

MONDAY, AUGUST 20, 1787.

JOURNAL

Monday August 20th. 1787.

It was moved and seconded to refer the following propositions to the Committee of five.

which passed in the affirmative.

Each House shall be the Judge of it's own privileges, and shall have authority to punish by imprisonment every person violating the same: or who, in the place where the Legislature may be sitting and during the time of it's session, shall threaten any of it's members for any thing said or done in the House: or who shall assault any of them therefor — or who shall assault, or arrest any witness or other person ordered to attend either of the Houses in his way going or returning; or who shall rescue any person arrested by their order. Each Branch of the Legislature, as well as the supreme Executive shall have authority to require the opinions of the supreme Judicial Court upon important questions of law, and upon solemn occasions

The privileges and benefit of the writ of habeas corpus shall be enjoyed in this government in the most expeditious and ample manner: and shall not be suspended by the Legislature except upon the most urgent and pressing occasions, and for a limited time not exceeding months.

The liberty of the Press shall be inviolably preserved.

No Troops shall be kept up in time of peace, but by consent of the Legislature

The military shall always be subordinate to the civil power, and no grants of money shall be made by the Legislature for supporting military land forces for more than one year at a time

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No Soldier shall be quartered in any house in time of peace without consent of the Owner.

No person holding the Office of President of the United States — a Judge of their supreme Court — Secretary for the Department of foreign affairs — of Finance — of Marine — of War — or of

shall be capable of holding at the same time any other office of trust or emolument under the United States, or an individual State.

No religious test or qualification shall ever be annexed to any oath of office under the authority of the United States:

The United States shall be for ever considered as one Body-corporate and politic in law, and entitled to all the rights, privileges and immunities which to Bodies Corporate do, or ought to appertain.

The Legislature of the United States shall have the power of making the great seal, which shall be kept by the President of the United States or in his absence by the President of the Senate, to be used by them as the occasion may require — It shall be called the great Seal of the United-States and shall be affixed to all laws.

all commissions and writs shall run in the name of the United States.

The jurisdiction of the supreme court shall be extended to all controversies between the United States and an individual State — or the United States and the Citizen of an individual State.

To assist the President in conducting the Public affairs there shall be a Council of State composed of the following Officers.

1. The Chief Justice of the supreme Court, who shall from time to time recommend such alterations of, and additions to, the Laws of the United-States as may in his opinion be necessary to the due administration of Justice, and such as may promote useful learning and inculcate sound morality throughout the Union: He shall be President of the Council in the absence of the President.

2. The Secretary of domestic-affairs who shall be appointed by the President and hold his office during pleasure It shall

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be his duty to attend to matters of general police, the state of agriculture and manufactures, the opening of roads and navigations, and the facilitating communications through the United States, and he shall from time to time recommend such measures and establishments as may tend to promote those objects.

3 The Secretary of Commerce and Finance who shall also be appointed by the President during pleasure. It shall be his duty to superintend all matters relating to the public finances, to prepare and report Plans of revenue and for the regulation of expenditures, and also to recommend such things as may in his judgment promote the commercial interests of the United-States.

4. The Secretary of foreign affairs who shall also be appointed by the President during pleasure — It shall be his duty to correspond with all foreign Ministers, prepare plans of Treaties, and consider such as may be transmitted from abroad — and generally to attend to the Interests of the United States, in their connections with foreign Powers.

5. The Secretary of war who shall also be appointed by the President during pleasure. — It shall be his duty to superintend every thing relating to the war Department such as the raising and equipping of Troops, the care of military Stores, public Fortifications, arsenals, and the like — also in time of war to prepare and recommend Plans of offence and defence.

6 The Secretary of the Marine who shall also be appointed by the President during pleasure — It shall be his duty to superintend every thing relating to the marine Department, the public ships, Dock-yards, naval stores, and Arsenals — also in time of war to prepare and recommend Plans of offence and defence.

The President shall also appoint a Secretary of State to hold his office during pleasure; who shall be Secretary of the Council of State, and also public Secretary to the President. — It shall be his duty to prepare all public dispatches from the President, which he shall countersign.

