpetual error, it ought by all means to be avoided. A vice in the Representation, like an error in the first concoction, must be followed by disease, convulsions, and finally death itself. The justice of the general principle of proportional representation has not in argument at least been yet contradicted. But it is said that a departure from it so far as to give the States an equal vote in one branch of the Legislature is essential to their preservation. He had considered this position maturely, but could not see its application. That the States ought to be preserved he admitted. But does it follow that an equality of votes is necessary for the purpose? Is there any reason to suppose that if their preservation

should depend more on the large than on the small States the security of the States agst. the Genl. Government would be diminished? Are the large States less attached to their existence, more likely to commit suicide, than the small? An equal vote then is not necessary as far as he can conceive: and is liable among other objections to this insuperable one: The great fault of the existing confederacy is its inactivity. It has never been a complaint agst. Congs. that they governed overmuch. The complaint has been that they have governed too little. To remedy this defect we were sent here. Shall we effect the cure by establishing an equality of votes as is proposed? no: this very equality carries us directly to Congress: to the system which it is our duty to rectify. The small States cannot indeed act, by virtue of this equality, but they may controul the Govt. as they have done in Congs. This very measure is here prosecuted by a minority of the people of America. Is then the object of the Convention likely to be accomplished in this way? Will not our Constituents say? we sent you to form an efficient Govt. and you have given us one more complex indeed, but having all the weakness of the former Governnt. He was anxious for uniting all the States under one Governnt. He knew there were some respectable men who preferred three confederacies, united by offensive & defensive alliances. Many things may be plausibly said, some things may be justly said, in favor of such a project. He could not however concur in it himself; but he thought nothing so pernicious as bad first principles.

Mr. ELSEWORTH asked two questions one of Mr. Wilson, whether he had ever seen a good measure fail in Congs. for want of a majority of States in its favor? He had himself never known such an instance: the other of Mr. Madison whether a negative lodged with the majority of the States even the smallest, could be more dangerous than the qualified negative proposed to be lodged in a single Executive Magistrate, who must be taken from some one State?

Mr. SHERMAN, signified that his expectation was that the Genl. Legislature would in some cases act on the federal principle, of requiring quotas. But he thought it ought to be empowered to carry their own plans into execution, if the States should fail to supply their respective quotas.

On the question for agreeing to Mr. Pinkney's motion for allowing N. H. 2. Mas. 4. &c -- it passed in the negative Mas. no. Mr. King ay. Mr.

**Ghorum absent. cont. no. N.J. no. Pa. ay. Del. no. Md. ay. Va. ay. N. C.
no. S. C. ay Geo. no.**
Adjourned" [Notes, July 14, 1787].

“MONDAY. JULY 16. IN CONVENTION

On the question for agreeing to the whole Report as amended & including the equality of votes in the 2d. branch. it passed in the Affirmative.

Mas. divided Mr. Gerry, Mr. Strong, ay. Mr. King Mr. Ghorum no. Cont. ay. N.J. ay. Pena. no. Del. ay. Md. ay. Va. no. N.C. ay. Mr. Spaight no. S.C. no. Geo. no. [Here enter the whole in the words entered in the Journal July 16]

The whole, thus passed is in the words following viz

"Resolved that in the original formation of the Legislature of the U. S. the first branch thereof shall consist of sixty five members, of which number N. Hampshire shall send 3. Massts. 8. Rh. I. 1. Connt. 5. N. Y. 6. N. J. 4. Pena. 8. Del. 1. Maryd. 6. Virga. 10. N. C. 5. S. C. 5. Geo. 3. -- But as the present situation of the States may probably alter in the number of their inhabitants, the Legislature of the U. S. shall be authorized from time to time to apportion the number of Reprs.; and in case any of the States shall hereafter be divided, or enlarged by, addition of territory, or any two or more States united, or any new States created with the limits of the U. S. the Legislature of the U. S. shall possess authority to regulate the number of Reprs. in any of the foregoing cases, upon the principle of their number of inhabitants, according to the provisions hereafter mentioned, namely -- provided always that representation ought to be proportioned according to direct taxation; and in order to ascertain the alteration in the direct taxation, which may be required from time to time by the changes in the relative circumstances of the States --

...

