

THURSDAY, AUGUST 23, 1787.

JOURNAL

Thursday August 23rd 1787.

It was moved and seconded to postpone the consideration of the second clause of the report of the Committee of eleven in order to take up the following

“To establish an uniform and general system of discipline for the militia of these States, and to make laws for organizing, arming, disciplining and governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the Officers and all authority over the militia not herein given to the general Government”

On the question to postpone

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

It was moved and seconded to postpone the consideration of the second clause of the report of the Committee of eleven in order to take up the following

“To establish an uniformity of arms, exercise, and organization for the militia — and to provide for the government of them when called into the service of the United States”

On the question to postpone

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

It was moved and seconded to recommit the 2nd clause of the report of the Committee of eleven

which passed in the negative.

¹ Vote 344, Detail of Ayes and Noes, which notes that the motion to postpone was in order “to take up Mr Elsworths amendt”. The Journal states that the question “passed in the affirmative”, but the Detail of Ayes and Noes records a negative vote, which is confirmed by Madison, and the subsequent action of the Convention makes an affirmative vote impossible.

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On the question to agree to the first part of the 2nd clause of the report, namely

“To make laws for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States”

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

It was moved and seconded to amend the next part of the 2nd clause of the report to read

“reserving to the States, respectively, the appointment of the Officers under the rank of general Officers

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

On the question to agree to the following part of the 2nd clause of the report, namely,

“reserving to the States, respectively, the appointment of the Officers”

it passed in the affirmative

On the question to agree to the following part of the 2nd clause of the report, namely,

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

it passed in the affirmative [Ayes — 7; noes — 4.]²

It was moved and seconded to agree to the 7 section of the 7 article, as reported,

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

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

“No person holding any office of profit or trust under the United States, shall without the consent of the Legislature accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign State”

which passed in the affirmative

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

“This Constitution and the Laws of the United States made in pursuance thereof, and all treaties made under the authority of the United-States, shall be the supreme law of

² Vote 347, Detail of Ayes and Noes, which makes an evident mistake in giving the total.

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“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

On the question to agree to the 8 article as amended
 it passed in the affirmative

It was moved and seconded to strike the following words out
 of the 18 clause of the 1st section 7 article

“enforce treaties”

which passed in the affirmative

It was moved and seconded to alter the first part of the 18
 clause of the 1st section, 7 article to read

“To provide for calling forth the militia to execute the laws
 “of the Union, suppress insurrections, and repel invasions”

which passed in the affirmative

On the question to agree to the 18th clause of the 1st section,
 7 article, as amended

it passed in the affirmative.

It was moved and seconded to agree to the following propo-
 sition, as an additional power to be vested in the Legislature
 of the United States.

“To negative all laws passed by the several States inter-
 “fering, in the opinion of the Legislature, with the general
 “interests and harmony of the Union — provided that two
 “thirds of the Members of each House assent to the same.”

It was moved and seconded to commit the proposition

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

The Proposition was then withdrawn.

It was moved and seconded to amend the 1st section of
 the 7. article to read

“The Legislature shall fulfil the engagements and dis-
 “charge the debts of the United-States, and shall have the
 “power to lay and collect taxes, duties, imposts, and excises.”

which passed in the affirmative

It was moved and seconded to amend the first clause of the
 first section 9. article to read

“The Senate shall have power to treat with foreign na-

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“tions, but no Treaty shall be binding on the United States
“which is not ratified by a Law.”

It was moved and seconded to postpone the consideration of
the amendment.

which passed in the negative. [Ayes — 5; noes — 5.]³

On the question to agree to the amendment.

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

It was moved and seconded to postpone the considn
of the first clause of the 1st sect. 9 article

which passed in the affirmative

It was moved and seconded to insert the words

“and other public ministers” after the word “ambassa-
dors” in the first section 9 article

which passed in the affirmative

Separate questions being taken on postponing the several
clauses of the first sect. 9 article

they passed in the affirmative.

