

SATURDAY, AUGUST 25, 1787.

JOURNAL

Saturday August 25. 1787.

It was moved and seconded to postpone the first clause of the first section 7 article, in order to take up the following amendment

“all debts contracted and engagements entered into, by or
“under the authority of Congress shall be as valid against the
“United States under this constitution as under the confed-
“eration.”

which passed in the affirmative

On the question to agree to the amendment

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

It was moved and seconded to add the following clause to the first clause of the 1st sect. 7 article

“for the payment of said debts and for the defraying the
“expences that shall be incurred for the common defence and
“general welfare”

which passed in the negative. [Ayes — 1; noes — 10.]

It was moved and seconded to amend the report of the Committee of eleven, entered on the Journal of the 24th instant as follows

to strike out the words “the year eighteen hundred” and to insert the words “the year eighteen hundred and eight”

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

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

The importation of Slaves into such of the States as shall

¹ Vote 365, Detail of Ayes and Noes, which notes that it was “Mr. Randolph’s amendment”.

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permit the same shall not be prohibited by the Legislature of the U. S. until the year 1808.

which passed in the negative ²

On the question to agree to the first part of the report as amended, namely.

“The migration or importation of such persons as the several States now existing shall think proper to admit shall not be prohibited by the Legislature prior to the year 1808.”

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

It was moved and seconded to strike out the words “average of the duties laid on Imports” and to insert the words

“common impost on articles not enumerated”

which passed in the affirmative

It was moved and seconded to amend the second clause of the report to read

“but a tax or duty may be imposed on such importation not exceeding ten dollars for each person”

which passed in the affirmative.

On the question to agree to the second clause of the report as amended

it passed in the affirmative

On the question to postpone the farther consideration of the report .

it passed in the affirmative

It was moved and seconded to amend the 8th article to read

“This Constitution and the Laws of the United States, which shall be made in pursuance thereof and all treaties made or which shall be made under the authority of the United-States shall be the supreme law of the several States, and of their citizens and inhabitants; and the Judges in the several States shall be bound thereby in their decisions; any thing in the constitutions or laws of the several States to the contrary notwithstanding”

which passed in the affirmative

² *Journal* (p. 292) ascribes Vote 369, Detail of Ayes and Noes, to this question, but there is no apparent reason for this, and probably it is the same as reported by Madison (see below note 15) and McHenry.

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It was moved and seconded to agree to the following propositions

“The Legislature of the United States shall not oblige
“Vessels belonging to Citizens thereof, or to foreigners, to
“enter or pay duties, or imposts in any other State than in
“that to which they may be bound, or to clear out in any
“other than the State in which their cargoes may be laden
“on board — Nor shall any privilege, or immunity, be granted
“to any vessels on entering, clearing out, or paying duties
“or imposts in one State in preference to another”

“Should it be judged expedient by the Legislature of the
“United States that one or more ports for collecting duties
“or imposts other than those ports of entrance and clearance
“already established by the respective States should be estab-
“lished, the Legislature of the U. S. shall signify the same
“to the Executive of the respective States ascertaining the
“number of such ports judged necessary; to be laid by the
“said Executives before the Legislatures of the States at their
“next session; and the legislature of the U. S. shall not have
“the power of fixing or establishing the particular ports for
“collecting duties or imposts in any State except the Legisla-
“ture of such State shall neglect to fix and establish the same
“during their first session to be held after such notification
“by the legislature of the U. S. to the executive of such State.

“all duties, imposts, and excises, prohibitions or restraints
“laid or made by the Legislature of the U. S. shall be uniform
“and equal throughout the United States”

It was moved and seconded to refer the above propositions to a Committee of a Member from each State

which passed in the affirmative

and a Committee was appointed by ballot of the honorable
Mr Langdon, Mr Gorham, Mr Sherman, Mr Dayton, Mr Fitz
Simmons, Mr Read, Mr Carrol Mr Mason, Mr Williamson, Mr
Butler and Mr Few.

[To agree to Mr Sherman’s amendment Ayes — 3; noes —
6; divided — 1.]³

³ Vote 369, Detail of Ayes and Noes.

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It was moved and seconded to add the words

“and other public Ministers” after the word “Ambassadors” 2 sect. 10 article

which passed in the affirmative. [Ayes — 10; noes — 0.]

