

TUESDAY, AUGUST 21, 1787.

JOURNAL

Tuesday August 21. 1787.

The honorable Mr Livingston, from the Committee of eleven to whom were referred

a proposition respecting the debts of the several States, entered on the Journal of the 18 instant and a proposition respecting the militia entered on the Journal of the 18 instant

informed the House that the Committee were prepared to report — and had directed him to submit the same to the consideration of the House.

The report was then delivered in at the Secretary's-table, and, being read throughout, is as follows.

“The Legislature of the United-States shall have power “to fulfil the engagements which have been entered into by “Congress, and to discharge as well the debts of the United “States, as the debts incurred by the several States during “the late war, for the common defence and general welfare.”

“To make laws for organizing, arming, and disciplining “the militia, and for governing such part of them as may be “employed in the service of the United States, reserving to “the States respectively, the appointment of the Officers, “and the authority of training the militia according to the “discipline prescribed by the United States”

It was moved and seconded to postpone the consideration of the above report

which passed in the affirmative

On the question to agree to the 3rd sect. of the 7 article as amended

it passed in the affirmative [Ayes — 10; noes — 1.]

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It was moved and seconded to add the following clause to the 3rd sect. of the 7 article

“And all accounts of supplies furnished, services performed, and monies advanced by the several States, to the United States; or by the United States to the several States shall be adjusted by the same rule.”

The last motion being withdrawn,

It was moved and seconded to add the following clause to the 3rd section of the 7th article.

“By this rule the several quotas of the States shall be determined in settling the expences of the late war”

It was moved and seconded to postpone the consideration of the last motion

which passed in the affirmative.

It was moved and seconded to add the following clause to the 3rd sect. of the 7 article

That from the first meeting of the Legislature of the United States until a Census shall be taken, all monies for supplying the public Treasury, by direct taxation, shall be raised from the several States according to the number of their representatives respectively in the first Branch.

It was moved and seconded to annex the following amendment to the last motion.

“subject to a final liquidation by the foregoing rule when a Census shall have been taken”

On the question to agree to the amendment

it passed in the affirmative

On the question to agree to the Proposition and amendment it passed in the negative. [Ayes — 2; noes — 8; divided — 1.]<sup>1</sup>

On the question to take up the amendment offered to the 12 sect of the 6 article, entered on the Journal of the 15th instant, and then postponed

it passed in the negative [Ayes — 5; noes — 6.]

It was moved and seconded to add the following clause to the 3rd sect. 7 article

“and whenever the Legislature of the United States shall

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<sup>1</sup> Vote 331, Detail of Ayes and Noes, which notes that the original “Proposition” was “made by Mr. Gerry”. *Journal* (p. 273) misprinted it “Ellsworth”.

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“find it necessary that revenue should be raised by direct  
 “taxation, having apportioned the same, according to the  
 “above rule, on the several States, requisitions shall be made  
 “of the respective States to pay into the Continental Treasury  
 “their respective quotas within a time in the said requisition  
 “specified, and in case of any of the States failing to comply  
 “with such requisitions, then and then only to devise and  
 “pass acts directing the mode and authorising the collection  
 “of the same.”

which passed in the negative [Ayes — 1; noes — 7;  
 divided — 1.]<sup>2</sup>

It was moved and seconded to insert the following clause  
 after the word “duty” in the first line 4 sect. 7 article

“for the purpose of revenue”

which passed in the negative. [Ayes — 3; noes — 8.]

It was moved and seconded to amend the first clause of the  
 4 sect. 7 article by inserting the following words

“unless by consent of two thirds of the legislature”

which passed in the negative [Ayes — 5; noes — 6.]

On the question to agree to the first clause of the 4 section  
 of the 7 article, as reported,

it passed in the affirmative. [Ayes — 7; noes — 4.]

It was moved and seconded to insert the word “free” before  
 the word “persons” in the 4 sect. of the 7 article.