It was moved and seconded to take up the 1st section of the
9 article, in order to it's being committed

which passed in the affirmative.

and it was referred to the Committee of five.

and then the House adjourned

³ Vote 350, 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
[343]	no	no	no	aye	no	no	aye	no	no	no	no	aye	To postpone ye 2nd clause of the report of the Comme	3	8		
[p. 13]																	
[344]	no	no	aye	no	no	no	no	no	no	no	no	no	To postpone ye 2 clause of the report to take up Mr Elsworths amendt	1	10		
[345]	aye	aye	no	aye	aye	aye	no	aye	aye	aye	aye	aye	To agree to the 1st part of ye 2d clause of the report of the Committee of eleven	9	2		
[346]	aye	no	no	no	no	no	no	no	no	no	aye	no	To agree to the appointment of the Genl Officers of the militia by the genl Govt	2	9		
[347]	aye	aye	aye	aye	aye	no	aye	no	aye	no	no	no	To agree to the last clause of the report	8	3		
[348]	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	"The United States shall not grant titles of nobility"				
[349]	aye	no	no	no	aye	aye	aye	aye	aye	no	no	no	To commit the motion for giving a negative to the Legislature of the U. S. over the State laws.	5	6		
[350]	no	no	no	aye	aye	aye	aye	aye	aye	no	no	no	To postpone Mr Morris's amendment to the 1st clause 1st sect 9 article	5	5		
[351]	no	no	no	no	aye	no	no	no	no	dd	no	no	To agree to the amendment	1	8	1	

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In Convention Thursday Aug: 23. 1787

The Report of the Committee of Eleven made Aug: 21. being taken up, and the following clause being under consideration to wit "To make laws for organizing, arming & disciplining the Militia, and for governing such parts of them

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as may be employed in the service of the U. S. reserving to the States respectively, the appointment of the officers, and authority of training the militia according to the discipline prescribed" — ⁴

Mr Sherman moved to strike out the last member — "and authority of training &c. He thought it unnecessary. The States will have this authority of course if not given up.

Mr. Elsworth doubted the propriety of striking out the sentence. The reason assigned applies as well to the other reservation of the appointment to offices. He remarked at the same time that the term discipline was of vast extent and might be so expounded as to include all power on the subject.

Mr. King, by way of explanation, said that by *organizing* the Committee meant, proportioning the officers & men — by *arming*, specifying the kind size and caliber of arms — & by *disciplining* prescribing the manual exercise evolutions &c.

Mr. Sherman withdrew his motion

Mr Gerry, This power in the U— S. as explained is making the States drill-sergeants. He had as lief let the Citizens of Massachusetts be disarmed, as to take the command from the States, and subject them to the Genl Legislature. It would be regarded as a system of Despotism.

Mr Madison observed that "*arming*" as explained did not did not extend to furnishing arms; nor the term "*disciplining*" to penalties & Courts martial for enforcing them.

Mr. King added, to his former explanation that *arming* meant not only to provide for uniformity of arms, but included authority to regulate the modes of furnishing, either by the militia themselves, the State Governments, or the National Treasury: that *laws* for disciplining, must involve penalties and every thing necessary for enforcing penalties.

Mr. Dayton moved to postpone the paragraph, in order to take up the following proposition

"To establish an uniform & general system of discipline for the Militia of these States, and to make laws for organiz-

⁴ Upon this question, see above August 18, 21, and 22, and below September 14, also Appendix A, CLVIII (52-55), CLXXV, CLXXXIX, CXCI, CCX, CCLXXII, CCCXV.

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ing, arming, disciplining & governing *such part of them as may be employed in the service of the U. S.*, reserving to the States respectively the appointment of the officers, and all authority over the Militia not herein given to the General Government”

On the question to postpone in favor of this proposition: (it passed in the Negative)

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

Mr. Elsworth & Mr. Sherman moved to postpone the 2d. clause in favor of the following

“To establish an uniformity of arms, exercise & organization for the Militia, and to provide for the Government of them when called into the service of the U. States”

The object of this proposition was to refer the plan for the Militia to the General Govt. but leave the execution of it to the State Govts.

Mr Langdon said He could not understand the jealousy expressed by some Gentleman. The General & State Govts. were not enemies to each other, but different institutions for the good of the people of America. As one of the people he could say, the National Govt. is mine, the State Govt is mine— In transferring power from one to the other—I only take out of my left hand what it cannot so well use, and put it into my right hand where it can be better used.

Mr. Gerry thought it was rather taking out of the right hand & putting it into the left. Will any man say that liberty will be as safe in the hands of eighty or a hundred men taken from the whole continent, as in the hands of two or three hundred taken from a single State?

Mr. Dayton was against so absolute a uniformity. In some States there ought to be a greater proportion of cavalry than in others. In some places rifles would be most proper, in others muskets &c—

Genl Pinkney preferred the clause reported by the Committee, extending the meaning of it to the case of fines &c—

Mr. Madison. The primary object is to secure an effectual discipline of the Militia. This will no more be done if left

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to the States separately than the requisitions have been hitherto paid by them. The States neglect their Militia now, and the more they are consolidated into one nation, the less each will rely on its own interior provisions for its safety & the less prepare its Militia for that purpose; in like manner as the Militia of a State would have been still more neglected than it has been if each County had been independently charged with the care of its Militia. The Discipline of the Militia is evidently a *National* concern, and ought to be provided for in the *National* Constitution.

