

FRIDAY, AUGUST 17, 1787.

JOURNAL

Friday August 17. 1787.

It was moved and seconded to insert the word “joint” before the word “ballot” in the 9 clause of the 1 sect. 7 article

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

It was moved and seconded to strike out the 9 clause of the 1. sect. of the 7 article

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

[To strike out the words “and punishmt 11 [12] clause 1 sect 7 art Ayes — 7; noes — 3.]<sup>1</sup>

It was moved and seconded to alter the first part of the 12th clause 1 sect. 7 article to read as follows

“To punish piracies and felonies committed on the high seas”

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

It was moved and seconded to insert the words “define and” between the word “To” and the word “punish” in the 12 clause

which passed in the affirmative

It was moved and seconded to amend the second part of the 12 clause as follows

“To punish the counterfeiting of the securities and current coin of the United States, and offences against the law of nations”

which passed in the affirmative

[“or without, when the Legislature cannot. Ayes — 5; noes — 3; divided — 2.]<sup>2</sup>

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<sup>1</sup> Vote 308, Detail of Ayes and Noes.

<sup>2</sup> Vote 310, Detail of Ayes and Noes.

*Friday*

## JOURNAL

*August 17*

On the question to agree to the 13 clause of the 1st sect. 7 article amended as follows

“To subdue a rebellion in any State against the government thereof on the application of it’s Legislature, or without when the Legislature cannot meet”

it passed in the negative [Ayes — 4; noes — 5.]

[“To subdue rebellion” Ayes — 2; noes — 4; divided — 1.]<sup>8</sup>

It was moved and seconded to strike out the word “make” and to insert the word “declare” in the 14th clause

which passed in the negative [Ayes — 4; noes — 5.]

It was moved and seconded to strike out the 14 clause

which passed in the negative.

The question being again taken to strike out the word “make” and to insert the word “declare” in the 14. clause

it passed in the affirmative [Ayes — 8; noes — 1.]

It was moved and seconded to add the words

“and to make peace” to the 14 clause

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

Separate questions having been taken on the 9, 10, 11, 12, and 14 clauses of the 1st section, 7 article as amended.

They passed in the affirmative

And the House adjourned till to-morrow at 11 o’Clock A. M.

<sup>8</sup> Vote 312, Detail of Ayes and Noes, see below, note 7.

Friday

MADISON

August 17

## 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
[306]	aye	aye	no	no	aye	no	aye	no	aye	aye	aye	aye	aye	To appoint a Treasurer by joint ballot	7	3	
[307]	no	no	no			aye	aye	aye	no	no	aye	no	no	To strike out the 9 clause of ye 1 sect 7 article	4	6	
[308]	no	aye	no			aye	aye	no	aye	aye	aye	aye	aye	To strike out the words "and punishmt 11 clause 1 sect 7 art	7	3	
[309]	aye	aye	no			aye	aye	aye	no	no	aye	aye	aye	To punish piracies & felonies committed on the high seas.	7	3	
[310]	aye	no	aye			dd	no	no	aye	dd	aye	aye	aye	"or without, when the Legislature cannot.	5	3	2
[311]	aye	no	aye			no	no	aye	no	no	aye	no	aye	To agree to the 13 clause as amended			
[312]	aye		no					no	no	dd	aye	no	no	"To subdue rebellion"			
[313]	no		no			aye	aye	no	aye	aye	no	no	no	To strike out "make" to insert "declare"	4	5	
[314]	no		aye			aye	aye	aye	aye	aye	aye	aye	aye	The last question repeated	8	1	
[315]	no	no	no			no	no	no	no	no	no	no	no	To add "to make peace" to ye 12 clause			

## MADISON

Friday August 17th. in Convention

Art VII. sect. 1. resumed. On the clause "to appoint Treasurer by ballot".

Mr Ghorum moved to insert "joint" before ballot, as more convenient as well as reasonable, than to require the separate concurrence of the Senate.

Mr. Pinkney zds. the motion. Mr Sherman opposed it as favoring the larger States.

Mr. Read moved to strike out the clause, leaving the appointment of the Treasurer as of other officers to the Executive. The Legislature was an improper body for

Friday

MADISON

August 17

appointments. Those of the State legislatures were a proof of it— The Executive being responsible would make a good choice.

Mr Mercer zds. the motion of Mr Read.

On the motion for inserting the word “joint” before ballot

N. H- ay. Mas. ay. Ct. no. N. J. no. Pa. ay. Md. no. Va. ay- N- C. ay. S. C. ay. Geo- ay- [Ayes — 7; noes — 3.]

Col. Mason in opposition to Mr. Reads motion desired it might be considered to whom the money would belong; if to the people, the legislature representing the people ought to appoint the keepers of it.

