

NOTES

On the impeachability of a Senator of the United States.

BY a reference to a few clauses in the Constitution of the United States, and to a few principles of reason and justice, I think a correct decision may be made of the question whether a Senator of the United States be liable to impeachment for any crime or offence.

Two propositions will be stated, either of which if maintained, will support the affirmative of this question.

1st. Under the constitution of the United States any and every citizen is impeachable for an offence endangering the peace and safety of the nation.

2d. Supposing that every citizen is not impeachable, yet a Senator being an officer under the authority of the Constitution of the United States, entrusted with Legislative, Executive and Judicial power, is impeachable for certain offences.

It is provided and declared by the Constitution that "the House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment." Article I, Section 2, clause 5th. And that "the Senate shall have the sole power to try all impeachments." Article I, Section 3, clause 6th. And that "judgment in cases of impeachment shall not extend further than removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law." Article I, Section 3, clause 7th.

These, it is asserted, are the *only clauses* to be found in that instrument which tend to explain and ascertain who is or is not impeachable: and this being the case, it is contended that their operation is alike upon all citizens, and that no construction can reasonably be made that excepts a Senator from the general rule.

For the truth of the assertion, whoever doubts is referred to a perusal of the constitution, and whoever objects is challenged to produce any other clause that describes the objects of impeachment.

These clauses, it is observable, are in terms indefinite: the House of Representatives have the sole power of impeachment, without describing who are impeachable, or excepting any.

The Senate have the sole power to try all impeachments, without describing who are impeachable, or excepting any.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold office in future; without describing any cases, or excepting any; and the party convicted shall be also liable to trial by indictment and punishment at law, without describing any party, or excepting any person.

In the construction of this last clause it cannot reasonably be said that an impeachment may only be prosecuted against a person actually in office; for if this were the case the tenure of most offices being limited either by a fixed space of time, or the will of the President, the process of impeachment might be defeated by the expiration of the official term, or by resignation of the party, or by the Presidential dismissal. It is therefore admitted on all sides that a person out of office may be impeached, though the only punishment to be inflicted, in case of conviction, be a disqualification in future to hold any office of honor, trust or profit. If the judgment of future disqualification may be pronounced against a person out of office, it may be as fitly pronounced against a person who never was in office as against one who had been, but was no longer in office. Therefore no inference is to be drawn that this clause has limited the indefinite expressions in the other parts of the constitution.

In every well constituted republic there exists a power of disqualification to hold office, and it is a dictate of sound reason that the citizens capable of being elected into office, should be alike capable of being disqualified to hold office, after conviction for criminal conduct. But the power of awarding a sentence of disqualification being of a nature, very liable to be abused, ought not to be vested in the ordinary tribunals, but should be trusted in one tribunal composed of men distinguished for their knowledge, honor, and virtue. It is obvious if such a power was placed in various ordinary tribunals, the best men might be exposed to an unfair trial in some part of the country or other, and fall victims to prejudice. Wherefore in the several state governments as well as in the government of the United States, a tribunal is provided of eminent characters to whom alone the high power of disqualification is confined.

The citizens of the United States have equal civil rights; and are alike punishable for offences. They who claim exclusive privileges of any sort or particular exemptions from this rule, are bound to shew their title to such privileges or exemptions, by unequivocal and explicit expressions in the constitution or their claim should be rejected. It is averred that none such are to be found there, and this will make it now necessary to discuss another clause in the constitution, which it is alleged exempts and protects a Senator from impeachment. The clause is in these words: "The President, Vice-President and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors." Article 2d, Section 4th.

When it is said that this clause has limited and defined the meaning of other indefinite parts of the constitution relative to impeachment, and by necessary implication has described who are liable to impeachment, it is answered that this clause has only designated and established the punishment to be inflicted on the President, Vice-President and civil officers who are *actually in office at the time of conviction*, namely, a removal from office. In such cases it is not left to the discretion of the Senate, whether a judgment of removal from office may or may not

be rendered, but it is imperatively and absolutely required.

Because this Section orders the punishment of removal from office to be inflicted in the cases therein described, it is not therefore to be interpreted to restrain the Senate from inflicting the further punishment of future disqualification in those cases, in addition to removal from office. With still less reason can it be construed to apply to persons out of office at the time of conviction, and to protect such offenders from the judgment of future disqualification. Consequently it does not contain any necessary implication that only those persons, and none else, are liable to impeachment, who, if convicted, are liable to the punishment therein fixed. On the contrary, to admit such a construction of this clause, would almost entirely prostrate the process of impeachment. The plain and only operation of this clause is to define and establish the punishment of removal from office in certain cases, and not to limit and describe the objects of impeachment.