Mr L—Martin was confident that the States would never give up the power over the Militia; and that, if they were (to do so,) the militia would be less attended to by the Genl. than by the State Governments.

Mr Randolph asked what danger there could be that the Militia could be brought into the field and made to commit suicide on themselves. This is a power that cannot from its nature be abused, unless indeed the whole mass should be corrupted. He was for trammelling the Genl Govt. whenever there was danger. but here there could be none— He urged this as an essential point; observing that the Militia were every where neglected by the State Legislatures, the members of which courted popularity too much to enforce a proper discipline. Leaving the appointment of officers to the States protects the people agst. every apprehension that could produce murmur.

On Question on Mr. Elsworth's Motion

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

A motion was then made to recommit the 2d clause which was negatived.

On the question to agree to the 1st. part of the clause, namely

“To make laws for organizing arming & disciplining the Militia, and for governing such part of them as may be employed in the service of the U. S”.

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

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no. Va ay. N—C—ay. S. C. ay. Geo. ay. [Ayes — 9
noes — 2.]

Mr. Madison moved to amend the next part of the clause so as to read “reserving to the States respectively, the appointment of the officers, *under the rank of General officers.*”

Mr. Sherman considered this as absolutely inadmissible. He said that if the people should be so far asleep as to allow the Most influential officers of the Militia to be appointed by the Genl. Government, every man of discernment would rouse them by sounding the alarm to them—

Mr. Gerry. Let us at once destroy the State Govts have an Executive for life or hereditary, and a proper Senate, and then there would be some consistency in giving full powers to the Genl Govt. but as the States are not to be abolished, he wondered at the attempts that were made to give powers inconsistent with their existence. He warned the Convention agst pushing the experiment too far. Some people will support a plan of vigorous Government at every risk. Others of a more democratic cast will oppose it with equal determination. And a Civil war may be produced by the conflict.

Mr. Madison. As the greatest danger is that of disunion of the States, it is necessary to guard agst. it by sufficient powers to the Common Govt. and as the greatest danger to liberty is from large standing armies, it is best to prevent them by an effectual provision for a good Militia—

On the Question to agree to Mr. Madison’s motion

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

On the question to agree to the “reserving to the States the appointment of the officers”. It was agreed to nem: contrad:

On the question on the clause “and the authority of training the Militia according to the discipline prescribed by the U. S” —

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

* (In the printed Journal-Geo: no)

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On the question to agree <to> Art. VII—sect. 7. <as reported>⁶ It passed nem: contrad:

Mr Pinkney urged the necessity of preserving foreign Ministers & other officers of the U. S. independent of external influence and moved to insert — after Art VII sect 7. the clause following — “No person holding any office of profit or trust under the U. S. shall without the consent of the Legislature, accept of any present, emolument, office or title of any kind whatever, from any King, Prince or foreign State which passed nem: contrad.⁶

Mr. Rutledge moved to amend Art: VIII to read as follows,

“This Constitution & the laws of the U. S. made in pursuance thereof, and all Treaties made under the authority of the U. S. 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” — ⁷

which was agreed to, nem: contrad:

Art: IX being next for consideration,⁸

Mr Govr Morris argued agst. the appointment of officers by the Senate. He considered the body as too numerous for the purpose; as subject to cabal; and as devoid of responsibility. — If Judges were to be tried by the Senate according to a late report of a Committee it was particularly wrong to let the Senate have the filling of vacancies which its own decrees were to create.

Mr. Wilson was of the same opinion & for like reasons.

The art IX— being waved— and art VII. sect 1. resumed,⁹

Mr Govr Morris moved to strike the following words out

⁶ Article VII, Sect. 7. “The United States shall not grant any title of Nobility.”

⁸ See Appendix A, CXCII.

⁷ See Appendix A, CXCII, CCCXCVIII.

⁸ Article IX, Sect. 1. “The Senate of the United States shall have power to make treaties, and to appoint Ambassadors, and Judges of the supreme Court.”

⁹ Article VII, Sect. 1 (clause 18). “To call forth the aid of the militia, in order to execute the laws of the Union, enforce treaties, suppress insurrections, and repel invasions;”.