On striking out the clause as amended by inserting “Joint”

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

“To constitute inferior tribunals” agreed to nem. con.

“To make rules as to captures on land & water”— do do

“To declare the law and punishment of piracies and felonies &c” &c considered.

Mr. (Madison) moved to strike out “and punishment” &c-

Mr. Mason doubts the safety of it, considering the strict rule of construction in criminal cases. He doubted also the propriety of taking the power in all these cases wholly from the States.

Mr Governr Morris thought it would be necessary to extend the authority farther, so as to provide for the punishment of counterfeiting in general. Bills of exchange for example might be forged in one State and carried into another:

It was suggested by some other member that *foreign* paper might be counterfeited by Citizens; and that it might be politic to provide by national authority for the punishment of it.

Mr Randolph did not conceive that expunging “the punishment” would be a constructive exclusion of the power. He doubted only the efficacy of the word “declare”.

Mr Wilson was in favor of the motion— Strictness was not necessary in giving authority to enact penal laws; though necessary in enacting & expounding them.

Friday

MADISON

August 17

On motion for striking out "and punishment" as moved by Mr (Madison)

N. H. no. Mas. ay. Ct. no. Pa. ay. Del. ay— Md. no. Va. ay. N— C— ay. S— C. ay— Geo. ay. [Ayes — 7; noes — 3.]

Mr Govr Morris moved to strike out "declare the law" and insert "punish" before "piracies". and on the question

N— H— ay. Mas— ay. Ct. no. Pa. ay. Del. ay. Md. ay. Va. no. N— C— no. S— C— ay. Geo— ay. [Ayes — 7; noes — 3.]

Mr. M(adison,) and Mr. Randolph moved to insert, "define &." before "punish".

Mr. Wilson thought "felonies" sufficiently defined by Common law.

Mr. Dickenson concurred with Mr Wilson

Mr Mercer was in favor of the amendment.

Mr M(adison.) felony at common law is vague.<sup>4</sup> It is also defective. One defect is supplied by Stat: of Anne as to running away with vessels which at common law was a breach of trust only. Besides no foreign law should be a standard farther than is expressly adopted — If the laws of the States were to prevail on this subject, the citizens of different States would be subject to different punishments for the same offence at sea — There would be neither uniformity nor stability in the law — The proper remedy for all these difficulties was to vest the power proposed by the term "define" in the Natl. legislature.

Mr Govr. Morris would prefer *designate* to *define*, the latter being as he conceived, limited to the preexisting meaning.

It was said by others to be applicable to the creating of offences also, and therefore suited the case both of felonies & of piracies. (The motion of Mr. M. & Mr. R was agreed to.)<sup>5</sup>

Mr. Elseworth enlarged the motion so as to read "to define and punish piracies and felonies committed on the high seas, counterfeiting the securities and current coin of the U. States, and offences agst. the law of Nations" which was agreed to, nem con.

"To subdue a rebellion in any State, on the application of its legislature"

<sup>4</sup> See Appendix A, CCXV.

<sup>5</sup> Taken from *Journal*.

Friday

MADISON

August 17

Mr Pinkney moved to strike out "on the application of its legislature"

Mr Govr. Morris zds.

Mr L- Martin opposed it as giving a dangerous & unnecessary power. The consent of the State ought to precede the introduction of any extraneous force whatever.

Mr. Mercer supported the opposition of Mr. Martin.

Mr Elseworth proposed to add after "legislature" "or Executive".

Mr Govr Morris. The Executive may possibly be at the head of the Rebellion. The Genl Govt. should enforce obedience in all cases where it may be necessary.

Mr. Ellsworth. In many cases The Genl. Govt. ought not to be able to interpose unless called upon. He was willing to vary his motion so as to read, "~~(or without it)~~<sup>6</sup> when the legislature cannot meet."

Mr. Gerry was agst. letting loose the myrmidons of the U. States on a State without its own consent. The States will be the best Judges in such cases. More blood would have been spilt in Massts in the late insurrection, if the Genl. authority had intermeddled.

Mr. Langdon was for striking out as moved by Mr. Pinkney. The apprehension of the national force, will have a salutary effect in preventing insurrections.

Mr Randolph- If the Natl. Legislature is to judge whether the State legislature can or cannot meet, that amendment would make the clause as objectionable as the motion of Mr Pinkney.

Mr. Govr. Morris. We are acting a very strange part. We first form a strong man to protect us, and at the same time wish to tie his hands behind him, The legislature may surely be trusted with such a power to preserve the public tranquillity.

