

WEDNESDAY, AUGUST 22, 1787.

JOURNAL

Wednesday August 22nd 1787.

The motion, made yesterday, to insert the word "free" before the word "persons" in the 4 section of the 7 article, being withdrawn,

It was moved and seconded to commit the two remaining clauses of the 4 section, and the 5 section of the 7 article

which passed in the affirmative. [Ayes — 7; noes — 3.]

It was moved and seconded to com't the 6th section of the 7 article

which passed in the affirmative [Ayes — 9; noes — 2.] and a Committee (of a Member from each State) was appointed by ballot of the honorable Mr Langdon, Mr King, Mr Johnson, Mr Livingston, Mr Clymer, Mr Dickinson, Mr L. Martin, Mr Madison, Mr Williamson, Mr C. C. Pinckney, & Mr Baldwin. — to whom the 2 remaining clauses of the 4th & ye 5 & 6 sections were referred.

The honorable Mr Rutledge, from the Committee to whom sundry propositions were referred on the 18 and 20th instant, informed the House that the Committee were prepared to report — he then read the report in his place — and the same, being delivered in at the Secretary's table, was again read throughout, and is as follows

The Committee report that in their opinion the following additions should be made to the report now before the Convention vizt

at the end of the 1st clause of the 1st section of the 7 article add

"for payment of the debts and necessary expences of the "United States — provided that no law for raising any branch

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“of revenue, except what may be specially appropriated for
“the payment of interest on debts or loans shall continue in
“force for more than years”

at the end of the 2nd clause, 2 sect. 7 article add

“and with Indians, within the Limits of any State, not
“subject to the laws thereof”

at the end of the 16 clause of the 2 sect. 7 article add

“and to provide, as may become necessary, from time to
“time, for the well managing and securing the common prop-
“erty and general interests and welfare of the United States
“in such manner as shall not interfere with the Governments
“of individual States in matters which respect only their
“internal Police, or for which their individual authorities
“may be competent”

at the end of the 1st section 10 article add

“he shall be of the age of thirty five years, and a Citizen
“of the United States, and shall have been an Inhabitant
“thereof for Twenty one years”

after the 2nd section of the 10th article insert the following as
a 3rd section.

“The President of the United States shall have a Privy-
“Council which shall consist of the President of the Senate,
“the Speaker of the House of representatives, the Chief-
“Justice of the Supreme-Court, and the principal Officer in
“the respective departments of foreign affairs, domestic-
“affairs, War, Marine, and Finance, as such departments of
“office shall from time to time be established — whose duty
“it shall be to advise him in matters respecting the execution
“of his Office, which he shall think proper to lay before them:
“But their advice shall not conclude him, nor affect his respon-
“sibility for the measures which he shall adopt”

at the end of the 2nd section of the 11 article add

“The Judges of the Supreme Court shall be triable by the
“Senate, on impeachment by the House of representatives”
Between the 4 & 5 lines of the 3rd section of the 11 article,
after the word “controversies” — insert

“between the United States and an individual State, or
“the United States and an individual person”

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It was moved and seconded to rescind the order of the House respecting the hours of meeting and adjournment

which passed in the negative [Ayes — 4; noes — 7.]

It was moved and seconded to insert the following clause after the 2nd section of the 7 article

“The Legislature shall pass no bill of attainder, nor any ex post facto laws.”

which passed in the affirmative [Ayes—7; noes—3; divided — 1.]

It was moved and seconded to take up the report of the Committee of five,

It was moved and seconded to postpone the consideration of the report, in order that the Members may furnish themselves with copies of the report,

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

It was moved and seconded to take up the report of the Committee of eleven, entered on the Journal of the 21st instant

which passed in the affirmative.

It was moved and seconded to amend the first clause of the report to read as follows.

“The Legislature shall fulfil the engagements and discharge the debts of the United States”

It was moved and seconded to alter the amendment by striking out the words “discharge the debts” and insert the words “liquidate the claims”

which passed in the negative

On the question to agree to the clause as amended, namely,

“The Legislature shall fulfil the engagements and discharge the debts of the United States”

it passed in the affirmative [Ayes — 11; noes — 0.]¹

It was moved and seconded to strike the following words out of the second clause of the report

“and the authority of training the militia according to the “discipline prescribed by the United States”

Before the question was taken on the last motion

The House adjourned

¹ Vote 342, Detail of Ayes and Noes, which notes that it was “Mr Morris’s amendment”.