If then no part of the constitution can be produced which excepts any citizen offending against the state from impeachment; and if a private citizen is upon principles of sound reason, policy and justice, liable to impeachment, surely the addition of official power is not to furnish an exemption from such process; on the contrary such official power exhibits the offender as a more proper object of impeachment even for an offence not committed in the official character.

The House of Representatives is the grand inquest of the nation to which every citizen is subject, and it belongs to them to accuse whomsoever they shall deem fit objects to be prosecuted by impeachment, whether they be private citizens or vested with public trust. There may be a private citizen offending against the nation in such a manner and of such consequence, as to make him equally fit to be disqualified from holding office, as any civil officer whatever.

Nothing that has been said is meant to apply that a Senator is not a civil officer in the eye of this section, and liable to the punishment of removal from office in case of conviction, but in another state of argument this is referred to be shewn. I shall, however, before I proceed to the second proposition, make a short reference to the received law of England touching impeachment and to the constitutions of some of the states. At the same time it must be observed that these sources are not supposed to furnish any conclusive arguments but only such as illustrate and confirm the preceding observations.

To the Author of TIT FOR TAT.
HOWEVER painful it may be, "at this enlightened period," to hear gentlemen of respectability and integrity compare Banks and Insurance Companies operating in large cities to grocery shops in villages, and attempt to prove that because "Rival shops make goods cheap," therefore the rate of premiums, both on money and on insurance, may and ought to be reduced, by multiplying ad infinitum both Banks and Insurance Companies; yet this must be patiently suffered. To turn these gentlemen to their A B C in calculation, these AXIOMS are inserted; viz. in a Bank, altho' 99 per cent premium will not secure the payment of any single note discounted, yet one per cent on each of one hundred notes would in the end secure the payment of all, and altho' 99 per cent will not cover a single policy, yet in times of peace 2 1/2 per cent only on each will secure one thousand averaged risks; this last axiom forms the basis both for the London and the American Insurance Companies, and is proved by a universal experience of more than one hundred years. While there was but one Insurance Company in this city, there was a good chance of obtaining a thousand risks at a time, but when two were established contrary to the opinion of all experienced men, the chances being less in number, called for an higher rate of premium to secure each; therefore I have no doubt that the state will hereafter be opposed to the renewal of an Incorporation for more than one, since one Insurance Company and but one Bank would be of more service to the community than two of either.

As those gentlemen who have time to examine the parliamentary debates at the times when attempts have been made to increase the number of Insurance Companies in London, will find more satisfaction than the present time will permit me to offer, I may be excused if I defer this subject for a future leisure moment. PERSEVERO.

THE COMMISSIONERS.
Appointed by the Governor, to carry into effect the law for alleviating the distresses of the citizens of Philadelphia, and Suburbs thereof, in consequence of the prevalence of the Epidemic Fever in the year 1797; addressed their fellow citizens in November of that year, informing how they had appropriated the money handed them for distribution, amounting to upwards of 27,000 dollars, exclusive of the grant of the Legislature, when in the ensuing inclement season, there was distributed to about 1500 persons chiefly heads of families, most of whom when visited in their habitations, 500 cords of wood 500 barrels of flour, and about 2500 bushels potatoes, we believe in the best manner that could be desired.—This, with an additional sum of 400 dollars, granted the Female Association, whom we have before deservedly noticed, reduced our funds to a small sum, which in the early part of last summer, was invested in wood for the relief of those who might yet be suffering under the multiplied difficulties in consequence of the suspension of business.

The wood being now disposed of, we may with propriety dissolve our board, hoping, through the interposition of Providence, not to have new occasion to act in that capacity. We respectfully offer our minutes for inspection to those who may be desirous of examining them, relying on our best endeavors having been used for mitigating the distresses of humanity.

Signed in behalf of the Commissioners.
ROBERT WHARTON, Chairman.
Attest,
EDWARD GARRIGUES, Sec'y.

LETTER

From the SECRETARY OF THE NAVY,
To the CHAIRMAN of the Committee on the Naval Establishment.

With sundry Estimates relative to the expense of building and equipping certain VESSELS OF WAR,
FOR THE SERVICE OF THE UNITED STATES.

