



CENTER FOR THE STUDY OF THE AMERICAN CONSTITUTION

csac.history.wisc.edu > Document Collections > The Creation and Ratification of the Bill of Rights > The Philadelphia Convention and Rights

Treason

U.S. Constitution, Article 3, Section 3

Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

Committee of Detail Report, Monday, 6 August 1787

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 blood, nor forfeiture, except during the life of the person attainted.

Debates, Monday, 20 August 1787

Article VII, Sect. 2. concerning Treason which see [above].

Mr. MADISON 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 comfort” which had a more extensive meaning.

Mr. ELLSWORTH 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 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. DICKINSON 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. MADISON 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. divd. 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.—

Mr. MADISON: 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. ELLSWORTH: 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. 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.”

DOCT. 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” 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. ELLSWORTH: 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. DICKINSON: 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. ELLSWORTH 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]

Mr. MADISON 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.)

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).

Mr. L. MARTIN moved to insert after conviction &c—“or 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. divd. S.C. no. Geo. no. [Ayes 7; noes 3; divided 1]

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

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), 119–23.