

The Portions of James Madison's 1787 Convention NOTES that pertain to Article V

Edward R. Long, Ph. D.
140 New Hope & Crimora Road, Waynesboro, VA 22980
ConcervativeVirginian@Solanqui.com

Note: The purpose of this white paper is to demonstrate that the activity of insertion and deletion of word "convention" in the language that became Article V was of considerable amount and that there was no particular meaning of the word "convention" other than its generic sense, and certainly did not in any manner in particular mean a "convention of States." The page numbers refer to those of Jonathan Elliot's editing of James Madison's notes on the Philadelphia Convention, Vol 5. This may be found at

http://files.libertyfund.org/files/1909/Elliot_1314-05_EBk_v7.0.pdf. The entire set of five

volumes may be found at

http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php?title=1904&Itemid=27.

Pg 220, May 29, 1787

Randolph presents a list of resolutions for that to be included during the Philadelphia Convention, amongst which is

The following is taken directly from Madison's Notes:

"13. Resolved, that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary; and that the assent of the national Legislature ought not to be required thereto.

Pg 220 – Pinckney provides the list to the House a draft he prepared of a federal government, amongst which on Page 226 is

Art. XVI.—If two thirds of the Legislatures of the states apply for the same, the Legislature of the United States shall call a convention for the purpose of amending the Constitution; or, should Congress, with the consent of two thirds of each House, propose to the states amendments to the same, the agreement of two thirds of the Legislatures of the states shall be sufficient to make the said amendments parts of the Constitution.

NOTE: At first glance the language seems similar to what is Article V of the Constitution resulting from the 1787 Convention – but it is not.

Pg 257, June 5

Randolph's 13th resolution is taken up

The following is taken directly from Madison's Notes:

The thirteenth resolution, to the effect that provision ought to be made for hereafter amending the system now to be established, without requiring the assent of the national Legislature, being taken up,—

Mr. PINCKNEY doubted the propriety or necessity of it.

Mr. GERRY favored it. The novelty and difficulty of the experiment requires periodical revision. The prospect of such a revision would also give intermediate stability to the government. Nothing had yet happened in the states where this provision existed to prove its impropriety.

The proposition was postponed for further consideration, the votes being,—
Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Maryland, North Carolina, ay, 7; Virginia, South Carolina, Georgia, no, 3.

Pg 286, June 11

Randolph's 13th resolution for amending the national Constitution, hereafter, without consent of the national Legislature, was considered

The following is taken directly from Madison's Notes:

The thirteenth resolution, for amending the national Constitution, hereafter, without consent of the national Legislature, being considered, several members did not see the necessity of the resolution at all, nor the propriety of making the consent of the national Legislature unnecessary.

Col. MASON urged the necessity of such a provision. The plan now to be formed will certainly be defective, as the Confederation has been found on trial to be. Amendments, therefore, will be necessary; and it will be better to provide for them in an easy, regular, and constitutional way, than to trust to chance and violence. It would be improper to require the consent of the national Legislature, because they may abuse their power, and refuse their assent on that very account. The opportunity for such an abuse may be the fault of the Constitution calling for amendment.

Pg 297, June 13

Randolph's 13th Resolution is renumbered to be the 17th.

17 - . Resolved, that provision ought to be made for the amendment of the Articles of Union, whensoever it shall seem necessary.

Pg 484, July 23

The seventeenth resolution, that provision ought to be made for future amendments of the articles of the Union, was agreed to, nem. con.

Pg 514, July 26

The following is taken directly from Madison's Notes:

The proceedings since Monday (July 23) last were unanimously referred to the committee of detail; and the Convention then unanimously adjourned till Monday, August 6th, that the committee of detail might have time to prepare and report the Constitution. The whole resolutions, as referred, are as follows:—

Resolved, That provision ought to be made for the amendment of the Articles of Union, whensoever it shall seem necessary.

Pg 524, Aug 6

The Committee of Detail presented a draft of a constitution.

