

**A STUDY OF THE TWELFTH
AMENDMENT OF
THE CONSTITUTION
OF THE UNITED STATES**

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A Study of the Twelfth Amendment of the Constitution of the United States by Lolabel House

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A STUDY
OF THE
TWELFTH AMENDMENT
OF THE
CONSTITUTION OF THE UNITED STATES.

PRESENTED TO THE FACULTY OF PHILOSOPHY OF THE
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BY
LOLABEL HOUSE

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The Convention of 1787 had several sources from which it might draw in constructing the executive department of the government. These were, the current political theories, the plans suggested previous to its meeting, the experience under the Confederation and the precedents found in the State constitutions.

As the Confederation dragged on year after year, becoming more hopelessly inadequate on account of the lack of sufficient powers and of an efficient executive, many plans were suggested to remedy the evils so apparent to the most indifferent observer. In each of these the question of the executive was emphasized. One of the first definite plans for a Confederation had been that of Thomas Paine, outlined in "Common Sense."¹ In this, after providing for a Congress, he suggested a President, chosen from the delegates of a Colony which should be selected by lot. In the next Congress the President should be similarly chosen, the Colony which had obtained its turn being omitted from the drawing, till the whole thirteen had had their proper rotation. As early as 1783, Pelatiah Webster pointed out very clearly and succinctly the defects of the Articles of Confederation, and suggested an entirely new plan in which there were to be four great Ministers of State, a financier, a Minister of War, a Minister of State and a Minister of Foreign Affairs, all of whom should be

¹ "Common Sense," pp. 30-31.

required to give a written opinion on all proposed bills.¹ Together with three others, named by Congress, from the New England, Middle and Southern States respectively, they should form the supreme executive body,² presided over by one of their number appointed by Congress. They were to superintend all executive business and appoint all executive officers, but how the "great ministers" were themselves to be chosen the plan did not state.

Noah Webster's plan³ in 1785 made no change in the method of choosing the President, but suggested that he be "ex-officio supreme magistrate, clothed with authority to execute the laws of Congress in the same manner that the governors of the States are to execute the laws of the States."

Madison⁴ wrote in his notes on Jefferson's "Draught of a Constitution for Virginia:" "An election by the Legislature is liable to insuperable objections. It not only tends to faction, intrigue and corruption, but leaves the Executive under the influence of an improper obligation to that department. An election by the people at large, or by electors, as in the appointment of the Senate in Maryland, or, indeed, by the people, thro' any other channel than their Legislative representatives, seems to be far preferable." Though this was written in regard to the State Executive it exactly expressed his opinion, as afterwards formulated, in regard to the national head. In common with other statesmen of the day⁵ he insisted upon the separation of the functions of government,⁶ yet such was the difficulty of the subject that in April, 1787, he wrote to Washington that though a National Executive was a necessity, he had scarcely ventured to form his opinion either of its form or authority.⁷

The Continental Congress had been struggling with the question of executive administration since its organization in 1775. The most natural step at first was to appoint committees

¹ "A Dissertation on the Political Union and Constitution of the Thirteen United States of North America," by a citizen of Philadelphia, Pelatiah Webster. First published in 1783; republished in "Political Essays," 1791, p. 214.

² *Ibid.*, p. 221.

³ "Sketches of American Policy," Noah Webster, pp. 30-48.

⁴ Madison's Works (Edition of 1865), I, 190.

⁵ Hamilton's Works (1851), II, 269-275.

⁶ Madison's Works, I, 286.

⁷ *Ibid.*, 290.

to carry out the resolves of Congress, but as the field of operations grew wider the action of committees proved increasingly unsatisfactory. Without giving a detailed account of the development of the administrative departments of War, State, Treasury and Navy, it may be said that the steady evolution was from committees of Congress, inefficient and desultory in action, through boards,¹ not always composed of members of Congress, more efficient, but still lacking in unity of action, to single officers² with subordinates.³ After the war was over Congress passed an Act⁴ for carrying out Art. IX of the Articles of Confederation, providing for a committee of one delegate from each State to sit between Congresses. The powers of this committee were much limited by the Act, and only one was ever appointed. It was instructed to prepare an ordinance revising the departments, but the order was not carried out. It met in Annapolis, June 4, 1784,⁵ and adjourned till June 26th, "to rest;" then it had to adjourn day after day till July 8th, for lack of a quorum. When a sufficient number was finally gotten together no business of importance was transacted. The members quarreled among themselves and animadverted against fate for placing them there in the heat. On August 13th there is the

¹ "Secret Journals of Congress," II, 130.

² In 1781.

³ This development may be traced through the following references to the action of the Continental Congress in regard to the matter:

State Department.—I, 254 (Nov. 29, 1775); II, 113 (April 17, 1777); VII; 11 (Jan. 10, 1781); VII, 219 (Feb. 22, 1782).

War Department.—II, 198 (June 12, 1776; Dec. 1776); III, 235 (July 18, 1777); III, 349 (Oct. 17, 1777); III, 351 (Oct. 17, 1777); III, 418 (Nov. 24, 1777); III, 423 (Nov. 27, 1777); IV, 19 (Jan. 12, 1778); IV, 449 (Oct. 29, 1778); VII, 24 (Feb. 7, 1781); VII, 206 (Jan. 17, 1782), VII, 256 (April 10, 1782); X, 28 (Jan. 27, 1785).