The President may from time to time submit any matter to the discussion of the Council of State, and he may require

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the written opinions of any one or more of the Members; But he shall in all cases exercise his own judgment, and either conform to such opinions or not as he may think proper: and every officer above mentioned shall be responsible for his opinion on the affairs relating to his particular Department.

Each of the Officers abovementioned shall be liable to impeachment and removal from office for neglect of duty, malversation, or corruption

That the Committee be directed to report qualifications for the President of the United-States — and a mode for trying the supreme Judges in cases of impeachment.

It was moved and seconded to postpone the consideration of the 17 clause, 1 sect. 7 article

which passed in the affirmative

It was moved and seconded to insert the following clause in the 1. sect. 7 article

“To make sumptuary laws”

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

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

“To establish all offices”

which passed in the negative [Ayes — 2; noes — 9.]

On the question to agree to the last clause of the 1st sect. 7 article, as reported,

it passed in the affirmative.

[To commit the 2nd section 7 article Ayes — 5; noes — 5; divided — 1.]¹

It was moved and seconded to insert the words “some overt-act of” after the word “in” in the 2 sect. 7 article and to strike out the word “and” before the words “in adhering” and to insert the word “or”

which passed in the affirmative²

¹ Vote 321, Detail of Ayes and Noes, but it is not certain that it belongs here rather than just preceding the motion to commit.

² Brearley’s notes on his copy of the Report of the Committee of Detail confirm these changes.

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It was moved and seconded to strike out the words "or any of them" 2 section 7 article

which passed in the affirmative

It was moved and seconded to postpone the consideration of the 2nd sect. 7 article in order to take up the following.

"Whereas it is essential to the preservation of Liberty to define precisely and exclusively what shall constitute the crime of Treason it is therefore ordained declared and established that if a man do levy war against the United States within their Territories or be adherent to the enemies of the United States within the said territories giving to them aid and comfort within their Territories or elsewhere, and thereof be provably attainted of open deed by the People of his condition he shall be adjudged guilty of treason"

On the question to postpone

it passed in the negative. [Ayes — 2; noes — 8.]

It was moved and seconded to strike out the words "against the United States" 1st line, 2 sect. 7 article

which passed in the affirmative [Ayes — 8; noes — 2.]

It was moved and seconded to insert the words "to the same overt-act." after the word "witnesses" 2 sect. 7 article

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

It was moved and seconded to strike the words "some overt-act" out of the 1st line, 2 sect. 7 article³

which passed in the affirmative

It was moved and seconded to insert the words

"Sole and exclusive" before the word "power" in the 2 clause, 2 sect, 7 article.

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

It was moved and seconded to re-instate the words

"against the United States" in the first line, 2 sect. 7 article

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

It was moved and seconded to strike out the words "of the United States" in the 3rd line 2 sect. 7 article

which passed in the affirmative

³ Refers to insertion made by an earlier vote of this same day.

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It was moved and seconded to amend the 1st clause of the 2 sect. 7 article to read

“Treason against the United States shall consist only
“in levying war against them, or in adhering to their enemies”
which passed in the affirmative

It was moved and seconded to add the words

“giving them aid and comfort” after the word “enemies”
in the 2 section, 7 article.

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

It was moved and seconded to add after the words “overt
act” the words “or on confession in open court” 2 section,
7 article.

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

On the question to agree to the 2nd section of the 7 article
as amended

it passed in the affirmative.

It was moved and seconded to strike the words

“white and other” out of the 3rd sect. 7 article
which passed in the affirmative.

It was moved and seconded to strike out the word

“six” and to insert the word “three” in the 3rd section
of the 7 article.

which passed in the affirmative. [Ayes — 9; noes — 2.]

It was moved and seconded to add the following clause to the
3rd section 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”

Before a question was taken on the last motion

The House adjourned.