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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
[337]	no			aye	aye	no	no	aye	aye	aye	aye	aye	aye	To commit ye remaing clauses of the 4th & the 5 sect 7 article	7	3	
[338]	aye	aye	no	no	aye	aye	aye	aye	aye	aye	aye	aye	aye	To commit the 6th section 7 article	9	2	
[339]	no	aye	no	no	aye	aye	aye	no	no	no	no	no	no	To rescind the order of the House respecting the hours of meeting and adjournment	4	7	
[340]	aye	aye	no	no	no	aye	aye	aye	dd	aye	aye	aye	aye	To agree to the clause after the 2nd sect. 7 article	7	3	1
[341]	no	aye	no	aye	no	no	aye	aye	aye	aye	no	aye	aye	To postpone the considn of the report of the Committee of five	6	5	
[342]	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	To agree to Mr Morris's amendment of the 1st clause of the report of the Committee of eleven	11		

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Art. VII sect 4. resumed.² Mr. Sherman was for leaving the clause as it stands. He disapproved of the slave trade: yet as the States were now possessed of the right to import slaves, as the public good did not require it to be taken from them, & as it was expedient to have as few objections as possible to the proposed scheme of Government, he thought it best to leave the matter as we find it. He observed that the abolition of slavery seemed to be going on in the U. S.

² Upon this question, see above, July 23, August 8, and August 21, and Appendix A, CXLVIII, CLI, CLVIII (56-60), CLXXI, CCXII, CCLI, CCLIII, CCCXXXIV, CCCXXXV, also below August 25 (with references under note 7), August 28 and August 29.

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& that the good sense of the several States would probably by degrees compleat it. He urged on the Convention the necessity of despatch(ing its business.)

Col. Mason. This infernal trafic originated in the avarice of British Merchants. The British Govt. constantly checked the attempts of Virginia to put a stop to it. The present question concerns not the importing States alone but the whole Union. The evil of having slaves was experienced during the late war. Had slaves been treated as they might have been by the Enemy, they would have proved dangerous instruments in their hands. But their folly dealt by the slaves, as it did by the Tories. He mentioned the dangerous insurrections of the slaves in Greece and Sicily; and the instructions given by Cromwell to the Commissioners sent to Virginia, to arm the servants & slaves, in case other means of obtaining its submission should fail. Maryland & Virginia he said had already prohibited the importation of slaves expressly. N. Carolina had done the same in substance. All this would be in vain if S. Carolina & Georgia be at liberty to import. The Western people are already calling out for slaves for their new lands; and will fill that Country with slaves if they can be got thro' S. Carolina & Georgia. Slavery discourages arts & manufactures. The poor despise labor when performed by slaves. They prevent the immigration of Whites, who really enrich & strengthen a Country. They produce the most pernicious effect on manners. Every master of slaves is born a petty tyrant. They bring the judgment of heaven on a Country. As nations can not be rewarded or punished in the next world they must be in this. By an inevitable chain of causes & effects providence punishes national sins, by national calamities. He lamented that some of our Eastern brethren had from a lust of gain embarked in this nefarious trafic. As to the States being in possession of the Right to import, this was the case with many other rights, now to be properly given up. He held it essential in every point of view, that the Genl. Govt. should have power to prevent the increase of slavery.

Mr. Elsworth. As he had never owned a slave could not

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judge of the effects of slavery on character. He said however that if it was to be considered in a moral light we ought to go farther and free those already in the Country. — As slaves also multiply so fast in Virginia & Maryland that it is cheaper to raise than import them, whilst in the sickly rice swamps foreign supplies are necessary, if we go no farther than is urged, we shall be unjust towards S. Carolina & Georgia — Let us not intermeddle. As population increases; poor laborers will be so plenty as to render slaves useless. Slavery in time will not be a speck in our Country. Provision is already made in Connecticut for abolishing it. And the abolition has already taken place in Massachusetts. As to the danger of insurrections from foreign influence, that will become a motive to kind treatment of the slaves.