It was moved and seconded to strike the words “and may correspond with the supreme executives of the several States” out of ye 2 sect. 10 article

which passed in the affirmative [Ayes — 9; noes — 1.]

[—————Ayes — 1; noes — 9.]⁴

It was moved and seconded to insert the words “except in cases of impeachment” after the word “pardons” 2 sect. 10 article

which passed in the affirmative

On the question to agree to the following clause

“but his pardon shall not be pleadable in bar”

it passed in the negative [Ayes — 4; noes — 6.]

The House adjourned.

⁴ Vote 372, Detail of Ayes and Noes. See below, note 18.

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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
[365]	aye	aye	aye	aye	aye	no	aye	aye	aye	aye	aye	aye	aye	To agree to Mr Randolph's amendment to the 1st clause, 1st section, 7 article.			
[366]	no	no	aye	no	no	no	no	no	no	no	no	no	no	To agree to the amendmt of ye 1st clause 1 sect. 7 article	1	10	
[367]	aye	aye	aye	no	no	no	aye	no	aye	aye	aye	aye	aye	To agree to the amendment of 20 years.	7	4	
[368]	aye	aye	aye	no	no	no	aye	no	aye	aye	aye	aye	aye	To agree to the first clause of ye report of eleven entd on the journal 24 instt	7	4	
[369]	no	no	aye	no	no	dd	aye	no	no	aye	no	no	aye	to agree to Mr Sherman's amendment			
[370]	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	To add the words & other pub: Ministers			
[371]	aye	aye	aye	aye	aye	aye	no	aye	aye	aye	aye	aye	aye	To strike out the words "correspond with the Executives"	9	1	
[372]	no	no	aye	no	no	no	no	no	no	no	no	no	no		1	9	
[373]	aye	no	no	no	no	aye	no	aye	aye	aye	aye	no	no	but his pardon shall not be pleadable in bar	4	6	

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Saturday August. 25. 1787— In Convention

The 1st. clause of 1 sect. of art: VII being reconsidered⁵

Col. Mason objected to the term, "*shall*" — fullfil the engagements & discharge the debts &c as too strong. It may be impossible to comply with it. The Creditors should be kept in the same plight. They will in one respect be necessarily and properly in a better. The Government will be more able

⁵ Upon this subject, see above August 18 (with references under note 6), August 21-24, and Appendix A, CCV, CCXII, CCLII, CCLIV, CCLVI, CCLXVIII, CCCLXXII.

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to pay them. The use of the term *shall* will beget speculations and increase the pestilent practice of stock-jobbing. There was a great distinction between original creditors & those who purchased fraudulently of the ignorant and distressed. He did not mean to include those who have bought Stock in open market. He was sensible of the difficulty of drawing the line in this case, but He did not wish to preclude the attempt. Even fair purchasers, at 4, 5, 6, 8 for 1 did not stand on the same footing with the first Holders, supposing them not to be blameable. The interest they receive even in paper is equal to their purchase money. What he particularly wished was to leave the door open for buying up the securities, which he thought would be precluded by the term "shall" as requiring *nominal payment*, & which was not inconsistent with his ideas of public faith. He was afraid also the word "*shall*," might extend to all the old continental paper.

Mr Langdon wished to do no more than leave the Creditors in statu quo.

Mr. Gerry said that for himself he had no interest in the question being not possessed of more of the securities than would, by the interest, pay his taxes. He would observe however that as the public had received the value of the literal amount, they ought to pay that value to some body. The frauds on *the soldiers* ought to have been foreseen. These poor & ignorant people could not but part with their securities. There are other creditors who will part with any thing rather than be cheated of the capital of their advances. The interest of the States he observed was different on this point, some having more, others less than their proportion of the paper. Hence the idea of a scale for reducing its value had arisen. If the public faith would admit, of which he was not clear, he would not object to a revision of the debt so far as to compel restitution to the ignorant & distressed, who have been defrauded. As to Stock-jobbers he saw no reason for the censures thrown on them — They keep up the value of the paper. Without them there would be no market.

Mr. Butler said he meant neither to increase nor diminish the security of the Creditors.

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Mr. Randolph moved to postpone the clause in favor of the following "All debts contracted & engagements entered "into, by or under the authority of Congs. shall be as valid "agst the U. States under this constitution as under the Con-
"federation"

Doct Johnson. The debts are debts of the U— S— of the great Body of America. Changing the Government cannot change the obligation of the U— S— which devolves of course on the New Government. Nothing was in his opinion necessary to be said. If any thing, it should be a mere declaration as moved by Mr. Randolph.