Treasury Department.—I, 173 (July 29, 1775); I, 191 (Sept. 25, 1775); II, 64 (Feb. 17, 1776); II, 274 (July 30, 1776); III, 78 (March 25, 1777); IV, 153 (April 15, 1778); IV, 294 (July 15, 1778); IV, 310 (July 30, 1778); IV, 331 (Aug. 12, 1778); IV, 403-407 (Sept. 26, 1778); VII, 24 (Feb. 7, 1781); VII, 143 (Sept. 7, 1781); VII, 30 (Feb. 20, 1781); VII, 144 (Sept. 11, 1781); IX, 182 (May 28, 1784).

Navy Department.—I, 203 (Oct. 13, 1775); I, 242 (Nov. 25, 1775); I, 269 (Dec. 11, 1775); I, 273 (Dec. 14, 1775); II, 406 (Oct. 28, 1776); II, 418 (Nov. 6, 1776); V, 297 (Oct. 28, 1779); VII, 24 (Feb. 7, 1781); VII, 143 (Sept. 7, 1781).

Washington's opinions of executive power may be found by reference to his writings. (Putnam edition), VIII, 304; IX, 14, 33, 75, 124, 131, 246; XI, 186, 257.

⁴ "Journals of Congress," IX, 184, May 29, 1784.

⁵ "Journals of Congress," IX, Appendix, p. 1.

plaintive little statement that whereas certain delegates "did on Wednesday, the 11th day of the present month of August, leave the city of Annapolis and set out for their respective homes," the Committee was reduced to an insufficient number to do business, so some of the remaining delegates recommended the Secretary of Congress to remove the papers and records to Philadelphia.¹ Thus, until the next meeting of Congress, the country was left without a government. Such experiences caused the framers of the new Constitution to regard the question of a Chief Magistrate as one of paramount importance.

It is hardly possible to follow the tortuous course of the discussion in the Federal Convention, concerning the election of the Executive, without causing the same confusion in the mind of the reader which seems to have existed in that of the Convention itself. The novel part of the plan evolved was the introduction of an independent, responsible executive, so fatally lacking in the Articles of Confederation. In the Virginia plan² introduced into the Convention May 29th by Edmund Randolph, the seventh Article reads: "*Resolved*, That a national Executive be instituted to be chosen by the national legislature for the term of ———," etc. Art. VIII provides for a Council of Revision³ to consist of the Executive and a convenient number of the judiciary. The plan entered in the debates as that of Pinckney⁴ lays down no method of election.

It was seen, as soon as the discussion began in the Committee of the Whole, that there were two directly opposing conceptions of the nature and function of the executive, and it was the struggle between these two which caused the prolonged indecision concerning the method of election. The first view was drastically expressed by Roger Sherman, who said he considered the executive as nothing more than an institution for carrying into effect the will of the legislature; that the person or persons ought to be appointed by and accountable to the legislature only, as it was the depository of the supreme will of society. The chief exponents of the opposite

¹ McMaster: "History of the People of the United States," I, 209-210.

² Elliot's "Debates," V, 128.

³ New York Constitution of 1777, Art. III. Poore's "Charters and Constitutions," II, 1332.

⁴ Elliot, V, 131, Appendix, No. 2.

view were Gouverneur Morris, who stated later that one great object of the executive is to control the legislature, and James Wilson, who said he was almost unwilling to declare the mode of choice he wished, for fear it might appear chimerical; stating, however, that, in theory at least, he preferred an election by the people. In favor of this he could cite the experience under some of the State constitutions. When these were first formed there was a reaction against the Colonial executive. The attempt was made to deprive the chief magistracy of the autocratic character of the royal governorship without divesting the office entirely of dignity and efficiency. Connecticut and Rhode Island, retaining their charters, retained the election by the people; and, of the newly constructed plans, New Hampshire, New York and Massachusetts provided for such an election. The other States gave the power to the legislative body.

The question of number next showed the complete divergence of opinion in the Convention. Some were in favor of allowing the legislature to appoint one or more persons as experience might dictate,¹ and unity in the executive was characterized as the "foetus of monarchy."² On the other hand, it was argued that only a single magistrate could give the necessary energy, dispatch and responsibility, and that such unity was the best safeguard against tyranny.³ Having decided that it would be necessary to fix the powers of the executive as a guide to the number, the question of term was introduced. A motion for three years, with re-eligibility, was lost;⁴ then Pinckney's motion for seven years was carried.

On June 2d, Wilson brought in, in a modified form, his idea of popular election by the motion "That the executive magistracy shall be elected in the following manner: That the States be divided into — districts, and that the persons qualified to vote in each district for the members of the first branch of the national legislature elect — members of their respective districts to be the electors of the executive magistracy; that the said electors of the executive magistracy meet at —, and they, or any — of them, so met, shall proceed to elect by ballot, but not out of their own body, — person— in whom the executive authority of the national government shall be vested."⁵

¹ Elliot, V, 140. Sherman.

² Ibid, V, 141. Randolph.

³ Ibid. Wilson.

⁴ Ibid, V, 142. Wilson.