Before the question was taken on the last motion

The House adjourned

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<sup>2</sup>Vote 333, Detail of Ayes and Noes, which notes that it was “Mr. Martin’s proposition”.

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DETAIL OF AYES AND NOES

	New Hampshire	Massachusetts	Rhode Island	Connecticut	New York	New Jersey	Pennsylvania	Delaware	Maryland	Virginia	No Carolina	So Carolina	Georgia	Questions	ayes	noes	divided
[330]	aye	aye	aye	aye	aye	aye	no	aye	aye	aye	aye	aye	aye	To agree to the 3 sect. 7 article as amended	10	1	
[331]	no	aye	no	no	no	no	no	no	no	no	dd	aye	no	To agree to the Proposition made by Mr Gerry until a Census be taken &ca	2	8	1
[332]	aye	no	aye	no	no	no	aye	aye	aye	no	no	no	no	To take up the amendmt offered to ye 12 sect. 4 art. entered on the Journal of the 15. august	5	6	
[333]			no	aye	no	no	dd	no	no	no	no	no	no	To agree to Mr. Martin's proposition respecting direct taxation	1	7	1
[334]	no	no	no	aye	aye	aye	no	no	no	no	no	no	no	To agree "to the words" for the purpose of revenue" 1st line 4 sect. 7 article	3	8	
[335]	aye	aye	no	aye	aye	aye	no	no	no	no	no	no	no	"unless by two-thirds of the Legislature" 1 line-4 sect. 7 article	5	6	
[336]	no	aye	aye	no	no	no	aye	aye	aye	aye	aye	aye	aye	To agree to ye 1st clause - 4 sect. 7 article	7	4	

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Tuesday August 21. in Convention

⟨Governour Livingston, from the Committee of Eleven to whom was referred the propositions respecting the debts of the several States, and also the Militia, entered on the 18th. inst: delivered the following report: <sup>3</sup>

“The Legislature of the U. S. shall have power to fulfil the engagements which have been entered into by Congress, and to discharge as well the debts of the U- S: as the debts

<sup>3</sup> Taken from *Journal*. Madison originally recorded substance in brief.

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incurred by the several States during the late war, for the common defence and general welfare”<sup>4</sup>

“To make laws for organizing arming and disciplining the Militia, and for governing such part of them as may be employed in the service of the U—S reserving to the States respectively, the appointment of the officers, and the authority of training the Militia according to the discipline prescribed by the U. States”)

Mr. Gerry considered giving the power only, without adopting the obligation, as destroying the security now enjoyed by the public creditors of the U—States. He enlarged on the merit of this class of citizens, and the solemn faith which had been pledged under the existing Confederation. If their situation should be changed as here proposed great opposition would be excited agst. the plan — He urged also that as the States had made different degrees of exertion to sink their respective debts, those who had done most would be alarmed, if they were now to be saddled with a share of the debts of States which had done least.

Mr. Sherman. It means neither more nor less than the confederation as it relates to this subject.

Mr Elseworth moved that the Report delivered in by Govr. Livingston should lie on the table. Agreed to nem. con.<sup>5</sup>

Art: VII. sect. 3. resumed.<sup>6</sup> — Mr. Dickenson moved to postpone this in order to reconsider Art: IV. sect. 4. and to *limit* the number of representatives to be allowed to the large States. Unless this were done the small States would be reduced to entire insignificancy, and encouragement given to the importation of slaves.

Mr. Sherman would agree to such a reconsideration, but did not see the necessity of postponing the section before the House. — Mr. Dickenson withdrew his motion.

<sup>4</sup> On the phrase “common defence and general welfare”, see Appendix A, CXXIII, CCCLXXII.

<sup>5</sup> See further, August 18 (with references under note 6), August 22–24, August 25 (with references under note 5).

<sup>6</sup> Relating to direct taxation and census.