The following is taken directly from Madison's Notes:

Mr. RUTLEDGE delivered in the report of the committee of detail, as follows—a printed copy being at the same time furnished to each member:

We, the people of the states of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, do ordain, declare, and establish, the following Constitution for the government of ourselves and our posterity:—

Art. XIX.—On the application of the Legislatures of two thirds of the states in the Union, for an amendment of this Constitution, the Legislature of the United States shall call a convention for that purpose.

NOTE: The numerical designation is now Article XIX

Pg 674, Aug 30

Article 19 was taken up.

The following is taken directly from Madison's Notes:

Mr. GOUVERNEUR MORRIS suggested, that the Legislature should be left at liberty to call a convention whenever they pleased.

The article was agreed to, nem. con.

Pg 719 - 721, Sept 10

NOTE: This is one of the more interesting portions of Madison's notes in that here is where Madison comments on the vagueness of the definition of a convention and in so doing makes it clear the word "convention" does not mean "convention of States." Moreover it is clear that Madison's choice was to not have the word "convention" appear and furthermore he appears to be taking the position that whether introduced by Congress or the States the decision of whether or not to amend is to be left in the hands of the congress.

The following is taken directly from Madison's Notes:

In Convention.—Mr. GERRY moved to reconsider article 19, viz:—

"On the application of the Legislatures of two thirds of the states in the Union, for an amendment of this Constitution, the Legislature of the United States shall call a convention for that purpose."

Note: See the 6th of August,—p. 381.

This Constitution, he said, is to be paramount to the state constitutions. It follows, hence, from this article, that two thirds of the states may obtain a convention, a majority of which can bind the Union to innovations that may subvert the state constitutions altogether. He asked whether this was a situation proper to be run into.

Mr. HAMILTON seconded the motion; but, he said, with a different view from Mr. Gerry. He did not object to the consequences stated by Mr. Gerry. There was no greater evil in subjecting the people of the United States to the major voice, than the people of a particular state. It had been wished by many, and was much to have been desired, that an easier mode of introducing amendments had been provided by the Articles of the Confederation. It was equally desirable now, that an easy mode should be established for supplying defects which will probably appear in the new system. The mode proposed was not adequate. The state Legislatures will not apply for alterations, but with a view to increase their own powers. The national Legislature will be the first to perceive, and will be most sensible to, the necessity of amendments; and ought also to be empowered, whenever two thirds of each branch should concur, to call a convention. There could be no danger in giving this power, as the people would finally decide in the case.

NOTE: The following is Madison's first expressed concern for the meaning of the word "convention."

Mr. MADISON remarked on the vagueness of the terms, "call a convention for the purpose," as sufficient reason for reconsidering the article. How was a convention to be formed?—by what rule decide?—what the force of its acts?
On the motion of Mr. Gerry, to reconsider,—

Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 9; New Jersey, no, 1; New Hampshire, divided.

Mr. SHERMAN moved to add to the article,—
"or the Legislature may propose amendments to the several states for their approbation; but no amendments shall be binding until consented to by the several states."

Mr. GERRY seconded the motion.

Mr. WILSON moved to insert "two thirds of" before the words "several states;" on which amendment to the motion of Mr. Sherman,—

New Hampshire, Pennsylvania, Delaware, Maryland, Virginia, ay, 5; Massachusetts, Connecticut, New Jersey, North Carolina, South Carolina, Georgia, no, 6.

Mr. WILSON then moved to insert "three fourths of" before "the several states;" which was agreed to, nem. con.

Mr. MADISON moved to postpone the consideration of the amended proposition, in order to take up the following:—

"The Legislature of the United States, whenever two thirds of both Houses shall deem necessary, or on the application of two thirds of the Legislatures of the several states, shall propose amendments to this Constitution, which shall be valid, to all intents and purposes, as part thereof, when the same shall have been ratified by three fourths, at least, of the Legislatures of the several states, or by conventions in three fourths thereof, as one or the other mode of ratification may be proposed by the Legislature of the United States."

NOTE: Madison's substituted language removes the word "convention."

Mr. HAMILTON seconded the motion.

