

# The Debates on Impeachment from the Records of the Philadelphia Convention

## Questions to Consider

1. In your opinion, what issue(s) within the evolution of the debates over impeachment are most notable?
  2. To what extent, have those issues persisted in our history?
- 

## 2 June 1787

Mr. Dickenson moved “that the Executive be made removeable by the National Legislature on the request of a majority of the Legislatures of individual States”. It was necessary he said to place the power of removing somewhere. He did not like the plan of impeaching the Great Officers of State. He did not know how provision could be made for removal of them in a better mode than that which he had proposed. He had no idea of abolishing the State Governments as some gentlemen seemed inclined to do. The happiness of this Country in his opinion required considerable powers to be left in the hands of the States.

Mr. Bedford seconded the motion.

Mr. Sherman contended that the National Legislature should have power to remove the Executive at pleasure.

Mr. Mason. Some mode of displacing an unfit magistrate is rendered indispensable by the fallibility of those who choose, as well as by the corruptibility of the man chosen. He opposed decidedly the making the Executive the mere creature of the Legislature as a violation of the fundamental principle of good Government.

Mr. Madison & Mr. Wilson observed that it would leave an equality of agency in the small with the great States; that it would enable a minority of the people to prevent ye removal of an officer who had rendered himself justly criminal in the eyes of a majority; that it would open a door for intrigues agst. him in States where his administration tho' just might be unpopular, and might tempt him to pay court to particular States whose leading partizans he might fear, or wish to engage as his partizans. They both thought it bad policy to introduce such a mixture of the State authorities, when their agency could be otherwise supplied.

Mr. Dickenson considered the business as so important that no man ought to be silent or reserved. He went into a discourse of some length, the sum of which was, that the Legislative, Executive, & Judiciary departments ought to be made as independt. as possible; but that such an Executive as some seemed to have in contemplation was not consistant with a republic; that a firm Executive could only exist in a limited monarchy. In the British Govt. itself the weight of the Executive arises from the attachments which the Crown draws to itself, & not merely from the force of its prerogatives. In place of these attachments we must look out for something else. One source of stability is the double branch of the Legislature. The division of the Country into distinct States formed the other principal source of stability. This division ought therefore to be maintained, and considerable powers to be left with the States. This was the ground of his consolation for the future fate of his Country. Without this, and in case of a consolidation of the States into one great Republic we might read its fate in the history of smaller ones. A limited Monarchy he considered

as *one* of the best Governments in the world. It was not *certain* that the same blessings were derivable from any other form. It was certain that equal blessings had never yet been derived from any of the republican form. A limited monarchy however was out of the question. The spirit of the times--the state of our affairs, forbade the experiment, if it were desirable. Was it possible moreover in the nature of things to introduce it even if these obstacles were less insuperable. A House of Nobles was essential to such a Govt. Could these be created by a breath, or by a stroke of the pen? No. They were the growth of ages, and could only arise under a complication of circumstances none of which existed in this Country. But though a form the most perfect *perhaps* in itself be unattainable. we must not despair. If ancient republics have been found to flourish for a moment only & then vanish forever, it only proves that they were badly constituted; and that we ought to seek for every remedy for their diseases. One of these remedies he conceived to be the accidental lucky division of this country into distinct States; a division which some seemed desirous to abolish altogether.

As to the point of representation in the national legislature as it might affect States of different sizes, he said it must probably end in mutual concession. He hoped that each State would retain an equal voice at least in one branch of the National Legislature, and supposed the sums paid within each state would form a better ratio for the other branch than either the number of inhabitants or the quantum of property.

A motion, being made to strike out "on request by a majority of the Legislatures of the individual States" and rejected, Connecticut. S. Carol: & Geo. being ay. the rest no: the question was taken--

On Mr. Dickenson's motion for making Executive removable by Natl. Legislature at request of majority of State Legislatures was also rejected all the States being in the negative except Delaware which gave an affirmative vote.

### 18 June 1787

IX. The Governour Senators and all officers of the United States to be liable to impeachment for mal--and corrupt conduct; and upon conviction to be removed from office, & disqualified for holding any place of trust or profit--all impeachments to be tried by a Court to consist of the Chief or Judge of the Superior Court of Law of each State, provided such Judge shall hold his place during good behavior and have a permanent salary.

### 19 July 1787

[G. Morris] The Executive is also to be impeachable. This is a dangerous part of the plan. It will hold him in such dependence that he will be no check on the Legislature, will not be a firm guardian of the people and of the public interest. He will be the tool of a faction, of some leading demagogue in the Legislature. These then are the faults of the Executive establishment as now proposed. Can no better establishmt. be devised? If he is to be the Guardian of the people let him be appointed by the people? If he is to be a check on the Legislature let him not be impeachable. Let him be of short duration, that he may with propriety be re-eligible.--It has been said that the candidates for this office will not be known to the people. If they be known to the Legislature, they must have such a notoriety and eminence of Character, that they cannot possibly be unknown to the people at large. It cannot be possible that a man shall have sufficiently distinguished himself to merit this high trust without having his character proclaimed by fame throughout the Empire. As to the danger from an unimpeachable magistrate he could not regard it as formidable. There must be certain great officers of State; a minister of finance, of war, of foreign affairs &c. These he presumes will exercise their functions in subordination to the Executive, and will be

amenable by impeachment to the public Justice. Without these ministers the Executive can do nothing of consequence.

## 20 July 1787

“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 reelected. He considered this as an essential security for the good behaviour of the Executive.

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 reelected, 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, 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 speculation 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 not for a limited time, but during good behaviour. It is necessary therefore that a forum should be established for trying misbehaviour. Was the Executive to hold his place during good behaviour?--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 appointment 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 opportunities 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 Dutch fleet did not appear. Every body 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 strengthening 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 to the electors 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 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.