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Art: VII. sect. 3. then agreed to (10 ays. Delaware alone being no.)<sup>7</sup>

Mr. Sherman moved (to add to sect 3, the following clause "and all accounts of supplies furnished, services performed, and monies advanced by the several States to the U— States, or by the U. S. to the several States shall be adjusted by the same rule.")<sup>8</sup>

Mr. Governr. Morris 2ds. the motion.

Mr. Ghorum, thought it wrong to insert this in the Constitution. The Legislature will no doubt do what is right. The present Congress have such a power and are now exercising it.

Mr Sherman unless some rule be expressly given none will exist under the new system.

Mr. Elsworth. (Though) The contracts of Congress will be binding, there will be no rule for executing them on the States; — and one ought to be provided.

Mr Sherman withdrew his motion to make way for one of Mr Williamson to add to sect- 3. "By this rule the (several) quotas of the States (shall be determined in) Settling the expences of the late war"<sup>9</sup>

Mr. Carrol brought into view the difficulty that might arise on this subject from the establishment of the Constitution as intended without the *Unanimous* consent of the States

Mr Williamson's motion was postponed nem. con.

Art: VI sect. 12.<sup>10</sup> which had been postponed Aug: 15. was now called for by Col. Mason. who wished to know how the proposed amendment as to money bills would be decided, before he agreed to any further points.

Mr. Gerry's motion of yesterday that previous to a census, direct taxation be proportioned on the States according to the number of Representatives, was taken up— He observed that the principal acts of Government would probably take place within that period, and it was but reasonable that the States should pay in proportion to their share in them.

<sup>7</sup> Taken from *Journal*.

<sup>8</sup> Taken from *Journal*. Madison originally recorded the substance of the motion.

<sup>9</sup> Revised from *Journal*.

<sup>10</sup> Article VI, Sect. 12. "Each House shall possess the right of originating bills."

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Mr. Elsworth thought such a rule unjust— there was a great difference between the number of Represents. and the number of inhabitants as a rule in this case. Even if the former were proportioned as nearly as possible to the latter, it would be a very inaccurate rule— A State might have one Representative only, that had inhabitants enough for  $1\frac{1}{2}$  or more, if fractions could be applied — &c —. He proposed to amend the motion by adding (the words “subject to a final liquidation by the foregoing rule when a census shall have been taken.”)<sup>11</sup>

Mr. M(adison.) The last appointment of Congs., on which the number of Representatives was founded, was conjectural and meant only as a temporary rule till a Census should be established.

Mr. Read. The requisitions of Congs. had been accommodated to the impoverishments produced by the war; and to other local and temporary circumstances —

Mr. Williamson opposed Mr Gerry’s motion

Mr Langdon was not here when N. H. was allowed three members. If it was more than her share; he did not wish for them.

Mr. Butler contended warmly for Mr Gerry’s motion as founded in reason and equity.

Mr. Elsworth’s proviso to Mr. Gerry’s motion was agreed to nem con.

Mr. King thought the power of taxation given to the Legislature rendered the motion of Mr Gerry altogether unnecessary.

On Mr Gerry’s motion as amended

N- H- no Mas- ay. Ct no N- J- no. Pa. no- Del. no- Md no- Va no- N- Ci- divd. S- C. ay. Geo. no- [Ayes— 2; noes — 8; divided — 1.]

On a question Shall art: VI sect. 12 with the amendment to it proposed & entered on the 15 instant,<sup>12</sup> as called for by Col Mason be now taken up? (it passed in the Negative.)

N. H. ay- Mas- no- Ct ay- N- J- no- Pa no- Del- no-

<sup>11</sup> Taken from *Journal*. Madison originally recorded the substance of the motion.

<sup>12</sup> This wording may have been revised from *Journal*.

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Md ay. Va ay. N- C- ay- S- C- no- Geo. no- [Ayes — 5; noes — 6.]

