THE RECORDS

OF THE

FEDERAL CONVENTION

of 1787

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the Committee to be appointed for detailing the Resolutions.

On this motion.

Mas-no. Ct. no. N. J. ay. Pa. no. Del. ay. Md. ay. Va. no. N. C. no. S. C. no. Geo. no. [Ayes — 3; noes — 7.]

Mr. Houston 2ded. the motion of Mr. Elseworth to add another Elector to N. H. & Georgia. On the Question:

Mas. no. Ct ay. N. J. no. Pa. no. Del. no. Md no. Va. no. N. C. no. S. C.-ay-Geo-ay. [Ayes — 3; noes — 7.][7]

Mr. Williamson moved as an amendment to Mr. Gerry's allotment of Electors in the 1st. instance that in future elections of the Natl. Executive, the number of Electors to be appointed by the several States shall be regulated by their respective numbers of Representatives in the 1st. branch pursuing as nearly as may be the present proportions.

On question on Mr. Gerry's ratio of Electors

Mas. ay. Ct ay. N. J. no. Pa. ay. Del. no. Md. no. Va. ay-N. C. ay. S. C. ay. Geo. no. [Ayes — 6; noes — 4.]

"to be removeable on impeachment and conviction ⟨for⟩ malpractice or neglect of duty". See Resol: 9:

Mr. Pinkney & Mr Govr. Morris moved to strike out this part of the Resolution. Mr P. observd. he ⟨ought not to⟩ be impeachable whilst in office

Mr. Davie. If he be not impeachable whilst in office, he will spare no efforts or means whatever to get himself re-elected. He considered this as an essential security for the good behaviour of the Executive.[8]

Mr Wilson concurred in the necessity of making the Executive impeachable whilst in office.

Mr. Govr. Morris. He can do no criminal act without Coadjutors who may be punished. In case he should be re-elected, that will be sufficient proof of his innocence. Besides who is to impeach? Is the impeachment to suspend his functions. If it is not the mischief will go on. If it is the impeachment will be nearly equivalent to a displacement,

[7] Madison's account of these proceedings differs from the Journal, but the result is the same.

[8] Crossed out; "To punish him when".

and will render the Executive dependent on those who are to impeach

Col. Mason. No point is of more importance than that the right of impeachment should be continued. Shall any man be above Justice? Above all shall that man be above it, who can commit the most extensive injustice? When great crimes were committed he was for punishing the principal as well as the Coadjutors. There had been much debate & difficulty as to the mode of chusing the Executive. He approved of that which had been adopted at first, namely of referring the appointment to the Natl. Legislature. One objection agst. Electors was the danger of their being corrupted by the Candidates: & this furnished a peculiar reason in favor of impeachments whilst in office. Shall the man who has practised corruption & by that means procured his appointment in the first instance, be suffered to escape punishment, by repeating his guilt?

Docr. Franklin was for retaining the clause as favorable to the executive. History furnishes one example only of a first Magistrate being formally brought to public Justice. Every body cried out agst this as unconstitutional. What was the practice before this in cases where the chief Magistrate rendered himself obnoxious? Why recourse was had to assassination in wch. he was not only deprived of his life but of the opportunity of vindicating his character. It wd. be the best way therefore to provide in the Constitution for the regular punishment of the Executive when his misconduct should deserve it, and for his honorable acquittal when he should be unjustly accused.

Mr. Govr Morris admits corruption & some few other offences to be such as ought to be impeachable; but thought the cases ought to be enumerated & defined:

Mr. ⟨Madison⟩ — thought it indispensable that some provision should be made for defending the Community agst the incapacity, negligence or perfidy of the chief Magistrate. The limitation of the period of his service, was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of pecula-

tion or oppression. He might betray his trust to foreign powers. The case of the Executive Magistracy was very distinguishable, from that of the Legislative or of any other public body, holding offices of limited duration. It could not be presumed that all or even a majority of the members of an Assembly would either lose their capacity for discharging, or be bribed to betray, their trust. Besides the restraints of their personal integrity & honor, the difficulty of acting in concert for purposes of corruption was a security to the public. And if one or a few members only should be seduced, the soundness of the remaining members, would maintain the integrity and fidelity of the body. In the case of the Executive Magistracy which was to be administered by a single man, loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic.

Mr. Pinkney did not see the necessity of impeachments. He was sure they ought not to issue from the Legislature who would in that case hold them as a rod over the Executive and by that means effectually destroy his independence. His revisionary power in particular would be rendered altogether insignificant.

Mr. Gerry urged the necessity of impeachments. A good magistrate will not fear them. A bad one ought to be kept in fear of them. He hoped the maxim would never be adopted here that the chief Magistrate could do ⟨no⟩ wrong.