Navy Department, 29th Dec. 1798.

SIR,
I have given to the enquiries you have done me the honor, as Chairman of a Committee of the House of Representatives, to make of me, all the consideration my desire to comply promptly with the wishes of the Committee would permit; and now proceed, with great diligence to submit the result.

The protection of our coast, the security of our extensive country from invasion in some of its weaker parts, the safety of our important commerce, and our future peace, when the maritime nations of Europe war with each other, all seem to demand that our naval force should be augmented—so much augmented, indeed, as to make the most powerful nation desire our friendship, the most unprincipled respect our neutrality. The peaceful character of America will afford to the world sufficient security, that we shall not be easily provoked to carry war into the country of an enemy; and it well becomes the wisdom of America to provide a cheap defence to keep it from our own.

Twelve ships of 74 guns, as many frigates, and twenty or thirty smaller vessels would probably be found (our geographical situation and our means of annoying the trade of the maritime powers considered) a force sufficient to insure our future peace with the nations of Europe. It would not, perhaps, be hazarding too much to say, that had we possessed this force a few years ago, we should not have lost, by depredations on our trade four times the sum necessary to have created, and maintained it, during the whole time the war had existed in Europe. If we do not profit by experience, and put ourselves in a situation to resent insult, and punish aggression, nothing is more likely, than that in less than half a dozen years, another occasion may be presented for a repetition of the same mortifying observation. In another and still more interesting view of this subject, mutual safety was a leading motive, and must ever remain a strong cement of our union. Whether this security can be afforded, unless we are able to command our own coast; and whether the union of all the states can long be preserved without it, are questions which merit the most serious and attentive consideration of American legislators. I forbear to dwell on this fruitful, perhaps delicate topic.

However to attend to our more pressing concerns. We cannot feel entirely secure that we are not to be exposed to great calamities from the ambition or animosity of France, until a considerable addition be made to our naval force. If twelve ships of 74 guns are added to our navy, an invasion of any part of our country would be rendered so difficult, that it would scarcely be attempted; for it is not possible to conceive that France could promise herself any advantage by an invasion of this country, equal to the enormous risk, if we should be so prepared to resist her. She would be obliged to employ more than double the number of ships of equal force, to convoy her armies, provisions and stores, and to keep the communication open between her armies and her own country. France can calculate and will calculate, the loss and probably gain of her enterprises. When she finds that she cannot deceive us; that she cannot arm our citizens to carry on her work of subjugation—involuntarily and unfounded expectation; that we are determined on manly resistance; and that we take vigorous measures to put ourselves in a proper posture of defence. Even France, with all her pride, and all her heroism, will consult her interest and avoid war with America; and like other nations, she will discover, that it will not only be just, but politic, to indulge us in our favorite wish, of preserving peace with all the world.

Thus, then, in whatever view the subject is considered; whether our object be to prevent invasion, to protect our commerce, to obtain a speedy and a proper peace, to maintain peace hereafter, or by affording security to every part of our country, to guard against the long train of ills which must result from disunion; the wisest, cheapest, and most peaceable means of obtaining the end we aim at, will be prompt and vigorous measures for the creation of a navy, sufficient for defence, but not for conquest.

The United States are doubtless able to bear any expense necessary for their present safety and their future tranquility. No country increases so fast in population and resources, and no country can incur a debt, with such an absolute certainty of discharging it, without laying new burthens on the people. Our revenue arising from the impost and other sources, must increase in proportion to the increase of population, and as the increase of the latter is certain, no country ever had less to fear, from the consequences of incurring any debt, necessary for defence and safety.

On the subject of procuring ships of 74 guns, we probably have it in our option to buy them or to build them. The former will be the most expeditious mode of procuring them but the latter, if the pressure of our affairs, will admit, will be the most honorable, and the most advantageous for our country. If we buy them from a foreign nation, it is not to be expected that we shall be able to obtain those of the best quality; and the sum given for them will not be kept at home, and distributed among our own citizens, but will operate against us, like an unfavorable balance of trade. My own idea is, that we certainly ought to build the vessels, in preference to purchasing them; that immediate measure should be taken to secure all the necessary timber; but that the President should be authorized to obtain, as the exigency of our affairs may require, twelve ships of 74 guns, by purchase or otherwise.

If it should be found necessary to procure them sooner than they can be built, the timber may be preserved, by docking, until those purchased decay, or for a century, if it should not be sooner wanted.