Mr. Govr. Morris, said he never had become a public Creditor that he might urge with more propriety the compliance with public faith. He had always done so and always would, and preferr'd the term "*shall*" as the most explicit. As to *buying up* the debt, the term "*shall*" was not inconsistent with it, if provision be first made for paying the interest: if not, such an expedient was a mere evasion. He was content to say nothing as the New Government would be bound of course — but would prefer the clause with the term "*shall*", because it would create many friends to the plan.

On Mr. Randolph's Motion

N— H— ay— Mas. ay. Ct ay— N. J. ay— Pa. no Del. ay— (Maryd. ay)⁶ Va. ay— N. C— ay— S. C. ay Geo. ay— [Ayes — 10; noes — 1.]

Mr. Sherman thought it necessary to connect with the clause for laying taxes duties &c an express provision for the object of the old debts &c — and moved to add to the 1st. clause of 1st. sect— of art VII "for the payment of said debts and for the defraying the expences that shall be incurred for the common defence and general welfare".

The proposition, as being unnecessary was disagreed to, Connecticut alone, being in the affirmative.

The Report of the Committee of eleven (see friday the 24th. instant) being taken up,⁷

⁶ Taken from *Journal*.

⁷ Compromise upon importation of slaves and navigation acts. Upon this subject and upon the compromise in general see above July 23, August 8, August 21,

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Genl Pinkney moved to strike out the words "the year eighteen hundred" (as the year limiting the importation of slaves,) and to insert the words "the year eighteen hundred and eight"

Mr. Ghorum 2ded. the motion

Mr. Madison. Twenty years will produce all the mischief that can be apprehended from the liberty to import slaves. So long a term will be more dishonorable to the National character than to say nothing about it in the Constitution.

On the motion; (which passed in the affirmative.)

N— H— ay. Mas. ay— Ct. ay. N. J. no. Pa. no. Del— no. Md. ay. Va. no. N— C. ay. S— C. ay. Geo. ay. [Ayes — 7; noes — 4.]

Mr. Govr. Morris was for making the clause read at once, "importation of slaves into N. Carolina, S— Carolina & Georgia". (shall not be prohibited &c.) This he said would be most fair and would avoid the ambiguity by which, under the power with regard to naturalization, the liberty reserved to the States might be defeated. He wished it to be known also that this part of the Constitution was a compliance with those States. If the change of language however should be objected to by the members from those States, he should not urge it.⁸

Col: Mason was not against using the term "slaves" but agst naming N— C— S— C. & Georgia, lest it should give offence to the people of those States.

Mr Sherman liked a description better than the terms proposed, which had been declined by the old Congs & were not pleasing to some people. Mr. Clymer concurred with Mr. Sherman

Mr. Williamson said that both in opinion & practice he was, against slavery; but thought it more in favor of

August 22 (with references under note 2), August 24, and below August 28 and 29; also Appendix A, CXXXIV, CXXXVII, CLVIII (60-64), CLXXI, CCa, CCII, CCXII, CCXVII, CCXXVII, CCXXXIX, CCLXIX, CCLXXX, CCCXXXII, CCCXXXIII, CCCXXXVI.

⁸ On the avoidance of the term "slaves", see Appendix A, CXLVIII, CLVIII (57), CCLXXX, CCCXXXII.

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humanity, from a view of all circumstances, to let in S— C & Georgia on those terms, than to exclude them from the Union —

Mr. Govr. Morris withdrew his motion.

Mr. Dickenson wished the clause to be confined to the States which had not themselves prohibited the importation of slaves, and for that purpose moved to amend the clause so as to read “The importation of slaves into such of the States as shall permit the same shall not be prohibited by the Legislature of the U— S— until the year 1808”. — which was agreed to nem: cont: *

The first part of the report was then agreed to, amended as follows. “The migration or importation of such persons as the several States now existing shall think proper to admit, shall not be prohibited by the Legislature prior to the year 1808.” N. H. Mas. Con. Md. N. C. S. C: Geo: ay

N. J. Pa. Del. Virga no

[Ayes — 7; noes — 4.]¹⁰

Mr. Baldwin in order to restrain & more explicitly define “the average duty” moved to strike out of the 2d. part the words “average of the duties laid on imports” and insert “common impost on articles not enumerated” which was agreed to nem: cont:

Mr. Sherman was agst. this 2d part, as acknowledging men to be property, by taxing them as such under the character of slaves,

Mr. King & Mr. Langdon considered this as the price of the 1st part.