Mr L. Martin. The power of taxation is most likely to be criticised by the public. Direct taxation should not be used but in cases of absolute necessity; and then the States will be best Judges of the mode. He therefore moved (the following addition to sect: 3. Art: VII “And whenever the Legislature of the U: S: shall find it necessary that revenue should be raised by direct taxation, having apportioned the same, according to the above rule on the several States, — requisitions shall be made of the respective States to pay into the Continental Treasury their respective quotas within a time in the said requisitions specified; and in case of any of the States failing to comply with such requisitions, then and then only to devise and pass acts directing the mode, and authorizing the collection of the same”)<sup>13</sup>

Mr McHenry 2ded. the motion — there was no debate, and on the question

N— H— no— Ct. no. N. J. ay. Pena. no. Del. no. Md. divd. (Jenifer & Carrol no). Va. no. N. C. no. S. C. no. Geo. no. [Ayes — 1; noes — 8; divided — 1.]<sup>14</sup>

Art. VII. sect. 4.<sup>15</sup> — Mr. Langdon. by this section the States are left at liberty to tax exports. N. H. therefore with other non-exporting States, will be subject to be taxed by the States exporting its produce. This could not be admitted. It seems to be feared that the Northern States will oppress the trade of the Southn. This may be guarded agst by requiring the concurrence of  $\frac{2}{3}$  or  $\frac{3}{4}$  of the legislature in such cases.

Mr Elseworth— It is best as it stands— The power of

<sup>13</sup> Taken from *Journal*. Madison originally recorded the substance. See Appendix A, CLVIII (49), CLXXXIX, CXCI.

<sup>14</sup> Detail of Ayes and Noes (Vote 333) omits New Hampshire.

<sup>15</sup> Article VII, Sect. 4. “No tax or duty shall be laid by the Legislature on articles exported from any State; nor on the migration or importation of such persons as the several States shall think proper to admit; nor shall such migration or importation be prohibited.”

Upon this question, see above, July 23, and August 16, and Appendix A, II, CXLVIa, CCLXV, CCCXXXVI.



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regulating trade between the States will protect them agst each other — Should this not be the case, the attempts of one to tax the produce of another passing through its hands, will force a direct exportation and defeat themselves — There are solid reasons agst. Congs taxing exports. 1. it will discourage industry, as taxes on imports discourage luxury. 2. The produce of different States is such as to prevent uniformity in such taxes. there are indeed but a few articles that could be taxed at all; as Tobo. rice & indigo, and a tax on these alone would be partial & unjust. 3. The taxing of exports would engender incurable jealousies.

Mr Williamson. Tho' N— C. has been taxed by Virga by a duty on 12,000 Hhs of her Tobo. exported thro' Virga yet he would never agree to this power. Should it take place, it would destroy the last hope of an adoption of the plan.

Mr. Govr Morris. These local considerations ought not to impede the general interest. There is great weight in the argument, that the exporting States will tax the produce of their uncommercial neighbours. The power of regulating the trade between Pa & N. Jersey will never prevent the former from taxing the latter. Nor will such a tax force a direct exportation from N— Jersey— The advantages possessed by a large trading City, outweigh the disadvantage of a moderate duty; and will retain the trade in that channel— If no tax can be laid on exports, an embargo cannot be laid, though in time of war such a measure may be of critical importance — Tobacco, lumber, and live-stock are three objects belonging to different States, of which great advantage might be maed by a power to tax exports — To these may be added Ginseng and Masts for Ships by which a tax might be thrown on other nations. The idea of supplying the West Indies with lumber from Nova Scotia, is one of the many follies of lord Sheffield's pamphlets. The State of the Country also, will change, and render duties on exports, as skins, beaver & other peculiar raw materials, politic in the view of encouraging American Manufactures.

Mr. Butler was strenuously opposed to a power over exports; as unjust and alarming to the staple States.

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Mr. Langdon suggested a prohibition on the States from taxing the produce of other States exported from their harbours.