The estimates herewith will shew the expense of building and equipping twelve ships of 74 guns, and six brigs or schooners, to mount, not exceeding eighteen guns. The latter would be highly useful in scouring the West Indies, and we have not a sufficient proportion of vessels of this size. Three of the largest of the 24 gun ships might be converted into frigates of 32 guns. The whole annual expense of maintaining the navy would then be,

The annual expense of the existing navy is

5,383,540	6
2,334,261	10

The difference would be the annual expense of the proposed addition,

2,949,278	96
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In times of peace, a small proportion of this sum would be sufficient to keep the ships in a state of preservation.

Every material article for the building and equipment of ships of war, copper executed, and probably copper also, may be procured, the growth or manufacture of our own country. It is true, that we have heretofore used cordage made of hemp of foreign growth, and imported canvas, and these articles constitute, if wear and tear be included, one third of the expense of building, equipping, and refitting our vessels of war. But manufactory of canvas have been heretofore established in the Eastern States, and with proper public encouragements, may be revived and made to supply at least the public demand; and it is most certain that any quantity of hemp can be raised on the Ohio and Mississippi, the Susquehanna, the Potomac, James River, and other parts of the United States, if the growers of it are assured of a ready market, and at a price less than that given for imported hemp; though if the prices of cordage and canvas, the entire growth and manufacture of the country, should be found at first a little dearer than the imported, the good policy of paying the difference to our own citizens, to render ourselves independent of foreign countries for articles so essential to our defence, cannot for a moment be doubted.

Timber can at present be had in almost every part of the United States, but in the greatest abundance, and of the best quality, on the Chesapeake Bay, and that waters which empty into it—and in the Southern states. The live oak of Georgia, is thought to be almost indispensable in the construction of our largest ships, to be used in those parts most subject to decay, but the white oak of the Chesapeake is not greatly inferior. It is however, highly desirable, to use the live oak of Georgia as long as it can be obtained, more especially in the ships built eastward of the Chesapeake—and by a proper mixture of this timber with that of the growth of the country, good vessels may be built in every part of our country.

The island on the coast of Georgia, on which the live oak is found, are supposed to be more healthy than the main land near the coast—they are also thought to be very important for the production of cotton—hence this valuable timber is becoming scarce every where, convenient to water transportation Two methods suggest themselves for obtaining supplies, beyond the immediate demand. To buy one or two of the most valuable islands and cause the timber to be preserved for the future uses of the navy, or to purchase the timber as the islands are cleared by the owners and have it transported to the places fixed on for building our ships, and docked until it be wanted. With respect to a purchase, the lands are held at prices greatly beyond what was the supposed value of them, a few years ago; and it is believed they have become less valuable for public purposes, in consequence of the efforts which have been made, and are daily making to clear them for cultivation.

On the subject of other kinds of timber, possibly when it is seen by the citizens, that it is worth preserving, it may be sufficient to trust in a great degree to their attention to private interest, for the preservation of a quantity equal to the public demand. It would however, be but provident to expend one hundred thousand dollars, in a way to secure enough of the white oak and yellow pine, both of which are indispensable in the construction of good vessels, to last the public, in aid of supplies from individuals, for ages—100,000 dollars could be so laid out; and I believe the expenditure would be judicious.

No extraordinary means are necessary to be used for procuring naval and military stores, except the article of hemp, canvas and copper. Cannon can be made in many of the states equal to any that could be obtained from foreign countries, also muskets and bayonets, pistols, swords, boarding pikes and indeed every other article necessary for ships of war.

Although copper mines are found in many parts of country, yet the most certain means of procuring present supplies will be by importation. The enterprising spirit of the merchants, has heretofore furnished enough for the public demand, and may be trusted for future supplies, so far as may be necessary for the ships now contemplated to be added to our navy. It is to be presumed, that before more ships are wanted, and possibly before any that may now be authorized are in a state to require the copper, means may be devised for obtaining it in the United States.