"Resolved, that all bills for raising or appropriating money, and for fixing the salaries of officers of the Govt. of the U. S. shall originate in the first branch of the Legislature of the U. S. and shall not be altered or amended in the 2d. branch: and that no money shall be drawn from the public Treasury, but in pursuance of appropriations to be originated in the 1st. branch.

"Resolvd. that in the 2d. branch of the Legislature of the U. S. each State shall have an equal vote."

...

Mr. RANDOLPH. The vote of this morning [involving an equality of suffrage in 2d. branch] had embarrassed the business extremely. All the powers given in the Report from the Come. of the whole, were founded on the supposition that a Proportional representation was to prevail in both branches of the Legislature. When he came here this morning his purpose was to have offered some propositions that might if possible have united a great majority of votes, and particularly might provide agst. the danger suspected on the part of the smaller States, by enumerating the cases in which it might lie, and allowing an equality of votes in such cases. But finding from the preceding vote that they persist in demanding an equal vote in all cases, that they have succeeded in obtaining it, and that N. York if present would probably be on the same side, he could not but think we were unprepared to discuss this subject further. It will probably be in vain to come to any final decision with a bare majority on either side. For these reasons he wished the Convention might adjourn, that the large States might consider the steps proper to be taken in the present solemn crisis of the business, and that the small States might also deliberate on the means of conciliation.

Mr. PATTERSON, thought with Mr. R. that it was high time for the Convention to adjourn that the rule of secrecy ought to be rescinded, and that our Constituents should be consulted. No conciliation could be admissible on the part of the smaller States on any other ground than that of an equality of votes in the 2d. branch. If Mr. Randolph would reduce to form his motion for an adjournment sine die, he would second it with all his heart.

Genl. PINKNEY wished to know of Mr. R. whether he meant an adjournment sine die, or only an adjournment for the day. If the former was meant, it differed much from his idea. He could not think of going to S. Carolina and returning again to this place. Besides it was chimerical to suppose that the States if consulted would ever accord separately, and beforehand.

Mr. RANDOLPH, had never entertained an idea of an adjournment sine die; & was sorry that his meaning had been so readily & strangely misinterpreted. He had in view merely an adjournment till tomorrow, in order that some conciliatory experiment might if possible be devised, and that in case the smaller States should continue to hold back, the larger might then take such measures, he would not say what, as might be necessary.

Mr. PATTERSON seconded the adjournment till tomorrow, as an opportunity seemed to be wished by the larger States to deliberate further on conciliatory expedients.

On the question for adjourning till tomorrow, the States were equally divided.

Mas. no. Cont. no. N.J. ay. Pa. ay. Del. no. Md. ay. Va. ay. N.C. ay. S.C. no. Geo. no. So it was lost.

Mr. BROOME thought it his duty to declare his opinion agst. an adjournment sine die, as had been urged by Mr. Patterson. Such a measure he thought would be fatal. Something must be done by the Convention, tho' it should be by a bare majority.

Mr. GERRY observed that Mass. was opposed to an adjournment, because they saw no new ground of compromise. But as it seemed to be the opinion of so many States that a trial shd -- be made, the State would now concur in the adjournmt.

Mr. RUTLIDGE could see no need of an adjournmt. because he could see no chance of a compromise. The little States were fixt. They had repeatedly & solemnly declared themselves to be so. All that the large States then had to do, was to decide whether they would yield or not. For his part he conceived that altho' we could not do what we thought best, in itself, we ought to do something. Had we not better keep the Govt. up a little longer, hoping that another Convention will supply our omissions, than abandon every thing to hazard. Our Constituents will be very little satisfied with us if we take the latter course.

Mr. RANDOLPH & Mr. KING renewed the motion to adjourn till tomorrow.

On the question. Mas. ay. Cont. no. N. J. ay. Pa. ay. Del. no. Md. ay. Va. ay. N.C. ay. S.C. ay. Geo. divid.

Adjourned

On the morning following before the hour of the convention a number of the members from the larger States by common agreement met for the purpose of consulting on the proper steps to be taken in consequence of the vote in favor of an equal Representation in the 2d. branch, and the apparent inflexibility of the smaller States on that point. Several members from the latter States also attended.