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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
[319]	no	no	no	no	no	no	aye	aye	no	no	no	aye		"To make sumptuary laws"	3	8	
[320]	no	aye	no	no	no	no	no	aye	no	no	no	no		To establish all Offices"	2	9	
[321]	no	no	no	aye	aye	no	aye	aye	dd	no	aye			To commit the 2nd section 7 article.	5	5	1
[322]		no	no	aye	no	no	no	aye	no	no	no			To postpone ye 2nd sect. 7 art. to take up a substitute	2	8	
[323]	aye	aye	aye	aye	aye	aye	aye	aye	no	no	aye	aye		To strike out "agt the United States" 1st line 2 sect. 7 article	8	2	
[324]	aye	aye	aye	no	aye	aye	aye	no	no	aye	aye			"To the same overt act"	8	3	
[325]	aye	aye	no	no	aye	aye	no	no	no	aye	no			To insert the words "sole & exclusive" before the word power" 2 sect. 7 article	5	6	
[326]	no	no	aye	aye	no	no	aye	aye	aye	no	aye			To reinstate the words "against the United States"	6	5	
[327]	aye	aye	no	aye	aye	no	aye	aye	aye	aye	no			"and comfort"	8	3	
[328]	aye	no	aye	aye	aye	aye	aye	aye	dd	no	no			"or on confession in open Court"	7	3	1
[329]	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	no	no		To strike out "six" and insert "three" 3 sect, 7 article	9	2	

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Monday August 20 — in Convention.

(Mr. Pinkney⁴ submitted to the House, in order to be

⁴ This whole section was taken from *Journal*; Madison's original record was as follows: — "Mr. Pinkney submitted sundry propositions — 1. authorising the Legislature to imprison for insult. 2. to require opinion of the Judges. 3. securing the benefit of the habeas corpus. 4. preserving the liberty of the press. 5 guarding agst billeting of soldiers. 6. agst. raising troops without the consent of the Legislature. 7. rendering the great officers of the Union incapable of other offices either under the Genl Govt. or the State Govts. 8. forbidding religious tests. 9 declaring

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referred to the Committee of detail, the following propositions — “Each House shall be the Judge of its own privileges, and shall have authority to punish by imprisonment every person violating the same; or who, in the place where the Legislature may be sitting and during the time of its Session, shall threaten any of its members for any thing said or done in the House, or who shall assault any of them therefor — or who shall assault or arrest any witness or other person ordered to attend either of the Houses in his way going or returning; or who shall rescue any person arrested by their order.”

“Each branch of the Legislature, as well as the Supreme Executive shall have authority to require the opinions of the supreme Judicial Court upon important questions of law, and upon solemn occasions”

“The privileges and benefit of the Writ of Habeas corpus shall be enjoyed in this Government in the most expeditious and ample manner; and shall not be suspended by the Legislature except upon the most urgent and pressing occasions, and for a limited time not exceeding months.”

“The liberty of the Press shall be inviolably preserved”

“No troops shall be kept up in time of peace, but by consent of the Legislature”

“The military shall always be subordinate to the Civil power, and no grants of money shall be made by the Legislature for supporting military Land forces, for more than one year at a time”

“No soldier shall be quartered in any House in time of peace without consent of the owner.”

“No person holding the office of President of the U. S., a Judge of their Supreme Court, Secretary for the department of Foreign Affairs, of Finance, of Marine, of War, or of ,

the U. States to be a body politic and corporate. 10 providing a great seal to be affixed to laws &c. 11. extending the jurisdiction of the Judiciary to controversies between the United States & States or individuals. — these were referred to the Committee of detail for consideration & report.

“Mr. Govr. Morris and Mr Pinkney proposed a sett of resolutions organizing the Executive department — referred to the Committee of detail.”

Cf. Appendix A, CXXIX, note 2.

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shall be capable of holding at the same time any other office of Trust or Emolument under the U. S. or an individual State”

“No religious test or qualification shall ever be annexed to any oath of office under the authority of the U. S.”