On the motion to add "or without it (application) when the legislature cannot meet"

N. H. ay. Mas. no. Ct ay. Pa. divd. Del. no. Md. no. Va.

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<sup>6</sup> Crossed out "& of the Executive"; revised from *Journal*.

Friday

MADISON

August 17

ay. N- C. divd. S. C. ay. Geo. ay. [Ayes — 5; noes — 3; divided — 2.] so agreed to —

Mr. (Madison) and Mr. Dickenson moved (to insert as explanatory,) after “State” — “against the Government thereof” There might be a rebellion agst the U- States. — (which was) Agreed to nem- con.

On the clause as amended

N. H. ay. Mas-\* abst. Ct ay. Pen. abst. Del. no. Md. no. Va. ay. N- C. no. S. C. no- Georg. ay — (so it was) lost [Ayes — 4; noes — 4; absent — 2.]

“To<sup>7</sup> make war”

Mr Pinkney opposed the vesting this power in the Legislature.<sup>8</sup> Its proceedings were too slow. It wd. meet but once a year. The Hs. of Reps. would be too numerous for such deliberations. The Senate would be the best depository, being more acquainted with foreign affairs, and most capable of proper resolutions. If the States are equally represented in Senate, so as to give no advantage to large States, the power will notwithstanding be safe, as the small have their all at stake in such cases as well as the large States. It would be singular for one- authority to make war, and another peace.

Mr Butler. The Objections agst the Legislature lie in a great degree agst the Senate. He was for vesting the power in the President, who will have all the requisite qualities, and will not make war but when the Nation will support it.

Mr. M(adison) and Mr Gerry moved to insert “*declare*,” striking out “*make*” war; leaving to the Executive the power to repel sudden attacks.

Mr Sharman thought it stood very well. The Executive shd. be able to repel and not to commence war. “*Make*” better than “*declare*” the latter narrowing the power too much.

Mr Gerry never expected to hear in a republic a motion to empower the Executive alone to declare war.

\* (In the printed Journal Mas. no)

<sup>7</sup> Crossed out “Mr. Dickenson moved”. A considerable blank space was left apparently for the insertion of the motion and the action upon it. This may have been Vote 312, Detail of Ayes and Noes, see the Journal above.

<sup>8</sup> See Appendix A, CCCXXVI.

Friday

MADISON

August 17

Mr. Elseworth. there is a material difference between the cases of making *war*, and making *peace*. It shd. be more easy to get out of war, than into it. War also is a simple and overt declaration. peace attended with intricate & secret negotiations.

Mr. Mason was agst giving the power of war to the Executive, because not (safely) to be trusted with it; or to the Senate, because not so constructed as to be entitled to it. He was for clogging rather than facilitating war; but for facilitating peace. He preferred "*declare*" to "*make*".

On the Motion to insert *declare* — in place of *Make*, (it was agreed to.)

N. H. no. Mas. abst. Cont. no.\* Pa ay. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo- ay. [Ayes — 7; noes — 2; absent — 1.]

Mr. Pinkney's motion to strike out whole clause, disagd. to without call of States.

Mr Butler moved to give the Legislature power of peace, as they were to have that of war.

Mr Gerry 2ds. him. 8 Senators may possibly exercise the power if vested in that body, and 14 if all should be present; and may consequently give up part of the U. States. The Senate are more liable to be corrupted by an Enemy than the whole Legislature.

On the motion for adding "and peace" after "war"

N. H. no. Mas. no. Ct. no. Pa. no. Del. no. Md. no. Va. no. N. C. (no)<sup>9</sup> S. C. no. Geo. no. [Ayes — 0; noes — 10.]

Adjourned

\* On the remark by Mr. King that "*make*" war might be understood to "conduct" it which was an Executive function, Mr. Elseworth gave up his objection (and the vote of Cont was changed to — ay.)<sup>10</sup>

<sup>9</sup> Madison originally left a blank after "N. C."

<sup>10</sup> The Journal shows that the question was repeated.

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*Friday*

McHENRY

*August 17*

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## M c H E N R Y

August 17.

Agreed "to appoint a treasurer by joint Ballot; To constitute tribunals inferior to the supreme court; To make rules concerning captures on land and water;

expunged the next section and inserted

To define and punish piracies and felonies committed on the high seas;

To punish counterfeiting the securities and the current coin of the United States.

Struck out the clause To subdue a rebellion etc.

Debated the difference between a power to declare war, and to make war — amended by substituting declare — adjourned without a question on the clause.