

November Construction, such Construction & Implication ought to be founded
 Liber No. ¹¹78 on a clear and obvious Necessity—What necessity can possibly exist
 p. 466 with Regard to his exercising this Power? Is not the judicial and
 Magisterial Authority of the State, as competent to arrest a Fugitive
 Criminal as any other Criminal? Is not the Power to arrest, a Branch of
 judicial Authority and does not our Bill of Rights say the Executive and
 Judicial ought to be separate and distinct? and where can it be so
 effectually evercised as by the Magisterial or judicial Authority? The
 Magisterial Power is dispersed over the whole State: if a Fugitive
 Criminal is detected in any of the Counties a Warrant may be immediately
 had of a Justice of the Peace and the Criminal arrested and secured. But
 if the Power to Arrest be in the Governor only the Criminal may escape
 before an Application could reach him or his Warrant be obtained.

With Regard to the Objection, that if such Criminal be arrested by the
 judicial Power it must conform in the Exercise of it to the Constitution
 and Form of Government of this State and there must be an Oath in all
 cases and the Party entitled to Bail I apprehend the Objection is made
 upon very mistaken principles. The Confederation is the supreme
 overuling Compact, Constitution, and Government of every State: the
 Power to arrest a Fugitive Criminal is derieved from the Confederation
 and the Exercise of it must be guided by that alone: the Forms of
 Process and Arrest prescribed by the Constitution and Form of
 Government with Regard to it's own Citizens for Offences within its
 Limits cannot apply to Arrests under the Confederation. A Fugitive
 Criminal arrested under the Confederation in my Opinion is not entitled
 to Bail; he must be committed and held in Custody until the State in
 which the Offence is committed is Officially informed of the arrest and
 Commitment and have a reasonable time to Demand him.

p. 467 I certainly did think you declined proceeding against M^r Carbury
 in Expectation that the State of Pennsylvania would have demanded
 him: it was my Opinion that the Moment M^r Carbury was demanded
 the Confederation superseded the judicial Authority and Jurisdiction
 of this State over such Offences as he was charged to have committed
 in Pennsylvania. It is true, M^r Carbury's Offence, tho' committed
 in Pennsylvania was cognizable and triable by our Laws but it is as
 true the Confederation expressly stipulates that on Demand a Fugitive
 Criminal shall be delivered up: The Confederation is the overuling
 Power: it cannot be controled by the Laws or Acts of Assembly of
 any Individual State: had a Demand been made I should have
 considered myself as obliged to have interposed the Authority of
 Government and prevented you from proceeding against him on the
 Treason Act of this State. If this State can pass an Act making
 Offences done in another by it's Citizens cognizable and triable
 here, and on that Ground retain the Criminal