Mr. Dickenson. The power of taxing exports may be inconvenient at present; but it must be of dangerous consequence to prohibit it with respect to all articles and for ever. He thought it would be better to except particular articles from the power.

Mr. Sherman— It is best to prohibit the National legislature in all cases. The States will never give up all power over trade. An enumeration of particular articles would be difficult invidious and improper.

Mr M(adison) As we ought to be governed by national and permanent views, it is a sufficient argument for giving ye power over exports that a tax, tho' it may not be expedient at present, may be so hereafter.<sup>16</sup> A proper regulation of exports may & probably will be necessary hereafter, and for the same purposes as the regulation of — imports; viz, for revenue — domestic manufactures<sup>17</sup> — and procuring equitable regulations from other nations. An Embargo may be of absolute necessity, and can alone be effectuated by the Genl. authority. The regulation of trade between State and State can not effect more than indirectly to hinder a State from taxing its own exports; by authorizing its Citizens to carry their commodities freely into a neighbouring State which might decline taxing exports in order to draw into its channel the trade of its neighbours — As to the fear of disproportionate burdens on the more exporting States, it might be remarked that it was agreed on all hands that the revenue wd. principally be drawn from trade, and as only a given revenue would be needed, it was not material whether all should be drawn wholly from imports — or half from those, and half from exports — The imports and exports must be pretty nearly equal in every State — and relatively the same among the different States.

Mr Elseworth did not conceive an embargo by the Congress interdicted by this section.

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<sup>16</sup> Crossed out: "for the general good of the Union".

<sup>17</sup> See Appendix A, CCCLXIV, CCCXC.

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Mr. McHenry conceived that power to be included in the power of war.

Mr. Wilson. Pennsylvania exports the produce of Maryland, N. Jersey, Delaware & will by & by when the River Delaware is opened, export for N—York. In favoring the general power over exports therefore, he opposed the particular interest of his State. He remarked that the power had been attacked by reasoning which could only have held good in case the Genl Govt. had been *compelled*, instead of *authorized*, to lay duties on exports. To deny this power is to take from the Common Govt. half the regulation of trade — It was his opinion that a power over exports might be more effectual than that over imports in obtaining beneficial treaties of commerce.

Mr. Gerry was strenuously opposed to the power over exports. It might be made use of to compel the States to comply with the will of the Genl Government, and to grant it any new powers which might be demanded — We have given it more power already than we know how will be exercised — It will enable the Genl Govt to oppress the States, as much as Ireland is oppressed by Great Britain.

Mr. Fitzimmons would be agst. a tax on exports to be laid immediately; but was for giving a power of laying the tax when a proper time may call for it — This would certainly be the case when America should become a manufacturing country — He illustrated his argument by the duties in G— Britain on wool &c.

Col. Mason — If he were for reducing the States to mere corporations as seemed to be the tendency of some arguments, he should be for subjecting their exports as well as imports to a power of general taxation — He went on a principle often advanced & in which he concurred, that “a majority when interested will oppress the minority”. This maxim had been verified by our own Legislature (of Virginia). If we compare the States in this point of view the 8 Northern States have an interest different from the five Southn. States, — and have in one branch of the legislature 36 votes agst 29. and in the other, in the proportion of 8 agst 5. The Southern

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States had therefore ground for their suspicions. The case of Exports was not the same with that of imports. The latter were the same throughout the States: the former very different. As to Tobacco other nations do raise it, and are capable of raising it as well as Virga. &c. The impolicy of taxing that article had been demonstrated by the experiment of Virginia —

Mr Clymer remarked that every State might reason with regard to its particular productions, in the same manner as the Southern States. The middle States may apprehend an oppression of their wheat flour, provisions, &c. and with more reason, as these articles were exposed to a competition in foreign markets not incident to Tobo. rice &c — They may apprehend also combinations agst. them between the Eastern & Southern States as much as the latter can apprehend them between the Eastern & middle — He moved as a qualification of the power of taxing Exports that it should be restrained to regulations of trade, (by inserting after the word “duty” Sect 4 art VII the words)<sup>18</sup> “for the purpose of revenue.”