Genl. Pinkney admitted that it was so.

Col: Mason. Not to tax, will be equivalent to a bounty on the importation of slaves.

Mr. Ghorum thought that Mr Sherman should consider the duty, not as implying that slaves are property, but as a discouragement to the importation of them.

*{ In the printed Journal. Cont. Virga. & Georgia voted in the affirmative. }⁹

⁹ An error of *Journal*, see above note 2.

¹⁰ Taken from *Journal*.

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Mr Govr, Morris remarked that as the clause now stands it implies that the Legislature may tax freemen imported.¹¹

Mr. Sherman in answer to Mr. Ghorum observed that the smallness of the duty shewed revenue to be the object, not the discouragement of the importation.

Mr. Madison thought it wrong to admit in the Constitution the idea that there could be property in men. The reason of duties did not hold, as slaves are not like merchandise, consumed. &c

Col. Mason (in answr. to Govr. Morris) the provision as it stands was necessary for the case of Convicts in order to prevent the introduction of them.

It was finally agreed nem: contrad: to make the clause read "but a tax or duty may be imposed on such importation not exceeding ten dollars for each person", and then the 2d. part as amended was agreed to.

Sect 5— art— VII was agreed to nem: con: as reported.¹²

Sect. 6. art. VII. in the Report was, postponed.

On motion of Mr. Madison 2ded. by Mr Govr Morris art VIII was reconsidered and after the words "all treaties made," were inserted nem: con: the words "or which shall be made" This insertion was meant to obviate all doubt concerning the force of treaties præexisting, by making the words "all treaties made" to refer to them, as the words inserted would refer to future treaties.

Mr. Carrol & Mr. L. Martin expressed their apprehensions, and the probable apprehensions of their constituents, that under the power of regulating trade the General Legislature, might favor the ports of particular States, by requiring vessels destined to or from other States to enter & clear thereat, as vessels belonging or bound to Baltimore, to enter & clear at Norfolk &c They moved the following proposition

"The Legislature of the U— S. shall not oblige vessels belonging to citizens thereof, or to foreigners, to enter or pay duties or imposts in any other State than in that to which they may be bound, or to clear out in any other than the

¹¹ See Appendix A, CXLVIII, CLVIII(57), CCLXXX, CCCXXXII-CCCXXXIV.

¹² "No capitation tax" etc.

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State in which their cargoes may be laden on board; nor shall any privilege or immunity be granted to any vessels on entering or clearing out or paying duties or imposts in one state in preference to another”¹³

Mr Ghorum thought such a precaution unnecessary; & that the revenue might be defeated, if vessels could run up long rivers, through the jurisdiction of different States without being required to enter, with the opportunity of landing & selling their cargoes by the way.

Mr McHenry & Genl Pinkney made the following propositions

“Should it be judged expedient by the Legislature of the U— S— that one or more ports for collecting duties or imposts other than those ports of entrance & clearance already established by the respective States, should be established, the Legislature of the U— S— shall signify the same to the Executives of the respective States, ascertaining the number of such ports judged necessary; to be laid by the said Executives before the Legislatures of the States at their next Session; and the Legislature of the U— S— shall not have the power of fixing or establishing the particular ports for collecting duties or imposts in any State, except the Legislature of such State shall neglect to fix and establish the same during their first Session to be held after such notification by the Legislature of the U— S— to the Executive of such State”

“All duties imposts & excises, prohibitions or restraints laid or made by the Legislature of the U— S— shall be uniform and equal throughout the U— S—”¹⁴

These several propositions were referred, nem: con: to a committee composed of a member from each State, The committee appointed by ballot were Mr. Langdon, Mr. Ghorum, Mr. Sherman, Mr Dayton, Mr. Fitzimmons, Mr. Read, Mr. Carrol, Mr. Mason, Mr. Williamson, Mr. Butler, Mr. Few.

On The question now taken on Mr. Dickinson motion of yesterday, allowing appointments to offices, to be referred by

¹³ Upon this subject see McHenry, below, and Appendix A, CXXXVIII, CLVIII (67-68), CCLXV, also below August 31 and September 12-15.