“The U. S. shall be for ever considered as one Body corporate and politic in law, and entitled to all the rights privileges, and immunities, which to Bodies corporate do or ought to appertain”

“The Legislature of the U. S. shall have the power of making the great Seal which shall be kept by the President of the U. S. or in his absence by the President of the Senate, to be used by them as the occasion may require. — It shall be called the great Seal of the U. S. and shall be affixed to all laws.”

“All Commissions and writs shall run in the name of the U. S.”

“The Jurisdiction of the supreme Court shall be extended to all controversies between the U. S. and an individual State, or the U. S. and the Citizens of an individual State”

These propositions were referred to the Committee of detail without debate or consideration of them, by the House.

Mr. Govr. Morris zded. by Mr. Pinkney submitted the following propositions which were in like manner referred to the Committee of Detail.

“To assist the President in conducting the Public affairs there shall be a Council of State composed of the following officers — 1. The Chief Justice of the Supreme Court, who shall from time to time recommend such alterations of and additions to the laws of the U. S. as may in his opinion be necessary to the due administration of Justice, and such as may promote useful learning and inculcate sound morality throughout the Union: He shall be President of the Council in the absence of the President

2. The Secretary of Domestic Affairs who shall be appointed by the President and hold his office during pleasure. It shall be his duty to attend to matters of general police, the State

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of Agriculture and manufactures, the opening of roads and navigations, and the facilitating communications thro' the U. States; and he shall from time to time recommend such measures and establishments as may tend to promote those objects.

3. The Secretary of Commerce and Finance who shall also be appointed by the President during pleasure. It shall be his duty to superintend all matters relating to the public finances, to prepare & report plans of revenue and for the regulation of expenditures, and also to recommend such things as may in his Judgment promote the commercial interests of the U. S.

4. The Secretary of foreign affairs who shall also be appointed by the President during pleasure. It shall be his duty to correspond with all foreign Ministers, prepare plans of Treaties, & consider such as may be transmitted from abroad; and generally to attend to the interests of the U- S- in their connections with foreign powers.

5. The Secretary of War who shall also be appointed by the President during pleasure. It shall be his duty to superintend every thing relating to the war-Department, such as the raising and equipping of troops, the care of military Stores — public fortifications, arsenals & the like — also in time of war to prepare & recommend plans of offence and Defence.

6. The Secretary of the Marine who shall also be appointed during pleasure — It shall be his duty to superintend every thing relating to the Marine-Department, the public Ships, Dock-Yards, Naval-Stores & arsenals — also in the time of war to prepare and recommend plans of offence and defence.

The President shall also appoint a Secretary of State to hold his office during pleasure; who shall be Secretary to the Council of State, and also public Secretary to the President. It shall be his duty to prepare all public despatches from the President which he shall countersign

The President may from time to time submit any matter to the discussion of the Council of State, and he may require the written opinions of any one or more of the members: But he shall in all cases exercise his own judgment, and either

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Conform to such opinions or not as he may think proper; and every officer abovementioned shall be responsible for his opinion on the affairs relating to his particular Department.

Each of the officers abovementioned shall be liable to impeachment & removal from office for neglect of duty malversation, or corruption”⁴

Mr Gerry moved “that the Committee be instructed to report proper qualifications for the President, and a mode of trying (the Supreme) Judges (in cases of) impeachment.⁵

The clause “to call forth the aid of the Militia &c— was postponed till report should be made as to the power over the Militia referred yesterday to the Grand Committee (of eleven).

Mr. Mason moved to enable Congress “to enact sumptuary laws.” No Government can be maintained unless the manners be made consonant to it. Such a discretionary power may do good and can do no harm. A proper regulation of excises & of trade may do a great deal but it is best to have an express provision. It was objected to sumptuary laws that they were contrary to nature. This was a vulgar error. The love of distinction it is true is natural; but the object of sumptuary laws is not to extinguish this principle but to give it a proper direction.

Mr. Elseworth, The best remedy is to enforce taxes & debts. As far as the regulation of eating & drinking can be reasonable, it is provided for in the power of taxation.

Mr Govr. Morris argued that sumptuary laws tended to create a landed Nobility, by fixing in the great-landholders and their posterity their present possessions.