On Question on Mr. Clymer’s motion

N. H— no— Mas. no. Ct. no. N. J— ay. Pa ay. Del. ay. Md. no. Va. no. N— C. no. Geo. no. [Ayes — 3; noes — 7.]<sup>19</sup>

Mr. M(adison,) In order to require  $\frac{2}{3}$  of each House to tax exports — as a lesser evil than a total prohibition (moved to insert the words “unless by consent of two thirds of the Legislature”),<sup>20</sup> Mr Wilson 2ds. and on this question, (it passed in the Negative.)

N. H. ay. Mas— ay. Ct. no. N. J. ay. Pa. ay. Del. ay. Md. no. Va. no. ((Col. Mason, Mr. Randolph Mr. Blair no.) Genl Washington & J. M. ay.) N. C. no. S— C. no. Geo. no. [Ayes — 5; noes — 6.]

Question on sect: 4. art VII. as far as to <sup>21</sup> “no tax shl. be laid on exports — (It passed in the affirmative) —

N. H. no. Mas. ay. Ct. ay. N— J. no. Pa. no— Del. no.

<sup>18</sup> Revised from *Journal*.

<sup>19</sup> Detail of Ayes and Noes (Vote 334) includes South Carolina in the negative.

<sup>20</sup> Revised from *Journal*.

<sup>21</sup> “as far as to” renders the clause meaningless; it may be a later insertion.

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Md ay. Va. ay (Genl W. & J. M. no.)<sup>22</sup> N. C. ay. S. C. ay. Geo— ay. [Ayes — 7; noes — 4.]

Mr L— Martin, proposed to vary the sect: 4. art VII so as to allow a prohibition or tax on the importation of slaves.<sup>23</sup>  
 1. As five slaves are to be counted as 3 free men in the apportionment of Representatives; such a clause wd. leave an encouragement to this trafic. 2 slaves weakened one part of the Union which the other parts were bound to protect: the privilege of importing them was therefore unreasonable —  
 3. it was inconsistent with the principles of the revolution and dishonorable to the American character to have such a feature in the Constitution.

Mr Rutledge did not see how the importation of slaves could be encouraged by this section. He was not apprehensive of insurrections and would readily exempt the other States from<sup>24</sup> (the obligation to protect the Southern against them.). — Religion & humanity had nothing to do with this question — Interest alone is the governing principle with Nations — The true question at present is whether the Southn. States shall or shall not be parties to the Union. If the Northern States consult their interest, they will not oppose the increase of Slaves which will increase the commodities of which they will become the carriers.

Mr. Elsworth was for leaving the clause as it stands. let every State import what it pleases. The morality or wisdom of slavery are considerations belonging to the States themselves — What enriches a part enriches the whole, and the States are the best judges of their particular interest. The old confederation had not meddled with this point, and he did not see any greater necessity for bringing it within the policy of the new one:

Mr Pinkney. South Carolina can never receive the plan if it prohibits the slave trade. In every proposed extension of the powers of Congress, that State has expressly & watchfully excepted that of meddling with the importation of negroes.

<sup>22</sup> See Appendix A, CXXXIV.

<sup>23</sup> Upon this question see further, references under August 22, note 2, and August 25, note 7.

<sup>24</sup> Crossed out "being protected agst. them".

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*Tuesday*

McHENRY

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If the States be all left at liberty on this subject, S. Carolina may perhaps by degrees do of herself what is wished, as Virginia & Maryland have already done.

Adjourned<sup>25</sup>

McHENRY

*Augt. 21.*

passed the 3 sect.

Took up 4 sect. adjourned, after passing the first clause to the word State 2 line inclusive.

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<sup>25</sup> See further, Appendix A, XC.