¹⁴ See Appendix A, CLVIII (67-68.)

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the Genl. Legislature to the Executives of the several States” as a farther amendment to sect. 2. art. X.,¹⁶ the votes were

N. H. no Mas. no. Ct ay. Pa. no— Del. no. Md divided¹⁶— Va. ay— N— C— no— S. C. no. Geo. ay— [Ayes— 3; noes — 6; divided — 1.]

In amendment of the same section, “other public Ministers” were inserted after “ambassadors”.¹⁷

Mr. Govr Morris moved to strike out of the section — “and may correspond with the supreme Executives of the several States” as unnecessary and implying that he could not correspond with others. Mr. Broome 2ded. him.

On the question

N. H. ay. Mas. ay. Ct. ay. Pa. ay. Del. ay. Md. no. Va. ay. N. C. ay— S. C. ay. Geo— ay. [Ayes — 9; noes — 1.]

“Shall receive ambassadors & other public Ministers”. agreed, to nem. con.

Mr. Sherman moved to amend the “power to grant reprieves & pardon” so as to read “to grant reprieves until the ensuing session of the Senate, and pardons with consent of the Senate.”

On the question

N— H— no. Mas. no. Ct. ay— Pa no Md. no. Va. no. N. C. no. S. C. no. Geo. no. [Ayes — 1; noes — 8.]¹⁸

“except in cases of impeachment” inserted nem: con: after “pardon”

On the question to agree to — “but his pardon shall not be pleadable in bar”

¹⁶ On August 24 Sherman had objected to the clause in Article X, Section 2 which empowered the President to “appoint officers in all cases not otherwise provided for by this Constitution.” Sherman’s proposed modification was defeated, one amendment by Dickinson was adopted and a second one offered by Dickinson. According to both the Journal and Madison Dickinson’s second motion was negatived, but McHenry states that the House adjourned “when the question was going to be put.” McHenry was probably correct as this question is now brought up without any recorded motion to reconsider. This is doubtless the amendment attributed to Sherman in Vote 369, Detail of Ayes and Noes (see above, notes 2 and 3).

¹⁷ See McHenry’s statement below.

¹⁸ Vote 370, Detail of Ayes and Noes, records the vote as Ayes, 10; noes, 0.

¹⁹ Probably the same as Vote 372, Detail of Ayes and Noes, which includes Delaware in the negative.

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N. H. ay— Mas— no. Ct. no— Pa. no— Del. no. Md. ay. Va. no. N— C— ay— S. C. ay— Geo. no. [Ayes — 4; noes — 6.]

Adjourned

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The clause in the 2 sect. X article, “he shall commission all the officers of the U. S. and shall appoint officers in all cases not otherwise provided for by this constitution, was moved to be amended by adding, except where by law the Executive of the several States shall have the power — Amendment negatives. Maryland divided — D. C. and J. against Martin and myself affirm.¹⁹

Moved several propositions to restrict the legislature from giving any preference in duties, or from obliging duties to be collected in a manner injurious to any State, and from establishing new ports of entrance and clearance, unless neglected to be established by the States after application — Opposed by Massachusetts — Mr. Gorahm said it might be very proper to oblige vessels, for example, to stop at Norfolk on account of the better collection of the revenue.

Mr. King thought it improper to deliberate long on such propositions but to take the sense of the house immediately upon them.

I moved to have them committed to a committee consisting of a member from each State. Committed.

Proceeded a little further in the 2 sect.

Mr. C. Pinkney gave notice that he would move that the consent of $\frac{3}{4}$ of the whole legislature be necessary to the enacting a law respecting the regulation of trade or the formation of a navigation act.

Adjourned to monday.

¹⁹ See above note 15.

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The Legislature²⁰ of the United States shall not oblige Vessels belonging to Citizens thereof, or to foreigners to enter or pay duties or imposts in any other State than in that to which they may be bound, or to clear out in any other than the State in which their Cargoes may be laden on board; Nor shall any privilege, or immunity be granted to any Vessels on entering clearing out or paying duties or imposts in one State in preference to another — Nor shall vessels owned by Citizens of one State have any preference of vessels owned by Citizens of another State.

²⁰ Found among the McHenry MSS., but not in his handwriting.