Dickinson’s Analogy for Federalism

[Transcript begins with the second half of the page.]

JUNE 4.

Unity of Executive-power resumed.

On Question of a single executive carried thus.

Mass. Cont. N. Y. Penn. Virg. N. C., S. Car. Georg.—Ay.

N. J. Del. Mar. —No.

Motion by Gerry seconded by Mr. King, to postpone the article for a Council of Revision, and to vest a qualified Negative in the Executive.

Affirmative all the States except Cont. & Mard.

Wilson second Hamilton—proposed a complete Negative in the Executive. The natural operation of the Legislature will be to swallow up the Executive power: divided power becomes the object of contest; if the powers are equal, each will preserve its own—otherwise the strongest will acquire the whole.

Butler opposed—because it will become a King.

Franklin opposed—Our former Govt. in Penn. abused this power of a full Negative and extorted money from the Legisla-ture, before he would sign their acts—in one instance he refused his Signature to a Bill to march the Militia agt. the Indians, till the Bill exempted from Taxes the Estate of the Proprietors on account of the expense of the Militia.

One man cannot be believed to possess more wisdom than both Branches of the Legislature—the Royal Negative has not been exercised since the Revolution; he easily does by corruption what could be done with some risk by his negative.

Madison—opposed—No man would dare negative a Bill unanimously passed. It is even doubtful whether the King of England [would] have Firmness enough to do so.

Mason—opposed—We have voted that the executive power be vested in one person—it is now proposed to give this person a negative in all cases—you have agreed that he shall appoint all officers,

not otherwise to be appointed, and those he has not the sole power to appoint, you propose to grant to him the power to negative—with these powers the Executive may soon corrupt the Legislature—the Executive will become a monarchy. We must regard the Genius of our People, which is Republican, & will not receive a King.

Franklin—The Prince of Orange at first had limited Powers, and his office was for Life—his son raised a faction & caused himself to be declared hereditary-we may meet the same fate.

Unanimous negative, except Wilson, Hamilton, King.

Madison—The judiciary ought to be introduced in the business of Legislation—they will protect their department, and united with the Executive make its negatives more strong. There is weight in the objections to this measure—but a check on the Legislature is necessary, Experience proves it to be so, and teaches us that what has been thought a calumny on a republican Govt. is nevertheless true—In all Countries are diversity of Interests, the Rich & the Poor, the Dr. & Cr., the followers of different Demagogues, the Diversity of religious Sects—the Effects of these Divisions in ancient Govts. are well known, and the like causes will now produce like effects. We must therefore introduce in our system Provisions against the measures of an interested majority—a check is not only necessary to protect the Executive power, but the minority in the Legislature. The independence of the Executive, having the Eyes of all upon him will make him animpartial judge—add the Judiciary, and you greatly increase his respectability.

Wilson—Wilson moved and Madison seconds, that the judiciary be added to the Executive in revising the Laws.

Dickinson opposed—you [should] separate the Departments—you have given the Executive a share in Legislation; and it is asked why not give a share to the judicial power. Because the Judges are to interpret the Laws, and therefore [should] have no share in making them—not so with the executive whose causing the Laws to be executed is a ministerial office only. Besides we have experience in the Br. Constitution which confers the Power of a negative on the Executive.

→the motion was withdrawn.

JUDICIARY POWER.

Wilson proposes that the judiciary be appointed by the National Executive, because he will be responsible.

Rutledge opposes, because the States generally appoint by their Legislatures.

Franklin—The 15 Lords of Sessions in Scotland are appointed by the Barristers or Doctors—these elect the most learned of their own order, because he has the most Business, wh. afterwards is divided among themselves.

Madison—in favor of further deliberation. Perhaps the appointment [should] be by the Senate—

Postponed—N. H., Mass, NY, Penn & Md. by the Executive power R. Island by the People—Con. N. J. Del. Virg. N. Car. & So. Car elect Judges by Legislatre.

Rutledge proposes to have a supreme Natl. Tribunal but no subordinate ones, except those established by the States respectively.

Wilson of a different opinion.

Dickinson—the State & Genl. Tribunals will interfere—we must have a National Tribunal—entire and proceeding from the Genl Govt.