Mr Gerry. the law of necessity is the best sumptuary law.

On Motion of Mr. Mason “as to sumptuary laws”

N. H. no. Mas— no. Ct no. N. J. no. Pa. no. Del. ay. Md. ay. Va. no. N— C. no— S. C. no. Geo. ay. [Ayes — 3; noes — 8.]

“And to make all laws necessary and proper for carrying into execution the foregoing powers, and all other powers

⁴ See above, note 4.

⁵ Revised from *Journal*.

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vested, by this Constitution, in the Government of the U. S. or any department or officer thereof.”⁶

Mr. M(adison) and Mr. Pinkney moved to insert between “laws” and “necessary” “and establish all offices”. it appearing to them liable to cavil that the latter was not included in the former.

Mr. Govr. Morris. Mr. Wilson, Mr Rutlidge and Mr. Elseworth urged that the amendment could not be necessary.

On the motion for inserting “and establish all offices”

N. H. no. Mas. ay. Ct. no. N. J. no. Pa. no. Del. no. Md. ay. Va. no. N- C- no. S. C. no. Geo. no. [Ayes — 2; noes — 9.]

The clause as reported was then agreed to nem con.

Art: VII sect. 2. concerning Treason which see⁷

Mr. M(adison,) thought the definition too narrow. It did not appear to go as far as the Stat. of Edwd. III. He did not see why more latitude might not be left to the Legislature. It wd. be as safe as in the hands of State legislatures; and it was inconvenient to bar a discretion which experience might enlighten, and which might be applied to good purposes as well as be abused.

Mr Mason was for pursuing the Stat: of Edwd. III.

Mr. Govr Morris was for giving to the Union an exclusive right to declare what shd. be treason. In case of a contest between the U- S- and a particular State, the people of the latter must, under the disjunctive terms of the clause, be traitors to (one) or other authority.

Mr Randolph thought the clause defective in adopting the words “in adhering” only. The British Stat: adds. “giving them aid (and)⁸ comfort” which had a more extensive meaning.

⁶ See Appendix A, CLXI.

⁷ Article VII, Sect. 2. “Treason against the United States shall consist only in levying war against the United States, or any of them; and in adhering to the enemies of the United States, or any of them. The Legislature of the United States shall have power to declare the punishment of treason. No person shall be convicted of treason, unless on the testimony of two witnesses. No attainder of treason shall work corruption of bloods nor forfeiture, except during the life of the person attainted.”

⁸ Crossed out “or”.

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Mr. Elseworth considered the definition as the same in fact with that of the Statute.

Mr. Govr Morris "adhering" does not go so far as giving aid (and)⁸² Comfort" or the latter words may be restrictive of "adhering". in either case the Statute is not pursued.

Mr Wilson held "giving aid and comfort" to be explanatory, not operative words; and that it was better to omit them —

Mr Dickenson, thought the addition of "giving aid & comfort" unnecessary & improper; being too vague and extending too far— He wished to know what was meant by the "testimony of two witnesses", whether they were to be witnesses to the same overt act or to different overt acts. He thought also that proof of an overt-act ought to be expressed as essential in the case.

Docr Johnson considered "giving aid & comfort" as explanatory of "adhering" & that something should be inserted in the definition concerning overt-acts. He contended that Treason could not be both agst. the U. States — and individual States; being an offence agst the Sovereignty which can be but one in the same community—

Mr. M(adison) remarked that "and" before "in adhering" should be changed into "or" otherwise both offences (viz of levying war, & of adhering to the Enemy) might be necessary to constitute Treason. He added that as the definition here was of treason against *the U. S.* it would seem that the individual States wd. be left in possession of a concurrent power so far as to define & punish treason particularly agst. themselves; which might involve double punishmt.

It was moved that the whole clause be recommitted (which was lost, the votes being equally divided.)

N- H- no. Mas- no- Ct no- N- J ay- Pa ay- Del- no- Md. ay. Va. ay- N C- divid S- C-no. Geo- ay. — [Ayes — 5; noes — 5; divided — 1.]