Mr. Pinkney — If slavery be wrong, it is justified by the example of all the world. He cited the case of Greece Rome & other antient States; the sanction given by France England, Holland & other modern States. In all ages one half of mankind have been slaves. If the S. States were let alone they will probably of themselves stop importations. He wd. himself as a Citizen of S. Carolina vote for it. An attempt to take away the right as proposed will produce serious objections to the Constitution which he wished to see adopted.

General Pinkney declared it to be his firm opinion that if himself & all his colleagues were to sign the Constitution & use their personal influence, it would be of no avail towards obtaining the assent of their Constituents. S. Carolina & Georgia cannot do without slaves. As to Virginia she will gain by stopping the importations. Her slaves will rise in value, & she has more than she wants. It would be unequal to require S. C. & Georgia to confederate on such unequal terms. He said the Royal assent before the Revolution had never been refused to S. Carolina as to Virginia. He contended that the importation of slaves would be for the interest of the whole Union. The more slaves, the more produce to employ the carrying trade; The more consumption also, and the more of this, the more of revenue for the common treasury. He admitted it to be reasonable that slaves should be dutied

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like other imports, but should consider a rejection of the clause as an exclusion of S. Carola from the Union.

Mr. Baldwin had conceived national objects alone to be before the Convention, not such as like the present were of a local nature. Georgia was decided on this point. That State has always hitherto supposed a Genl Governmt to be the pursuit of the central States who wished to have a vortex for every thing — that her distance would preclude her from equal advantage — & that she could not prudently purchase it by yielding national powers. From this it might be understood in what light she would view an attempt to abridge one of her favorite prerogatives. If left to herself, she may probably put a stop to the evil. As one ground for this conjecture, he took notice of the sect of _____ which he said was a respectable class of people, who carryed their ethics beyond the mere *equality of men*, extending their humanity to the claims of the whole animal creation.

Mr. Wilson observed that if S. C. & Georgia were themselves disposed to get rid of the importation of slaves in a short time as had been suggested, they would never refuse to Unite because the importation might be prohibited. As the Section now stands all articles imported are to be taxed. Slaves alone are exempt. This is in fact a bounty on that article.

Mr. Gerry thought we had nothing to do with the conduct of the States as to Slaves, but ought to be careful not to give any sanction to it.

Mr. Dickenson considered it as inadmissible on every principle of honor & safety that the importation of slaves should be authorized to the States by the Constitution. The true question was whether the national happiness would be promoted or impeded by the importation, and this question ought to be left to the National Govt. not to the States particularly interested. If Engd. & France permit slavery, slaves are at the same time excluded from both those Kingdoms. Greece and Rome were made unhappy by their slaves. He could not believe that the Southn. States would refuse to confederate on the account apprehended; especially as the power was

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not likely to be immediately exercised by the Genl. Government.

Mr Williamson stated the law of N. Carolina on the subject, to wit that it did not directly prohibit the importation of slaves. It imposed a duty of £5. on each slave imported from Africa. £10. on each from elsewhere, & £50 on each from a State licensing manumission. He thought the S. States could not be members of the Union if the clause should be rejected, and that it was wrong to force any thing down, not absolutely necessary, and which any State must disagree to.

Mr. King thought the subject should be considered in a political light only. If two States will not agree to the Constitution as stated on one side, he could affirm with equal belief on the other, that great & equal opposition would be experienced from the other States. He remarked on the exemption of slaves from duty whilst every other import was subjected to it, as an inequality that could not fail to strike the commercial sagacity of the Northn. & middle States.

Mr. Langdon was strenuous for giving the power to the Genl. Govt. He cd. not with a good conscience leave it with the States who could then go on with the traffic, without being restrained by the opinions here given that they will themselves cease to import slaves.

Genl. Pinkney thought himself bound to declare candidly that he did not think S. Carolina would stop her importations of slaves in any short time, but only stop them occasionally as she now does. He moved to commit the clause that slaves might be made liable to an equal tax with other imports which he he thought right & wch. wd. remove one difficulty that had been started.

Mr. Rutlidge. If the Convention thinks that N. C; S. C. & Georgia will ever agree to the plan, unless their right to import slaves be untouched, the expectation is vain. The people of those States will never be such fools as to give up so important an interest. He was strenuous agst. striking out the Section, and seconded the motion of Genl. Pinkney for a commitment.