Mr. RUTLEDGE said he never could agree to give a power by which the articles relating to slaves might be altered by the states not interested in that property, and prejudiced against it. In order to obviate this objection, these words were added to the proposition:*

“provided that no amendments, which may be made prior to the year 1808, shall in any manner affect the fourth and fifth sections of the seventh article.”

The postponement being agreed to,—

On the question on the proposition of Mr. Madison and Mr. Hamilton, as amended,—

Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 9; Delaware, no, 1; New Hampshire, divided.

Pg 725, Sept 12.

The following is taken directly from Madison's Notes:

In Convention.—Dr. JOHNSON, from the committee of style, &c., reported a digest of the plan,

“The Congress, whenever two-thirds of both Houses shall deem necessary, or on the application of two-thirds of the Legislatures of the several States, shall propose amendments to this Constitution; which shall be valid to all intents and purposes, as part thereof, when the same shall have been ratified by three-fourths at least of the Legislatures of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided, that no amendment which may be made prior to the year 1808 shall in any manner affect the __ and __ sections of the __ article” (p 712).

NOTE: This is Madison's Sept 10th version which includes Rutledge's addition. It does not include the word “convention.”

Pg 746, Sept 15

Article V is taken up.

NOTE: A major portion of that on this date included numerous proposed changes, all but one not being accepted. The one accepted was the reinsertion of the word "convention" to which again Madison expresses his concern for its vagueness and thus its lack of definition

The following is taken directly from Madison's Notes:

Article 5.

"The Congress, whenever two thirds of both Houses shall deem necessary, or on the application of two thirds of the Legislatures of the several states, shall propose, amendments to this Constitution, which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three fourths at least of the Legislatures of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: provided, that no amendment which may be made prior to the year 1808 shall in any manner affect the first and fourth clauses in the ninth section of article 1."

Mr. SHERMAN expressed his fears that three fourths of the states might be brought to do things fatal to particular states; as abolishing them all together, or depriving them of their equality in the Senate. He thought it reasonable that the proviso in favor of the states importing slaves should be extended, so as to provide that no state should be affected in its internal police, or deprived of its equality in the Senate.

Col. MASON thought the plan of amending the Constitution exceptionable and dangerous. As the proposing of amendments is in both the modes to depend, in the first immediately, and in the second ultimately, on Congress, no amendments of the proper kind would ever be obtained by the people, if the government should become oppressive, as he verily believed would be the case.

NOTE: The following is the reinsertion of the word "convention."

Mr. GOUVERNEUR MORRIS and Mr. GERRY moved to amend the article, so as to require a convention on application of two thirds of the states.

NOTE: Here again Madison expresses his opinion that convention is not necessary and he again expresses his concern for what is the meaning of the word "convention."

Mr. MADISON did not see why Congress would not be as much bound to propose amendments applied for by two thirds of the states, as to call a convention on the like application. He saw no objection, however, against providing for a convention for the purpose of amendments, except only that difficulties might arise as to the form, the quorum, &c., which in constitutional regulations ought to be as much as possible avoided.

The motion of GOUVERNEUR MORRIS and Mr. GERRY was agreed to, nem. con.

Mr. SHERMAN moved to strike out of article 5, after "legislatures," the words, "of three fourths," and so after the word "conventions," leaving future conventions to act in this matter, like the present convention, according to circumstances.

On this motion,—

Massachusetts, Connecticut, New Jersey, ay, 3; Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 7; New Hampshire, divided.

Mr. GERRY moved to strike out the words, "or by conventions in three fourths thereof." On which motion,—

Connecticut, ay, 1; New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 10.

Mr. SHERMAN moved, according to his idea above expressed, to annex to the end of the article a further proviso,—

"that no state shall, without its consent, be affected in its internal police, or deprived of its equal suffrage in the senate."

Mr. MADISON. Begin with these special provisos, and every state

will insist on them, for their boundaries, exports, &c.

On the motion of Mr. Sherman,—

Connecticut, New Jersey, Delaware, ay, 3; New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 8.

Mr. SHERMAN then moved to strike out article 5 al together. Mr. BREARLY seconded the motion; on which,—

Connecticut, New Jersey, ay, 2; New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 8; Delaware, divided.

