

year), without disturbing his commission of one and one-half percent on all transactions, and to compensate him from time to time "for any services which contrary to present expectation he may be enabled to perform." The motion lost on a tie vote, whereupon Kilty "agreeably to his constitutional privilege requires that the opinions of the members on the Subject be given in writing and filed among the records of the Board." It was so done (April 18, 1787).

Perhaps a note of animus crept into Kilty's relations with Jenifer in 1786-87. The times were hard, the political kettle was boiling in state and nation. But nothing of the partisan spirit appears in Kilty's last dissent reported in this volume. The moment was important, one of the rare ones when actions of the Council of State touched on national affairs of great import. Maryland had ratified the constitution of the United States some eighteen months previously. Now on January 21, 1789 before the Council of State lay returns from all Maryland constituencies for representatives to the congress and for electors who were to choose the first president and vice-president of the United States. How were these results to be signified to the federal congress that had not yet even come into existence?

The Council of State gave its answer: by proclamation issued over the signature of John Eager Howard, Governor of the State of Maryland. The proclamation recited that the Governor and Council, having examined the returns, find that the following six persons are duly elected Representatives of this state in the Congress of the United States and the following eight persons duly elected Electors. "Given in Council at the city of Annapolis under the Seal of the State of Maryland this twenty-first Day of January seventeen hundred and eighty nine, J. E. Howard. GOD SAVE THE STATE."

Kilty evidently spent some time working out his dissent, befitting an action that touched national concerns, bound to establish precedent and, as he thought, precedent unfortunately for ill. He waited until February 6 before filing his argument. In effect, Kilty said, the Council should have transmitted the papers (i.e. the election returns themselves), not merely a proclamation, to the House of Representatives. How, he asked, can the Federal House of Representatives act as judge of the election returns and the qualifications of its members without every material document? Kilty's elaboration of his theme leaves no doubt that here is a Federalist in the making. His paper leaves no room for doubting his abilities as a constitutional lawyer.

With these February days, the last under the moribund government of the Articles of Confederation, the present volume ends. It ends appropriately on matters of national concern, at a time when the new government was organizing for the continuous effort that has been our national history down to the present year of grace. Even thus does our remote past form a part of the figure in the seamless web of history.

The editor of this volume of the *Archives* has aimed at establishing a reliable and understandable text from the manuscript materials. This task presented problems, as the Publications Committee had recognized in its early discussions