Mr. Wilson & Docr. Johnson moved, that "or any of them" after "United States" be struck out in order to remove the embarrassment: which was agreed to nem. con —

⁸² Crossed out "or".

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Mr M(adison) This has not removed the embarrassment. The same Act might be treason agst. the United States as here defined — and agst a particular State according to its laws.

Mr Elseworth — There can be no danger to the Genl authority from this; as the laws of the U. States are to be paramount.

Docr Johnson was still of opinion there could be no Treason agst a particular State. It could not even at present, as the Confederation now stands; the Sovereignty being in the Union; much less can it be under the proposed System.

Col. Mason. The United States will have a qualified sovereignty only. The individual States will retain a part of the Sovereignty. An Act may be treason agst. a particular State which is not so against the U. States. He cited the Rebellion of Bacon in Virginia as an illustration of the doctrine.

Docr. Johnson: That case would amount to Treason agst the Sovereign, the supreme Sovereign, the United States —

Mr. King observed that the controversy relating to Treason might be of less magnitude than was supposed; as the legislature might punish capitally under other names than Treason.

Mr. Govr Morris and Mr Randolph wished to substitute the words of the British Statute
(and moved to postpone Sect. 2. art VII in order to consider the following substitute — “Whereas it is essential to the preservation of liberty to define precisely and exclusively what shall constitute the crime of Treason, it is therefore ordained, declared & established, that if a man do levy war agst. the U. S. within their territories, or be adherent to the enemies of the U. S. within the said territories, giving them aid and comfort within their territories or elsewhere, and thereof be provably attainted of open deed by the People of his condition, he shall be adjudged guilty of Treason”)

On this question

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

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no. Va.— ay. N. C. no— S. C. no. Geo— no. [Ayes — 2; noes—8.]

It was moved to strike out “agst United States” after “treason” so as to define treason generally — and on this question

Mas. ay — Ct. ay. N— J. ay. Pa ay. Del. ay. Md. ay. Va. no. N. C. no. S. C ay. Geo. ay. [Ayes — 8; noes — 2.]

It was then moved to insert after “two witnesses” the words “to the same overt act”.

Doctr Franklin wished this amendment to take place — prosecutions for treason were generally virulent; and perjury too easily made use of against innocence

Mr. Wilson. much may be said on both sides. Treason may sometimes be practised in such a manner, as to render proof extremely difficult — as in a traitorous correspondence with an Enemy.

On the question — as to same overt act

N— H— ay— Mas— ay— Ct. ay. N. J. no— Pa. ay— Del— ay— Md ay. Va no— N. C. no— S. C. ay— Geo— ay— [Ayes — 8; noes — 3.]

Mr King moved to insert before the word “power” the word “sole”, giving the U. States the exclusive right to declare the punishment of Treason.

Mr Broom 2ds. the motion—

Mr Wilson in cases of a general nature, treason can only be agst the U— States. and in such they shd have the sole right to declare the punishment — yet in many cases it may be otherwise. The subject was however intricate and he distrusted his present judgment on it.

Mr King this amendment results from the vote defining treason generally by striking out agst. the U. States; which excludes any treason agst particular States. These may however punish offences as high misdemeanors.

On inserting the word “sole”. (It passed in the negative)

N— H. ay— Mas— ay. Ct no— N. J— no— Pa ay. Del. ay. Md'no— Va— no— N— C— no— S. C. ay— Geo— no.— [Ayes — 5; noes — 6.]

Mr. Wilson. the clause is ambiguous now. “Sole”

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ought either to have been inserted — or “against the U- S.” to be reinstated.

Mr King no line can be drawn between levying war and adhering to enemy — agst the U. States and agst an individual States — Treason agst the latter must be so agst the former.

Mr Sherman, resistance agst. the laws of the U- States as distinguished from resistance agst the laws of a particular State, forms the line—

Mr. Elseworth— the U. S. are sovereign on one side of the line dividing the jurisdictions — the States on the other — each ought to have power to defend their respective Sovereignities.