Madison—proposed to vest the Genl. Govt. with power to establish an independent Judiciary, to be co-extensive with the nation. Ayes, 5, No, 4, divided 2.

REPRESENTATIVES.

Chs. Pinckney—proposes that the Representatives shd. be chosen by the Legislatures & not by the People—as the old members of Congress are chosen.

Gerry—proposes that the People shd. elect double the requisite number, and out of them the Legislature to choose the authorized number of each State. The People may be imposed upon by corrupt and unworthy men.

Wilson—Representatives shd. be elected by the People, thereby we shall come nearer to the will or sense of the majority-If you give the Election to the State Legislatures, you give it to the Rivals of the general Govt. —the People having parted with sufficient Powers, it remains only to divide these Powers between the Genl. & State Govts.

The People will love & respect the Genl. Govt., if it is founded on their consent & derived from them—it will acquire rank above the State Govts.

Mason—at Present the Reps. in Congress do not represent the People but the States—It is now proposed to form a Gov. for men, not for States—therefore draw the Reps. from the People—the Representation to be faithful shd. shew the Defects of the People; if not, how are they to be corrected? A Representation proceeding from the Legislatures will not afford this correction.

Suppose a majority of the Legislature to be in favor of Paper money, or some other bad measure, would they not elect Members to Congress, holding the same opinions?

Sherman—If the State Govts. remain, they shd. appoint Representatives to Congress-if they are to be swept away, then the People must elect, —the State Govts. must continue-few objects in this case will be before the Genl. Govt. —for war, treaties & commerce—Let the Genl. Govt. be a collateral Govt. to secure the States in particular Exigencies—for war, or war between the States.

I am opposed to a Genl. Govt. & in favor of the independence & Confederation of the States—give the

Genl. Govt. powers to regulate Commerce, drawing therefrom a Revenue.

Dickinson—We cannot form a Genl. Gov. unless we draw aBranch from the People, and a Br. from the Legislatures of the States—in theory this is requisite, and to the success of the scheme, it is also essential—the objection to popular Elections arise from the nature of free Govts. and are slight in comparison with the Excellence of such Govts. —the other Branch or Senate must come from the State Legislatures-they will thereby be more respectable, and for Respectability & Duration resemble the Br. H. of Lords. They can come from Legislatures who are & have been opposed to the general Govt. —they shd. be appointed for 3, 5 or 7 years, not subject to a recall and dependent on the Genl. Gov. for support.

Read—We must come to a consolidation—State Govts. must be swept away—we had better speak out—that the People will disapprove is perhaps a mistake—the State Magistrates may disapprove but the People are with us.

Genl. Pinckney—An election in South Carolina by the people is impracticable—the settlements are so sparse, that four or five thousand cannot be assembled to give their votes. I am in favor of an Election by the Legislatures—in So. Carolina the Legislature is against the issue of Paper Money with a tender, but in my Opinion a majority of the People are in favor thereof.

Wilson—I would preserve the State Govts. —there is no danger of their being swallowed up by the Genl. Govt. —the States have overpowered the Confederated Governments—The Amphictionic Council & the Achaean League were destroyed by the encroachments of the Members.

Madison—The Election may be safely made by the People, if you enlarge the sphere of Election—Experience shows this-if bad Elections be made by the People, it will be found to happen in small Districts.

Butler—Until the Ratio be fixed, I am opposed to settling the mode of Election; if this be established on a principle favorable to Wealth as well as numbers of free Inhabitants, I am content to unite with Delaware (Mr. Read) in abolishing the State Legislatures and becoming one nation instead of a Confederacy of Republics.

On question to choose Reps. by States Legislatures—

Con., N. Jersey & S. Car.—aye. The Eight other States—no.Motion by Wilson seconded by Madison.

To reconsider the partial Negative by the Pr. to vest this power in him jointly with the Judiciary—

Madison—A check requisite, to prevent legislative encroachment in the Judiciary, the Executive, or on private Rights.

By the judiciary Union, the check is increased in power and respectability—the Ex. alone is too weak—the King of Eng. wd. hesitate to negative a Bill unanimously passed by Parliament.

Gerry—The motion aims to unite Departments wh. ought to be separate—the union destroys Responsibility.

Chs. Pinckney—opposed as it destroys Responsibility.