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of the 18 clause "enforce treaties" as being superfluous since treaties were to be "laws" which was agreed to nem: contrad:

Mr Govr Morris moved to alter 1st. part. of 18. clause — sect. 1. art. VII so as to read "to provide for calling forth the militia to execute the laws of the Union,¹⁰ suppress insurrections and repel invasions". which was agreed to nem: contrad

On the question then to agree to the 18 clause of sect. 1. art: 7. as amended it passed in the affirmative nem: contradicente.

Mr C— Pinkney moved to add as an additional power to be vested in the Legislature of the U. S. "To negative all laws passed by the several States interfering in the opinion of the Legislature with the General interests and harmony of the Union;" provided that two thirds of the members of each House assent to the same" This principle he observed had formerly been agreed to.¹¹ He considered the precaution as essentially necessary: The objection drawn from the predominance of the large (States) had been removed by the equality established in the Senate— Mr. Broome 2ded. the proposition.

Mr. Sherman thought it unnecessary; the laws of the General Government being Supreme & paramount to the State laws according to the plan, as it now stands.

Mr. Madison proposed that it should be committed— He had been from the beginning a friend to the principle; but thought the modification might be made better.

Mr. Mason wished to know how the power was to be exercised. Are all laws whatever to be brought up? Is no road nor bridge to be established without the Sanction of the General Legislature? Is this to sit constantly in order to receive & revise the State Laws? He did not mean by these remarks to condemn the expedient, but he was apprehensive that great objections would lie agst. it.

¹⁰ See Appendix A, CCX.

¹¹ See above June 8 (with references under note 3), July 17, and Appendix A, XCI, CCCXXVI, CCCLXXXIII.

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Mr. Williamson thought it unnecessary, & having been already decided, a revival of the question was a waste of time.

Mr. Wilson considered this as the key-stone wanted to compleat the wide arch of Government we are raising. The power of self-defence had been urged as necessary for the State Governments— It was equally necessary for the General Government. The firmness of Judges is not of itself sufficient. Something further is requisite— It will be better to prevent the passage of an improper law, than to declare it void when passed.

Mr. Rutledge. If nothing else, this alone would damn and ought to damn the Constitution. Will any State ever agree to be bound hand & foot in this manner. It is worse than making mere corporations of them whose bye laws would not be subject to this shackle.

Mr Elseworth observed that the power contended for wd. require either that all laws of the State Legislatures should previously to their taking effect be transmitted to the Genl Legislature, or be repealable by the Latter; or that the State Executives should be appointed by the Genl Government, and have a controul over the State laws. If the last was meditated let it be declared.¹²

Mr. Pinkney declared that he thought the State Executives ought to be so appointed with such a controul. & that it would be so provided if another Convention should take place.

Mr Governr. Morris did not see the utility or practicability of the proposition of Mr. Pinkney, but wished it to be referred to the consideration of a Committee.

Mr Langdon was in favor of the proposition. He considered it as resolvable into the question whether the extent of the National Constitution was to be judged of by the Genl or the State Governments.

On the question for commitment, (it passed in the negative.)

N— H. ay. Masts: no. Cont. no. N. J. no. Pa. ay. Del: ay. Md. ay. Va. ay. N. C. no. S. C. no. Geo. no. [Ayes — 5; noes — 6.]¹³

¹² See Appendix A, CXXVII.

¹³ See Appendix A, CXXXVII.

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Mr Pinkney then withdrew his proposition.

The 1st sect. of art: VII being so amended as to read "The Legislature *shall* fulfil the engagements and discharge the debts of the U. S, & shall have the power to lay & collect taxes duties imposts & excises", (was agreed to)¹⁴

Mr. Butler expressed his dissatisfaction lest it should compel payment as well to the Blood-suckers who had speculated on the distresses of others, as to those who had fought & bled for their country. He would be ready he said tomorrow to vote for a discrimination between those classes of people, and gave notice that he should move for a reconsideration.

Art IX. sect. 1. being resumed, to wit "The Senate of the U. S. shall have power to make treaties, and to appoint Ambassadors, and Judges of the Supreme Court."

Mr. (Madison) observed that the Senate represented the States alone, and that for this as well as other obvious reasons it was proper that the President should be an agent in Treaties.¹⁵

Mr. Govr. Morris did not know that he should agree to refer the making of Treaties to the Senate at all, but for the present wd. move to add as an amendment to the section, after "Treaties" — "but no Treaty shall be binding on the U. S. which is not ratified by a law."

Mr Madison suggested the inconvenience of requiring a legal *ratification* of treaties of alliance for the purposes of war &c &c

Mr. Ghorum. Many other disadvantages must be experienced if treaties of peace and all negotiations are to be previously ratified — and if not previously, the Ministers would be at a loss how to proceed— What would be the case in G. Britain if the King were to proceed in this maner? American Ministers must go abroad not instructed by the same Authority (as will be the case with other Ministers) which is to ratify their proceedings.