Mr. Dickenson, war or insurrection agst a member of the Union must be so agst the whole body; but the Constitution should be made clear on this point.

The clause was reconsidered nem. con — & then, Mr. Wilson & Mr. Elseworth moved to reinstate “agst the U. S.” after “Treason” — on which question

N- H- no- Mas. no. Ct. ay- N- J- ay- Pa no- Del. no- Md ay. Va. ay- N- C. ay- S- C- no- Geo. ay— [Ayes — 6; noes — 5.]

MrM—(adison)was not satisfied with the footing on which the clause now stood. As treason agst the U- States involves Treason agst. particular States, and vice versa, the same act may be twice tried & punished by the different authorities — Mr Govr Morris viewed the matter in the same lights —

⟨It was moved & 2ded to amend the Sentence to read — “Treason agst. the U. S. shall consist only in levying war against them, or in adhering to their enemies” which was agreed to.⟩¹⁰

Col- Mason moved to insert the words “giving ⟨them⟩ aid comfort”. as restrictive of “adhering to their Enemies &c” — the latter he thought would be otherwise too indefinite — This motion was agreed to ⟨Cont: Del: & Georgia only being in the Negative.⟩¹⁰

Mr L. Martin — moved to insert after conviction &c — “or

¹⁰ Taken from *Journal*.

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on confession in open court" — and on the question, (the negative States thinking the words superfluous) (it was agreed to) N. H: ay— Mas— no— Ct. ay. N— J. ay— Pa. ay. Del. ay— Md ay— Va ay. N— C— divid S— C— no. Geo— no.

[Ayes — 7; noes — 3; divided — 1.]

Art: VII. Sect— 2. as amended was then agreed to nem— con.¹¹

Sect— 3— taken up.¹² "white & other" struck out nem con. as superfluous.

Mr Elseworth moved to required the first census to be taken within "three" instead of "six" years from the first meeting of the Legislature — and on question

N— H— ay. Mas— ay Ct ay— N J— ay— Pa ay— Del. ay. Md ay Va ay— N— C— ay— S— C. no— Geo— no. [Ayes — 9; noes — 2.]

Mr King asked what was the precise meaning of *direct* taxation? No one answd.

Mr. Gerry moved (to add to the 3d. Sect. art. VII, the following clause. "That from the first meeting of the Legislature of the U. S. 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")¹³

Mr. Langdon. This would bear unreasonably hard on N. H. and he must be agst it.

Mr. Carrol. opposed it. The number of Reprs. did not admit of a proportion exact enough for a rule of taxation —

(Before any question the House)¹⁴

Adjourned.¹⁵

¹¹ See further Appendix A, CL, CLVIII (88-91).

¹² Article VII, Sect. 3. "The proportions of direct taxation shall be regulated by the whole number of white and other free citizens and inhabitants, of every age, sex and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, (except Indians not paying taxes) which number shall, within six years after the first meeting of the Legislature, and within the term of every ten years afterwards, be taken in such manner as the said Legislature shall direct."

¹³ Taken from *Journal*, but Madison had recorded the substance of this motion.

¹⁴ Taken from *Journal*.

¹⁵ See further, Appendix A, LXXXV-LXXXIX.

Monday

McHENRY

August 20

McHENRY

August 20.

The following one agreed to.

Sect. 2. Amended to read. Treason against the U. S. shall consist only in levying war against them, or in adhering to their enemies giving them aid and comfort. The legislature shall have power to declare the punishment of treason. No person shall be convicted of treason unless on confession in open court, or the testimony of two witnesses to the same overt act.

Mr. Mason moved to add to the 1 sect of the VII article.

To make sumptuary laws.

Gouverneur Morris: sump. laws were calculated to continue great landed estates for ever in the same families — If men had no temptation to dispose of their money they would not sell their estates.

Negatived.

Amended section 3 by striking out the words in the second line *white and other*, and the word six in the 5 line and substituting the word three — but adjourned without a question on the section.