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.]

## **27 August 1787**

The clause for removing the President on impeachment by the House of Reps and conviction in the supreme Court, of Treason, Bribery or corruption, was postponed nem: con: at the instance of Mr. Govr. Morris, who thought the Tribunal an improper one, particularly, if the first judge was to be of the privy Council.

Mr. Govr. Morris objected also to the President of the Senate being provisional successor to the President, and suggested a designation of the Chief Justice.

Mr. Madison added as a ground of objection that the Senate might retard the appointment of a President in order to carry points whilst the revisionary power was in the President of their own body, but suggested that the Executive powers during a vacancy, be administered by the persons composing the Council to the President.

Mr. Williamson suggested that the Legislature ought to have power to provide for occasional successors. & moved that the last clause (of 2 sect. X art:) relating to a provisional successor to the President be postponed.

Mr. Dickinson 2ded. the postponement. remarking that it was too vague. What is the extent of the term "disability" & who is to be the judge of it?

#### 4 September 1787

The latter part of Sect. 2. Art: 10. to read as follows.

(9) "He shall be removed from his office on impeachment by the House of Representatives, and conviction by the Senate, for Treason, or bribery, and in case of his removal as aforesaid, death, absence, resignation or inability to discharge the powers or duties of his office, the vice-president shall exercise those powers and duties until another President be chosen, or until the inability of the President be removed."

#### 8 September 1787

The clause referring to the Senate, the trial of impeachments agst. the President, for Treason & bribery, was taken up.

Col. Mason. Why is the provision restrained to Treason & bribery only? Treason as defined in the Constitution will not reach many great and dangerous offences. Hastings is not guilty of Treason. Attempts to subvert the Constitution may not be Treason as above defined--As bills of attainder which have saved the British Constitution are forbidden, it is the more necessary to extend: the power of impeachments. He movd. to add after "bribery" "or maladministration". Mr. Gerry seconded him--

Mr Madison So vague a term will be equivalent to a tenure during pleasure of the Senate.

Mr Govr Morris, it will not be put in force & can do no harm-- An election of every four years will prevent maladministration.

Col. Mason withdrew "maladministration" & substitutes "other high crimes & misdemeanors" agst. the State"

On the question thus altered

N. H-- ay. Mas. ay-- Ct. ay. N. J. no Pa no. Del. no. Md ay. Va. ay. N. C. ay. S. C. ay. Geo. ay. [Ayes--8; noes--3.]

Mr. Madison, objected to a trial of the President by the Senate, especially as he was to be impeached by the other branch of the Legislature, and for any act which might be called a misdemeanor. The President under these circumstances was made improperly dependent. He would prefer the supreme Court for the trial of impeachments, or rather a tribunal of which that should form a part.

Mr Govr Morris thought no other tribunal than the Senate could be trusted. The Supreme Court were too few in number and might be warped or corrupted. He was agst. a dependence of the Executive on the Legislature, considering the Legislative tyranny the great danger to be apprehended; but there could be no danger that the Senate would say untruly on their oaths that the President was guilty of crimes or facts, especially as in four years he can be turned out.--

Mr. Pinkney disapproved of making the Senate the Court of Impeachments, as rendering the President too dependent on the Legislature. If he opposes a favorite law, the two Houses will combine agst him, and under the influence of heat and faction throw him out of office.

Mr. Williamson thought there was more danger of too much lenity than of too much rigour towards the President, considering the number of cases in which the Senate was associated with the President--

Mr Sherman regarded the Supreme Court as improper to try the President, because the Judges would be appointed by him.

On motion by Mr. Madison to strike out the words—"by the Senate" after the word "Conviction"

N--H. no. Mas--no. Ct. no. N. J. no--Pa. ay--Del--no. Md. no. Va. ay--N. C. no. S--C--no. Geo. no. [Ayes--2; noes--9.]

In the amendment of Col: Mason just agreed to, the word "State" after the words "misdemeanors against" was struck out, and the words "United States" inserted, unanimously in order to remove ambiguity--

On the question to agree to clause as amended,

N. H. ay. Mas. ay. Cont ay N. J. ay. Pa. no. Del. ay Md. ay-- Va. ay. N-- C. ay. S. C. ay. Geo. ay [Ayes--10; noes--1.]

On motion "The vice-President and other Civil officers of the U. S. shall be removed from office on impeachment and conviction as aforesaid" was added to the clause on the subject of impeachments.

.....

Mr. Govr Morris moved to add to clause (3) of the report made on Sept. 4. the words "and every member shall be on oath" which being agreed to, and a question taken on the clause so amended viz—"The Senate of the U. S. shall have power to try all impeachments: but no person shall be convicted without the concurrence of two thirds of the members present: and every member shall be on oath"

N. H. ay-- Mas. ay. Ct. ay. N. J-- ay. Pa. no-- Del--ay--Md ay. Va. no. N. C. ay. S. C. ay. Geo. ay. [Ayes--9; noes--2.]

### **10 September 1787**

Mr. Randolph took this opportunity to state his objections to the System. They turned on the Senate's being made the Court of Impeachment for trying the Executive—

### **14 September 1787**

Mr Rutledge and Mr. Govr. Morris moved "that persons impeached be suspended from their office until they be tried and acquitted"

Mr. Madison-- The President is made too dependent already on the Legislature, by the power of one branch to try him in consequence of an impeachment by the other. This intermediate suspension, will put him in the power of one branch only--They can at any moment, in order to make way for the functions of another who will be more favorable to their views, vote a temporary removal of the existing magistrate--

Mr. King concurred in the opposition to the amendment

On the question to agree to it

N--H. no. 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--8.]