

Article 1, Section 8, Clause 11

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Records of the Federal Convention

[1:19; Madison, 29 May]

[Mr. Randolph] then proceeded to enumerate the defects: 1. that the confederation produced no security agai[nst] foreign invasion; congress not being permitted to prevent a war nor to support it by th[eir] own authority--Of this he cited many examples; most of whi[ch] tended to shew, that they could not cause infractions of treaties or of the law of nations, to be punished: that particular states might by their conduct provoke war without controul; and that neither militia nor draughts being fit for defence on such occasions, enlistments only could be successful, and these could not be executed without money.

[2:318; Madison, 17 Aug.]

"To make war"

Mr Pinkney opposed the vesting this power in the Legislature. 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 depositary, 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. Madison 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.

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.1 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 S. C. no. Geo. no. [Ayes--0; noes--10.]

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.

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