Mr. Govr. Morris. As to treaties of alliance, they will oblige foreign powers to send their Ministers here, the very

¹⁴ See further August 18 (with references under note 6), August 21–22, August 24, August 25 (with references under note 5).

¹⁵ Upon this question and its determination, see Appendix A, CCLXXIV—CCLXXVI.

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thing we should wish for. Such treaties could not be otherwise made, if his amendment shd. succeed. In general he was not solicitous to multiply & facilitate Treaties. He wished none to be made with G. Britain, till she should be at war. Then a good bargain might be made with her. So with other foreign powers. The more difficulty in making treaties, the more value will be set on them.

Mr. Wilson. In the most important Treaties, the King of G. Britain being obliged to resort to Parliament for the execution of them, is under the same fetters as the amendment of Mr. Morris will impose on the Senate. It was refused yesterday to permit even the Legislature to lay duties on exports. Under the clause, without the amendment, the Senate alone can make a Treaty, requiring all the Rice of S. Carolina to be sent to some one particular port.

Mr. Dickinson concurred in the amendment, as most safe and proper, tho' he was sensible it was unfavorable to the little States; wch would otherwise have an *equal* share in making Treaties.

Docr. Johnson thought there was something of solecism in saying that the acts of a Minister with plenipotentiary powers from one Body, should depend for ratification on another Body. The Example of the King of G. B. was not parallel. Full & compleat power was vested in him—If the Parliament should fail to provide the necessary means of execution, the Treaty would be violated.

Mr. Ghorum in answer to Mr. Govr Morris, said that negotiations on the spot were not to be desired by us, especially if the whole Legislature is to have any thing to do with Treaties. It will be generally influenced by two or three men, who will be corrupted by the Ambassadors here. In such a Government as ours, it is necessary to guard against the Government itself being seduced.

Mr. Randolph observing that almost every Speaker had made objections to the clause as it stood, moved in order to a further consideration of the subject, that the Motion of Mr. Govr. Morris should be postponed, and on this question (It was lost the States being equally divided.)

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Massts. no. Cont. no. N. J— ay— Pena. ay. Del. ay. Md. ay. Va. ay—N. C. no. S. C. no—Geo. no. [Ayes— 5; noes— 5.]

On Mr. Govr. Morris Motion

Masts. no. Cont no. N. J. no. Pa. ay— Del. no— Md. no. Va. no. N. C. divd S. C. no. Geo— no. [Ayes— 1; noes— 8; divided— 1.]

The several clauses of Sect: 1. art IX, were then separately postponed after inserting “and other public Ministers” next after “Ambassadors.”

Mr. Madison hinted for consideration, whether a distinction might not be made between different sorts of Treaties— Allowing the President & Senate to make Treaties eventual and of Alliance for limited terms— and requiring the concurrence of the whole Legislature in other Treaties.

The 1st Sect. art IX. was finally referred nem: con: to the committee of Five, and the House then

Adjourned.¹⁸

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7 sect. agreed to.

On motion, on a proposition reported and amended agreed that “*The legislature* shall fulfil the engagements and discharge the debts of the U. S.” To make the first clause in the VII article— Amended the first clause in the report of the said article by striking out the words, *the legislature of the U. S.* Added in the said article after the clause “to provide and maintain fleets.”

To organize and discipline the militia and govern such part of them as may be employed in the service of the U. S. reserving to the States respectively the appointment of the officers and the authority of training the militia according to the discipline prescribed by the U. S.”

Expunged in the VIII article the words *the acts of the legis-*

¹⁸ See further, Appendix A, XCIV.

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lature of the U. S. and of this constitution, so as that the constitution and laws made in pursuance thereof etc should be the supreme laws of the several States —

The IX article being taken up, It was motioned that no treaty should be binding till it received the sanction of the legislature.

It was said¹⁷ that a minister could not then be instructed by the Senate who were to appoint him, or if instructed there could be no certainty that the house of representatives would agree to confirm what he might agree to under these instructions.

To this it was answered¹⁸ that all treaties which contravene a law of England or require a law to give them operation or effect are inconclusive till agreed to by the legislature of Great Britain.

Except in such cases the power of the King without the concurrence of the parliament conclusive.

Mr. Maddison. the Kings power over treaties final and original except in granting subsidies or dismembering the empire. These required parliamentary acts.

Committed.

Adjourned.

¹⁷ By Gorham.

¹⁸ By Wilson.