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Mr Govr. Morris wished the whole subject to be committed including the clauses relating to taxes on exports & to a navigation act. These things may form a bargain among the Northern & Southern States.

Mr. Butler declared that he never would agree to the power of taxing exports.

Mr. Sherman said it was better to let the S. States import slaves than to part with them, if they made that a sine qua non. He was opposed to a tax on slaves imported as making the matter worse, because it implied they were *property*. He acknowledged that if the power of prohibiting the importation should be given to the Genl. Government that it would be exercised. He thought it would be its duty to exercise the power.

Mr. Read was for the commitment provided the clause concerning taxes on exports should also be committed.

Mr. Sherman observed that that clause had been agreed to & therefore could not committed.

Mr. Randolph was for committing in order that some middle ground might, if possible, be found. He could never agree to the clause as it stands. He wd. sooner risk the constitution — He dwelt on the dilemma to which the Convention was exposed. By agreeing to the clause, it would revolt the Quakers, the Methodists, and many others in the States having no slaves. On the other hand, two States might be lost to the Union. Let us then, he said, try the chance of a commitment.

On the question for committing the remaining part of Sect 4 & 5. of art: 7. N. H. no. Mas. abst. Cont. ay N. J. ay Pa. no. Del. no Maryd ay. Va ay. N. C. ay S. C. ay. Geo. ay. [Ayes — 7; noes — 3; absent — 1.]

Mr. Pinkney & Mr. Langdon moved to commit sect. 6. as to navigation act (by two thirds of each House.)

Mr. Gorham did not see the propriety of it. Is it meant to require a greater proportion of votes? He desired it to be remembered that the Eastern States had no motive to Union but a commercial one. They were able to protect themselves. They were not afraid of external danger, and did not need the aid of the Southn. States.

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Mr. Wilson wished for a commitment in order to reduce the proportion of votes required.

Mr. Elsworth was for taking the plan as it is. This widening of opinions has a threatening aspect. If we do not agree on this middle & moderate ground he was afraid we should lose two States, with such others as may be disposed to stand aloof, should fly into a variety of shapes & directions, and most probably into several confederations and not without bloodshed.

On Question for committing 6 sect. as to navigation Act to a member from each State — N. H. ay— Mas. ay. Ct no. N. J. no. Pa. ay. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay. [Ayes — 9; noes — 2.]

The Committee appointed were Mr. Langdon, King, Johnson, Livingston, Clymer, Dickenson, L. Martin,³ Madison, Williamson, C. C. Pinkney, & Baldwin.

To this committee were referred also the two clauses above mentioned, of the 4 & 5. sect: of art. 7.

Mr. Rutledge, from the Committee to whom were referred on the 18 & 20th. instant the propositions of Mr. Madison & Mr. Pinkney, made the Report following. —

~~☞~~ ((Here insert) ——— the Report (from) the Journal of the Convention of this date.) —

A motion to rescind the order of the House respecting the hours of meeting & adjourning, was negatived:

(Mass: Pa. Del. Maryland. ay
N. H. Con: N. J. Va. N. C. S. C. Geo. no)⁴

Mr. Gerry⁵ & Mr. McHenry moved to insert after the 2d. sect. art: 7. the clause following, to wit, “The Legislature shall pass no bill of attainder nor (any)⁴ ex post facto law” *

Mr. Gerry urged the necessity of this prohibition, which he said was greater in the National than the State Legislature, because the number of members in the former being fewer, they were on that account the more to be feared.

* (the proceedings on this motion involving the two questions on “attainders & ex post facto laws.” are not so fully stated in the printed Journal.)

³ See Appendix A, CLXXXIX.

⁵ See Appendix A, CLI.

⁴ Taken from *Journal*.

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Mr. Govr. Morris thought the precaution as to ex post facto laws unnecessary; but essential as to bills of attainder

Mr Elseworth contended that there was no lawyer, no civilian who would not say that ex post facto laws were void of themselves. It cannot then be necessary to prohibit them.

Mr. Wilson was against inserting anything in the Constitution as to ex post facto laws. It will bring reflexions on the Constitution — and proclaim that we are ignorant of the first principles of Legislation, or are constituting a Government which will be so.