Mr. GOUVERNEUR MORRIS moved to annex a further proviso,—

“that no state, without its consent, shall be deprived of its equal suffrage in the Senate.”

This motion, being dictated by the circulating murmurs of the small states, was agreed to without debate, no one opposing it, or, on the question, saying no.

Col. MASON, expressing his discontent at the power given to Congress, by a bare majority, to pass navigation acts, which he said would not only enhance the freight, (a consequence he did not so much regard,) but would enable a few rich merchants in Philadelphia, New York, and Boston, to monopolize the staples of the Southern States, and reduce their value perhaps fifty per cent., moved a further proviso,—

“that no law in the nature of a navigation act be passed before the year 1808, without the consent of two thirds of each branch of the Legislature.”

On which motion,—

Maryland, Virginia, Georgia, ay, 3; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, South Carolina, no, 7; North Carolina, absent.

Mr. RANDOLPH, animadverting on the indefinite and dangerous power given by the Constitution to Congress, expressing the pain he felt at differing from the body of the Convention on the close of the great and awful subject of their labors, and anxiously wishing for some accommodating expedient which would relieve him from his embarrassments, made a motion importing,

“that amendments to the plan might be offered by the state conventions, which should be submitted to, and finally decided on by, another General Convention.”

Should this proposition be disregarded, it would, he said, be impossible for him to put his name to the instrument. Whether he should oppose it afterwards, he would not then decide; but he would not deprive himself of the freedom to do so in his own state, if that course should be prescribed by his final judgment.

Col. MASON seconded and followed Mr. RANDOLPH in animadversions on the dangerous power and structure of the government, concluding that it would end either in monarchy or a tyrannical aristocracy—which, he was in doubt,—but one or other, he was sure. This Constitution had been formed without the knowledge or idea of the people. A second Convention will know more of the sense of the people, and be able to provide a system more consonant to it. It was improper to say to the people, take this or nothing. As the Constitution now stands, he could neither give it his support or vote in Virginia; and he could not sign here what he could not support there. With the expedient of another Convention, as proposed, he could sign.

Mr. PINCKNEY. These declarations, from members so respectable, at the close of this important scene, give a peculiar solemnity to the present moment. He descanted on the consequences of calling forth the deliberations and amendments of the different states, on the subject of government at large. Nothing but confusion and contrariety will spring from the experiment. The states will never agree in their plans, and the deputies to a second Convention, coming together under the discordant impressions of their constituents, will never agree. Conventions are serious things, and ought not to be repeated. He was not without objections, as well as others, to the plan. He objected to the contemptible weakness and dependence of the executive. He objected to the power of a majority, only, of Congress, over commerce. But, apprehending the danger of a general confusion, and an ultimate decision by the sword, he should give the plan his support.

Mr. GERRY stated the objections which determined him to withhold his name from the Constitution: 1, the duration and reëligibility of the Senate; 2, the power of the House of Representatives to conceal their Journals; 3, the power of Congress over the places of election; 4, the unlimited power of Congress over their own compensation; 5, that Massachusetts has not a due share of representatives allotted to her; 6, that three fifths of the blacks are to be represented, as if they were freemen; 7, that under the

power over commerce, monopolies may be established; 8, the Vice-President being made head of the Senate. He could, however, he said, get over all these, if the rights of the citizens were not rendered insecure—first, by the general power of the Legislature to make what laws they may please to call “necessary and proper;” secondly, to raise armies and money without limit; thirdly, to establish a tribunal without juries, which will be a Star Chamber as to civil cases. Under such a view of the Constitution, the best that could be done, he conceived, was to provide for a second General Convention.

On the question, on the proposition of Mr. Randolph, all the states answered, no.

On the question to agree to the Constitution, as amended, all the states, ay.

The Constitution was then ordered to be engrossed, and the House adjourned.

Pg 750, Sept 17.

In Convention.—The engrossed Constitution being read,

Pg 766

Article V in the form as we know it

ARTICLE V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution; or, on the application of the Legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided, that no amendment which may be made prior to the year 1808 shall, in any manner, affect the third and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

