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Bill of Attainder and Ex Post Facto Laws

U.S. Constitution, Article 1, Section 9

No bill of attainder or ex post facto law shall be passed.

Debates, Wednesday, 22 August 1787

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

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

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

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

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

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

On the second part relating to ex post facto laws—

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

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

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

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

Mr. RUTLEDGE was in favor of the clause.

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

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

Debates, Wednesday, 22 August 1787

Moved [by Gerry and McHenry] that the legislature should pass no ex post facto laws or bills of attainder.

G. MORRIS, WILSON, Dr. JOHNSON etc. thought the first an unnecessary guard as the principles of justice law etc. were a perpetual bar to such—To say that the legislature shall not pass an ex post facto law is the same as to declare they shall not do a thing contrary to common sense—that they shall not cause that to be a crime which is no crime—

Carried in the affirmative.

Debates, Wednesday, 29 August 1787

Mr. DICKINSON mentioned to the House that on examining Blackstone's Commentaries, he found that the terms "ex post facto" related to criminal cases only; that they would not consequently restrain the States from retrospective laws in civil cases, and that some further provision for this purpose would be requisite.

Resolution Submitted to the Committee of Style, Monday, 10 September 1787

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

Committee of Style Report, Wednesday, 12 September 1787

No bill of attainder shall be passed, nor any ex post facto law.

Debates, Friday, 14 September 1787

Col: MASON moved to strike out from the clause (art I sect 9) "No bill of attainder nor any ex post facto law shall be passed" the words "nor any ex post facto law." He thought it not sufficiently clear that the prohibition meant by this phrase was limited to cases of a criminal nature—and no Legislature ever did or can altogether avoid them in Civil cases.

Mr. GERRY 2ded. the motion but with a view to extend the prohibition to "Civil cases," which he thought ought to be done.

On the question; all the States were—no.

George Mason's Objections, Saturday, 15 September 1787

Both the general legislature and the State legislature are expressly prohibited making *ex post facto* laws; though there never was nor can be a legislature but must and will make such laws, when necessity and the public safety require them; which will hereafter be a breach of all the constitutions in the Union, and afford precedents for other innovations.

CITE AS: John P. Kaminski et al., eds., *The Documentary History of the Ratification of the Constitution*, Vol. XXXVII: Bill of Rights [1] (Madison, Wis.: Wisconsin Historical Society Press, 2019), 115–18.