Mason—The Purse & the sword must not be in the same Hands—if so, and the Legislature are able to raise revenue and make and direct war, I shall agree to a Restriction in the Executive, or in a Council of Revision.

Dickinson—hurry, vigour and Despatch are not properties of a Republic—we cannot have these in a Council—but Responsibility of such immense value, we can have by a single Executive—unite the judiciary and you lose Responsibility—the measure is furthermore bad by uniting Departments which should be separate and independent. It will require as great talents & firmness to discharge the other executive Duties, as to interpose a veto on the Laws, wh. shall require two thirds of both branches of the Legislature to remove.

We have not introduced a plurality in the Executive in the former instance and why should we do so in this case? For Reconsideration Con. N. Y. Virginia, ay. 8 others no.

SENATE.

The proposition that the Senate be chosen by the H. of Reps. out of Persons nominated by the State Legislatures being negatived.

Dickinson moved that the Senators be appointed by the State Legislatures—because the mind & body of the several States shd. be represented in the national Legislature; and because these Legislatures would choose men of distinguished Talents as Senators—such men would have a chance to be chosen by the People as national Representatives—failing in such choice,Wealth, family, or Talents may recommend them to be appointed Senators—let the Number of Senators be more than 200—by enlarging their number, their influence and weight will be increased by combining the Families and Wealth of the aristocracy and thereby you will establish a Balance against, and a check of the Democracy.

Wilson—if this amendment succeed, we shall not have a National government—the Senate will be too numerous, representing neither Property, nor numbers, but States or Societies, whose interests may oppose the General Govt.; the consequence will be unfavorable to the Harmony of the Nation.

Madison—We propose to form a National Government, and therefore must abandon Ideas founded in the Plan of a Confederation.

The Senate shd. come from, and represent, the wealth of the Nation, and this being the Principle, the proposed amendment cannot be adopted—besides the numbers will be too large—History proves this proposition, that delegated power has most weight and consequence in the hands of a few. The Roman tribunes when few, checked the Senate—when numerous, they divided, became weak and ceased to be

the Guardians of the People, which was the object of their institution.

Dickinson—The objection is, that you attempt to unite distinct Interests: I do not consider this Union to be an objection that we should regard—Safety may flow from these various Interests—this diversity exists in the Constitution of England—we cannot abolish the States, and consolidate the whole into one Government—if we could consolidate, I should oppose our doing so. Let our Government be like that of the solar system—let the Genl. Govt. be the Sun and States the Planets, repelled yet attracted, and the whole moving harmoniously in their several orbits.

The objection from Virginia (Madison) that Power delegated to a few will prove a more weighty and efficient check upon the Democracy, as in the instance of the roman Tribunes, proves too much; they never exceeded Ten; and no one thinks that the Senate should consist of so small a number, as that of the Tribunes at any time, much less when their number was only three.Wilson—I am not in favor of the abolition of the States. I revere the theory of the British Government, but we cannot adopt it. We have no Laws in favor of Primogeniture—no Distinction of Families—the partition of States destroys the influence of the few. Yet I well know that all confederations have been destroyed by the growth and ambition of some of their Members, and if the State Legislatures appoint the Senators, the Principle will be received by which the antient Confederacies were ruined. I therefore propose that the Senators be elected by the People, and for this purpose, that the territory be formed into convenient divisions or Districts.

Dickinson—Opposes Mr. Wilson's substitute, because it is either impracticable, or unfair—the Districts must be parts of a State, or entire States, or parts of distinct States—if the first, how can you prevent fraudulent & corrupt elections; if the second, How can you establish an intermediate body, from which to elect those who have a majority of voters, and who are not elected; if the third, the small States will never have a Senator, therefore it would be unfair.

On Question to agree to Wilson's substitute, Penn. aye, the other 10 States, no.

Mason—It is true that the old Confederacies were ruined by gt. overgrown power and the ambition of some of their Members—but their circumstances differed from ours—*We have agreed that the natl. Govt. shall have a negative on the acts of the State Legislatures.* —the danger now is that the national Legislature will swallow up the Legislatures of the States. The Protection from this Occurrence will be the securing to the State Legislatures, the choice of the Senators of the U. S. *So adopted unanimously.*

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The Jefferson MONTICELLO