The time was wasted in vague conversation on the subject, without any specific proposition or agreement. It appeared indeed that the opinions of the members who disliked the equality of votes differed so much as to the importance of that point, and as to the policy of risking a failure of any general act of the Convention, by inflexibly opposing it.

Several of them supposing that no good Governnt. could or would be built on that foundation, and that as a division of the Convention into two opinions was unavoidable; it would be better that the side comprising the principal States, and a majority of the people of America, should propose a scheme of Govt. to the States, than that a scheme should be proposed on the other side, would have concurred in a firm opposition to the smaller States, and in a separate ecommendation, if eventually necessary.

Others seemed inclined to yield to the smaller States, and to concur in such an act however imperfect & exceptionable, as might be agreed on by the Convention as a body, tho' decided by a bare majority of States and by a minority of the people of the U. States.

It is probable that the result of this consultation satisfied the smaller States that they had nothing to apprehend from a union of the larger, in any plan whatever agst. the equality of votes in the 2d. branch."

[Notes, July 16, 1787]

VII. ACT III, Scene 2: It Is Done

“TUESDAY JULY 17. IN CONVENTION

Mr. GOVERNr. MORRIS. moved to reconsider the whole Resolution agreed to yesterday concerning the constitution of the 2 branches of the Legislature. His object was to bring the House to a consideration in the abstract of the powers necessary to be vested in the general Government. It had been said, Let us know how the Govt. is to be modelled, and then we can determine what powers can be properly given to it. He thought the most eligible course was, first to determine on the necessary powers, and then so to modify the Governr. as that it might be justly & properly enabled to administer them. He feared if we proceeded to a consideration of the powers, whilst the vote of yesterday including an equality of the States in the 2d. branch, remained in force, a reference to it, either mental or expressed, would mix itself with the merits of every question concerning the powers. -- **this motion was not seconded. [It was probably approved by several members, who either despaired of success, or were apprehensive that the attempt would inflame the jealousies of the smaller States.]**

...

Adjd.” [Notes, July 17, 1787]

VIII. EPILOGUE, Scene 1: “Republicanism and Federalism”
Federalist Papers, No. 39 (Madison)

To the People of the State of New York:

...

The first question that offers itself is, whether the general form and aspect of the government be strictly republican. It is evident that no other form would be reconcilable with the genius of the people of America; with the fundamental principles of the Revolution; or with that honorable determination which animates every votary of freedom, to rest all our political experiments on the capacity of mankind for self-government. If the plan of the convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible.

What, then, are the distinctive characters of the republican form? Were an answer to this question to be sought, not by recurring to principles, but in the application of the term by political writers, to the constitution of different States, no satisfactory one would ever be found. Holland, in which no particle of the supreme authority is derived from the people, has passed almost universally under the denomination of a republic. The same title has been bestowed on Venice, where absolute power over the great body of the people is exercised, in the most absolute manner, by a small body of hereditary nobles. Poland, which is a mixture of aristocracy and of monarchy in their worst forms, has been dignified with the same appellation. The government of England, which has one republican branch only, combined with an hereditary aristocracy and monarchy, has, with equal impropriety, been frequently placed on the list of republics. These examples, which are nearly as dissimilar to each other as to a genuine republic, show the extreme inaccuracy with which the term has been used in political disquisitions.

If we resort for a criterion to the different principles on which different forms of government are established, we may define a republic to be, or at

least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. It is ESSENTIAL to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans, and claim for their government the honorable title of republic. It is SUFFICIENT for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified; otherwise every government in the United States, as well as every other popular government that has been or can be well organized or well executed, would be degraded from the republican character. According to the constitution of every State in the Union, some or other of the officers of government are appointed indirectly only by the people. According to most of them, the chief magistrate himself is so appointed. And according to one, this mode of appointment is extended to one of the co-ordinate branches of the legislature. According to all the constitutions, also, the tenure of the highest offices is extended to a definite period, and in many instances, both within the legislative and executive departments, to a period of years. According to the provisions of most of the constitutions, again, as well as according to the most respectable and received opinions on the subject, the members of the judiciary department are to retain their offices by the firm tenure of good behavior.