Docks will be highly necessary in repairing our ships, to avoid the tedious, expensive, and sometimes dangerous operation of heaving down. They can undoubtedly be made in the eastern states, where the tides rise very considerably;—probably in New-Hampshire, Massachusetts, or Rhode-Island. Whether they can be made with equal advantage or to answer valuable purposes, to the Southward of Rhode Island or New-York, I cannot form any accurate judgment, from any information I possess:—though it would

enquestionably be a great public advantage, to have a dock, near the entrance of the Chesapeake Bay, and another still further south, if circumstances will admit. Docks for repairing ships ought to be convenient to the sea, and yet not easily accessible to any enemy. Yards for building the ships where large quantities of water may be deposited (the destruction of which would always be an object of an enemy) should be according to the opinion of Mr. Humphreys, a gentleman of considerable science and experience in naval architecture, "in the vicinity of commercial cities, for the convenience of procuring able workmen within the reach of good white oak timber in fresh water, where timber may be deposited without danger from the worms; on a river running East and West, or nearly so, with a light bank, and where the harbor is secure from freshes, and stormy weather, out of the reach of an enemy—and near a good stream of water, 18 or 20 feet higher than the surface of the river, for the convenience of making lock docks sawing timber, and for many other valuable uses."

Perhaps the most expeditious mode of building ships immediately wanted, will be to let them up in several different places, and by such means avail ourselves of the resources of different parts of the country. I am by no means certain that this method will not also be the most economical under present circumstances, and with little seasonable timber in the country, and will certainly distribute more equally among the states the advantages which may arise from supplying the materials and labour. But the subject being new, I am not possessed of sufficient information, to state with precision where these places ought to be. At a future time, when the pressure may be less, and our experience greater, two or three places, uniting the greater number of advantages, may be fixed on for building all the large ships of the United States.

The mode heretofore pursued for obtaining naval stores, for the ships in public service, has been to get such supplies on the spot, as could be procured on moderate terms by the agent for building or equipping the ship—sending from Philadelphia, or elsewhere, such articles only, as could not be so supplied. Until it can be ascertained, what places should be selected for permanent building yards, no great inconvenience will result from pursuing the mode already adopted, for supplying the naval stores. Deposits of masts, to supply quickly vessels which may come in distressed, will be made at Boston, and Norfolk—measures indeed have already been taken for this purpose, and like deposits must be made at New York or Rhode Island—other articles required by vessels in distress, can generally be had in these places, and in our other commercial cities.

The business of naval armament being new in this country, and complicated; it is impossible in this early stage, to devise a perfect system on the subject. Every day's experience will add to the stock of knowledge possessed by the country; and it may be best for the public interest, that the Congress at their present session, should rely a little more on executive discretion than may hereafter be necessary. At the present session, it may be expedient and sufficient—that the president be authorized to procure by purchase or otherwise—12 ships of 74 guns, and six brigs or schooners to mount, not exceeding 18 guns; to take measures for procuring and depositing in dock of fresh water and in places of safety, such quantity of live-oak timber, proper for ships of 74 guns and frigates, not exceeding in the whole, such parts of the frames of 12 74 gun ships and as many frigates, as may be deemed essential to be of this species of timber;—to cause to be laid out in securing other kinds of timber for the future uses of the navy, a sum not exceeding 100,000 dollars: and to cause not exceeding three docks to be erected for the convenience of repairing ships. For so much of these objects as can be accomplished before the next session of Congress—an appropriation of 1,200,000 dollars, with a promise of further appropriations, may be sufficient.

I have suggested no plan for the encouragement of the manufacture of sail cloth. This subject will be better understood in Congress. A certainty of sale, as was already observed, will be encouraged enough for the growers of hemp.

I shall take the liberty to lay before you in a few days, such alterations in the rules for the government of the navy, as have been suggested by some of the most experienced captains, with my own observations.

I have the honor to be,
With great respect and esteem,
SIR,
Your obedient servant,
BENJAMIN STODDERT.

Cost of building and equipping a seventy-four gun ship, of 1620 tons, exclusive of military stores, 342,700 dollars. Annual expense of a 74 gun ship, per estimate, is 216,941 dollars.

Bank of Pennsylvania,
December 31, 1798.
The Stockholders of the Bank of Pennsylvania are hereby notified that their Annual meeting will be held at the Bank on Friday the 1st day of February next at 10 o'clock.
By order of the Board,
JONA. SMITH, cashier.
dec 1 F.

Lost, this Morning,
A CHECK, No. 179, on the Bank of the United States, for 175 dollars, drawn by Bond and Brookes, in favor of J. B. Bond. Also a five dollar note of the Bank of the United States. Payment of the check is stopped. Whoever will deliver it to the sufferer at the corner of Market and Chestnut street, shall receive the five Dollars in reward.
BOND & BROOKES.
jan 12.