Mr. King expressed his apprehensions that an extreme caution in favor of liberty might enervate the Government we were forming. He wished the House to recur to the primitive axiom that the three great departments of Govts. should be separate & independent: that the Executive & Judiciary should be so as well as the Legislative: that the Executive should be so equally with the Judiciary. Would this be the case if the Executive should be impeachable? It had been said that the Judiciary would be impeachable. But it should have been remembered at the same time that the Judiciary hold their places [9] not for a limited time, but during good

[9] Crossed out: "for life".

behaviour. It is necessary therefore that a forum should be established for trying misbehaviour. Was the Executive to hold his place during good behaviour? [10] — The Executive was to hold his place for a limited term like the members of the Legislature; Like them particularly the Senate whose members would continue in appointmt the same term of 6 years. he would periodically be tried for his behaviour by his electors, who would continue or discontinue him in trust according to the manner in which he had discharged it. Like them therefore, he ought to be subject to no intermediate trial, by impeachment. He ought not to be impeachable unless he hold his office during good behavior, a tenure which would be most agreeable to him; provided an independent and effectual forum could be devised; But under no circumstances ought he to be impeachable by the Legislature. This would be destructive of his independence and of the principles of the Constitution. He relied on the vigor of the Executive as a great security for the public liberties.

Mr. Randolph. The propriety of impeachments was a favorite principle with him; Guilt wherever found ought to be punished. The Executive will have great opportunitys of abusing his power; particularly in time of war when the military force, and in some respects the public money will be in his hands. Should no regular punishment be provided, it will be irregularly inflicted by tumults & insurrections. He is aware of the necessity of proceeding with a cautious hand, and of excluding as much as possible the influence of the Legislature from the business. He suggested for consideration an idea which had fallen (from Col Hamilton) of composing a forum out of the Judges belonging to the States: and even of requiring some preliminary inquest whether just grounds of impeachment existed.

Doctr. Franklin mentioned the case of the Prince of Orange during the late war. An agreement was made between France & Holland; by which their two fleets were to unite at a certain time & place. The Du(t)ch fleet did not appear. Every body

[10] Crossed out: "He wished this were the case. But it was not."

began to wonder at it. At length it was suspected that the Statholder was at the bottom of the matter. This suspicion prevailed more & more. Yet as he could not be impeached and no regular examination took place, he remained in his office, and strengtheing his own party, as the party opposed to him became formidable, he gave birth to the most violent animosities & contentions. Had he been impeachable, a regular & peaceable inquiry would have taken place and he would if guilty have been duly punished, if innocent restored to the confidence of the public.

Mr. King remarked that the case of the Statholder was not applicable. He held his place for life, and was not periodically elected. In the former case impeachments are proper to secure good behaviour. In the latter they are unnecessary; the periodical responsibility [11] to the electors [12] being an equivalent security.

Mr Wilson observed that if the idea were to be pursued, the Senators who are to hold their places during the same term with the Executive. ought to be subject to impeachment & removal.

Mr. Pinkney apprehended that some gentlemen reasoned on a supposition that the Executive was to have powers which would not be committed to him: ⟨He presumed⟩ that his powers would be so circumscribed as to render impeachments unnecessary.

Mr. Govr. Morris,'s opinion had been changed by the arguments used in the discussion. He was now sensible of the necessity of impeachments, if the Executive was to continue for any time in office. Our Executive was not like a Magistrate having a life interest, much less like one having an hereditary interest in his office. He may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay without being able to guard agst it by displacing him. One would think the King of England well secured agst bribery. He has as it were a fee

[11] Crossed out "trial". [12] Crossed out "rendering them unnecessary".

simple in the whole Kingdom. Yet Charles II was bribed by Louis XIV. The Executive ought therefore to be impeachable for treachery; Corrupting his electors, and incapacity were other causes of impeachment. For the latter he should be punished not as a man, but as an officer, and punished only by degradation from his office. This Magistrate is not the King but the prime-Minister. The people are the King. When we make him amenable to Justice however we should take care to provide some mode that will not make him dependent on the Legislature.

⟨It was moved & 2ded. to postpone the question of impeachments which was negatived. Mas. & S. Carolina only being ay.⟩[13]

On ye. Question, Shall the Executive be removeable on impeachments?

Mas. no. Ct. ay. N. J. ay. Pa. ay. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. no. Geo-ay- [Ayes — 8; noes — 2.]

"Executive to receive fixed compensation, Agreed to nem. con-

"⟨to be paid out of the National Treasury" agreed to, N. Jersey only in the negative.⟩[14]

Mr. Gerry & Govr. Morris moved 'that the Electors of the Executive shall not be members of the Natl. Legislature, nor officers of the U. States, nor shall the Electors themselves be eligible to the ⟨supreme⟩ Magistracy."[15] Agreed to nem. con.

Docr. McClurg asked whether it would not be necessary, before a Committee for detailing the Constitution should be appointed, to determine on the means by which the Executive. is to carry the laws into effect, and to resist combinations agst. them. Is he to have a military force for the purpose, or to have the command of the Militia, the only existing force that can be applied to that use? As the Resolutions now

[13] Taken from *Journal.*

[14] Madison originally had added to preceding question "to be paid out of the Natl treasury" and had recorded the whole as agreed to unanimously. He was misled by *Journal* into making the changes incorporated in the text. See above note 3.

[15] This motion by Gerry and Morris is placed earlier in the Journal.