On comparing the Constitution planned by the convention with the standard here fixed, we perceive at once that it is, in the most rigid sense, conformable to it. The House of Representatives, like that of one branch at least of all the State legislatures, is elected immediately by the great body of the people. The Senate, like the present Congress, and the Senate of Maryland, derives its appointment indirectly from the people. The President

is indirectly derived from the choice of the people, according to the example in most of the States.

...

“But it was not sufficient,” say the adversaries of the proposed Constitution, “for the convention to adhere to the republican form. They ought, with equal care, to have preserved the FEDERAL form, which regards the Union as a CONFEDERACY of sovereign states; instead of which, they have framed a NATIONAL government, which regards the Union as a CONSOLIDATION of the States.” And it is asked by what authority this bold and radical innovation was undertaken? The handle which has been made of this objection requires that it should be examined with some precision.

Without inquiring into the accuracy of the distinction on which the objection is founded, it will be necessary to a just estimate of its force, first, to ascertain the real character of the government in question; secondly, to inquire how far the convention were authorized to propose such a government; and thirdly, how far the duty they owed to their country could supply any defect of regular authority.

...

On examining the first relation, it appears, on one hand, that the Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but, on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong. It is to be the assent and ratification of the several States, derived from the supreme authority in each State, the authority of the people themselves. The act, therefore, establishing the Constitution, will not be a NATIONAL, but a FEDERAL act.

...

The next relation is, to the sources from which the ordinary powers of government are to be derived. The House of Representatives will derive its powers from the people of America; and the people will be represented in the same proportion, and on the same principle, as they are in the legislature of a particular State. So far the government is NATIONAL, not FEDERAL. The Senate, on the other hand, will derive its powers from the States, as political and coequal societies; and these will be represented on the principle of equality in the Senate, as they now are in the existing Congress. So far the government is FEDERAL, not NATIONAL. The executive power will be derived from a very compound source. The immediate election of the President is to be made by the States in their political characters. The votes allotted to them are in a compound ratio, which considers them partly as distinct and coequal societies, partly as unequal members of the same society. The eventual election, again, is to be made by that branch of the legislature which consists of the national representatives; but in this particular act they are to be thrown into the form of individual delegations, from so many distinct and coequal bodies politic. From this aspect of the government it appears to be of a mixed character, presenting at least as many FEDERAL as NATIONAL features.

...

If we try the Constitution by its last relation to the authority by which amendments are to be made, we find it neither wholly NATIONAL nor wholly FEDERAL. Were it wholly national, the supreme and ultimate authority would reside in the MAJORITY of the people of the Union; and this authority would be competent at all times, like that of a majority of every national society, to alter or abolish its established government. Were it wholly federal, on the other hand, the concurrence of each State in the Union would be essential to every alteration that would be binding on all. The mode provided by the plan of the convention is not founded on either of these principles. In requiring more than a majority, and principles. In requiring more than a majority, and particularly in computing the proportion

by STATES, not by CITIZENS, it departs from the NATIONAL and advances towards the FEDERAL character; in rendering the concurrence of less than the whole number of States sufficient, it loses again the FEDERAL and partakes of the NATIONAL character.

The proposed Constitution, therefore, is, in strictness, neither a national nor a federal Constitution, but a composition of both. In its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is partly federal and partly national; in the operation of these powers, it is national, not federal; in the extent of them, again, it is federal, not national; and, finally, in the authoritative mode of introducing amendments, it is neither wholly federal nor wholly national. [Emphasis Added].

PUBLIUS [Federalist Papers, No. 39, January 16, 1788]

IX. EPILOGUE, Sc. 2: Does the Seventeenth Amendment Undo A Key
Compromise Reached by the Founders?

Compare: Seventeenth Amendment (1913)

“The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.”

with Federalist Papers, Number 39 (1788)(Madison)

The proposed Constitution, therefore, is, in strictness, neither a national nor a federal Constitution, but a composition of both. **In its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is partly federal and partly national;** in the operation of these powers, it is national, not federal; in the extent of them, again, it is federal, not national; and, finally, in the authoritative mode of introducing amendments, it is neither wholly federal nor wholly national. [Emphasis Added].

Has the Seventeenth Amendment altered the federal/national foundation described by Madison in Federalist 39? If so, how? On balance, and with the passage of time, was it a sound alteration of the Constitution? Should it be fixed going forward?