The question being divided, The first part of the motion relating to bills of attainder was agreed to *nem. contradicente*.

On the second part relating to ex post facto laws —

Mr Carrol remarked that experience overruled all other calculations. It had proved that in whatever light they might be viewed by civilians or others, the State Legislatures had passed them, and they had taken effect.

Mr. Wilson. If these prohibitions in the State Constitutions have no effect, it will be useless to insert them in this Constitution. Besides, both sides will agree to the principle & will differ as to its application.

Mr. Williamson. Such a prohibitory clause is in the Constitution of N. Carolina, and tho it has been violated, it has done good there & may do good here, because the Judges can take hold of it

Docr. Johnson thought the clause unnecessary, and implying an improper suspicion of the National Legislature.

Mr. Rutledge was in favor of the clause.

On the question for inserting the prohibition of ex post facto laws.

N— H— ay— Mas. ay. Cont. no. N. J— no. Pa. no. Del— ay. Md. ay. Virga. ay N— C. divid. S. C. ay— Geo. ay. [Ayes — 7; noes — 3; divided — 1.]

The report of the committee of 5. made by Mr. Rutledge, was taken up & then postponed that each member Might furnish himself with a copy.

The Report of the Committee of Eleven delivered in & entered on the Journal of the 21st. inst. was then taken up.

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and the first clause containing the words "The Legislature of the U. S. *shall have power* to fulfil the engagements which have been entered into by Congress" being under consideration,⁶

Mr. Elsworth argued that they were unnecessary. The U— S— heretofore entered into Engagements by Congs who were their Agents. They will hereafter be bound to fulfil them by their new agents.

Mr Randolph thought such a provision necessary; for though the U. States will be bound, the new Govt will have no authority in the case unless it be given to them.

Mr. Madison thought it necessary to give the authority in order to prevent misconstruction. He mentioned the attempts made by the Debtors to British subjects to shew that contracts under the old Government, were dissolved by the Revolution which destroyed the political identity of the Society.

Mr Gerry thought it essential that some explicit provision should be made on this subject, so that no pretext might remain for getting rid of the public engagements.

Mr. Govr. Morris moved by way of amendment to substitute — "The Legislature *shall* discharge the debts & fulfil the engagements (of the U. States)".

It was moved to vary the amendment by striking out "discharge the debts" & to insert "liquidate the claims", which being negatived,

The amendment moved by Mr. Govr. Morris was agreed to all the States being in the affirmative.

It was moved & 2ded. to strike the following words — out of the 2d. clause of the report "and the authority of training the Militia according to the discipline prescribed by the U— S." (Before a question was taken)⁷

The House adjourned ⁸

⁶ See further, August 18 (with references under note 6), August 21, August 23-24, and August 25 (with references under note 5).

⁷ Taken from *Journal*,

⁸ See further, Appendix A, XCI-XCIII.

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Committed the remainder of the 4 sect. with the 5 and 6.

The 4 sect promising the importation of Slaves gave rise to much desultory debate.

Every 5 slaves counted in representation as one elector without being equal in point of strength to one *white* inhabitant.

This gave the slave States an advantage in representation over the others.

The slaves were moreover exempt from duty on importation.

They served to render the representation from such States aristocratical.

It was replied — That the population or increase of slaves in Virginia exceeded their calls for their services — That a prohibition of Slaves into S. Carolina Georgia etc — would be a monopoly in their favor. These States could not do without Slaves — Virginia etc would make their own terms for such as they might sell.

Such was the situation of the country that it could not exist without slaves — That they could confederate on no other condition.

They had enjoyed the right of importing slaves when colonies.

They enjoyed as States under the confederation — And if they could not enjoy it under the proposed government, they could not associate or make a part of it.

Several additions were reported by the Committee.

Mr. Martin shewed us some restrictory clauses drawn up for the VII article respecting commerce — which we agreed to bring forward. —

Moved that the legislature should pass no *ex post facto* laws or bills of attainder.

G. Morris Willson Dr. Johnson etc thought the first an unnecessary guard as the principles of justice law et[c] were

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a perpetual bar to such — To say that the legis. shall not pass an ex post facto law is the same as to declare they shall not do a thing contrary to common sense — that they shall not cause that to be a crime which is no crime —

Carried in the affirmative.