

vested in The President are declared—but no such power as this is pointed out—so far from it, the mode of removal is particularly specified, and that is upon conviction, after impeachment before the Senate: As the constitution is thus explicit, it follows, that this House can have no right to confer the power designated in the clause.

The reason for giving this power is the necessity of removal in cases of incapacity; but for what cause can a man be removed from office, but for mal-practices or misdemeanors? Is sickness or ignorance a sufficient reason? and who is to judge of incapacity or ignorance, unless by reason of either some offence is committed? In that case the removal is not for incapacity, but for the offence, and let me ask for the instance of dismissal for the former?

This clause invests a power in The President, which will be liable to great abuses; for we are not always to expect a chief magistrate in whom such entire confidence can be placed as in the present—the splendor of whose virtues, some gentlemen, appear to be dazzled with, as to lose sight of a proper respect to futurity. The constitution is not calculated upon the idea of having the chair always so well filled; checks and guards are therefore provided—this is our only directory: An officer who is subjected to the whims of a capricious man, will be in an abject, dependent state: a mere slave; what is the consequence? we subject a fellow citizen to lose his reputation, his property, his living without a trial; men of independent principles will be cautious of placing themselves in such a situation; as a President might have round him those who envious of the honors and emoluments of persons in office, would be constantly intriguing and insinuating suspicions to effect their removal.

To be removed from office without a specified crime, or without a trial is contrary to the spirit of the constitution; is contrary to the free sentiments of this people: Some gentlemen have supposed that the present case is one of those to be provided for by legislative regulations; it appears however from the foregoing observations, that the mode proposed is unconstitutional; and upon the whole it is evident, that as the power is not given to the President by the constitution, it ought not to be delegated to him.

Mr. HUNTINGTON followed Mr. SMITH, and made a few observations upon "responsibility," shewing that its importance was principally derived from the character in which it was fixed, and not from the idea in itself considered—he was opposed to the clause as dangerous.

Mr. SEDGWICK adverted to several cases, which would render removals from office necessary, which were not provided for by the constitution—and which the mode by impeachment from the length of process, and various difficulties always realized, would be found totally inadequate to remedy—he pointed out the necessity of speedy and prompt decision, when a man had become odious and unpopular in his office, without committing a positive offence when his talents were found deficient, and there was an incurable negligence and indolence in his attention to the duties of his office—when his political principles were become odious to the people, and his talents, instead of being exerted for the public good, were directed to prosecuting schemes of personal aggrandizement, in such and similar cases, it would be necessary to adopt something more summary than the slow, desultory process by impeachment.

Upon the principle of gentlemen, opposed to the clause—the Senate must be always in session—This he hoped would not take place—but in the absence of this body, what was to be done? must the public interest be sacrificed? must justice be delayed, by keeping an unworthy officer in his post, till the Senate could be collected from the extremities of this continent?

The danger of abuses had been enlarged upon; but was there no danger on that account from the Senate? the argument in his opinion, applied with equal force—and the power in the hands of a body chosen from various parts of the union, under the impression of various and different principles, was as liable to abuse if not more so, than if placed in the hands of the man, whom the united voice of the people should call to the office of chief magistrate.

Mr. MADISON coincided with Mr. SMITH, so far as that we ought to adhere strictly to the spirit and meaning of the constitution—He was however opposed to the motion for striking out the clause.—The present question was considered in various points of view; it therefore came properly before the legislature to decide upon it. If the proposed clause is merely a declaration of the constitution, it can do no harm; if it relates to a doubtful part, it lays with the whole legislature to give an explanation: And if the constitution is totally silent, Congress may use its discretion: The power is a high and important one; and therefore a decision merits a full and free discussion of both sides of the question: When it is considered, that the chief magistrate is to be selected from the mass of the citizens, by the united suffrages of three millions of people; notwithstanding the weakness incident to a popular election, he could not suppose that a vicious or bad character would be chosen.

If there is a country upon earth in which an effectual security is provided against the elevation of an unworthy man to the first seat in government, it is the United States. It is evidently the policy of the Constitution, that great responsibility should be lodged in The President, with respect to the executive department; but this responsibility is abated or destroyed so far as the officers to whom the duties of this department are committed, are not amenable to him: Should the Senate be associated with The President in the power of removal, the officers would very probably rest the retaining their places upon the favor of the Senate, in preference to that of The President, and would accordingly consider themselves as accountable principally to the Senate; in that case all executive responsibility would be impracticable, or the expectation of it, unjust.

The officers may by connecting themselves with the Senate in a cabal against The President, lay a foundation for perpetual discord, and in that way effectually destroy his responsibility, and defeat the expectation of the people from the institution of an independent executive branch.

From an attentive examination of the Constitution upon its true principle, it is at least problematical whether the House is not tied down to the construction adopted in this clause of the bill.

So far as particular powers are invested in different and particular departments, a different appropriation of those powers is not warranted by the constitution; it will therefore be highly improper to blend those powers: If the executive powers are invested in The President, the legislature may not interfere in the exercise of those powers.

No gentleman will say, that the judicial power should be vested in anybody, other than that designated by the constitution: The executive power is in the hands of The President, and is there any particular exceptions to this general principle? There is an exception: The constitution has declared, that in the appointment of officers, the Senate shall have a voice, unless in cases of inferior officers, the law shall otherwise direct.

Has Congress a right to extend this exception? No. If the constitution has in general vested all executive powers in one branch, the legislature has no right to diminish or modify them, any farther than is expressly provided by the constitution.

The question resolves itself into this: Is the power of displacing officers an executive, or legislative power? I conceive (said he) that no power can be more completely executive than that of appointing, inspecting and controuling those, who have the immediate administration of the laws. If the constitution had not provided, that in the appointment of officers, The President should have the advice and consent of the Senate; would it not be evident that he being possessed of the executive powers would have a right to appoint them? Could Congress in this case, have a right to say that the concurrence of the Senate should be necessary in such appointments? Most certainly not: And if not how can it be said with propriety, that Congress has a right to associate these branches, in order to dismiss them.

This clause may therefore be considered as explanatory of the constitution, and if the foregoing reasoning is just, it comports with its spirit and meaning; but if it is a doubtful point, it is the duty of the legislature to decide upon it.

Mr. VINING observed, that he was sorry that this question was again made the subject of discussion.

The committee who brought in the bill, (of which he had the honor to be one) thought themselves obliged by the former decision of the House to insert the clause now objected to: The House, (said he) has determined that the power of removing officers, shall be lodged where the responsibility resides: The circuitous route of impeachments has been well pointed out by the gentleman from Massachusetts, (Mr. Sedgwick) the slow, dilatory and inefficient process by that mode, is demonstrated by universal experience. The case of Warren Hastings is an eternal stigma upon the system of Impeachments: What delays! what suspension of the public service!

Suppose a secretary of foreign affairs in this situation: The forms of a full trial; the collecting of evidences; the charges and arguments of the parties, and a deliberate decision, may perpetuate the business for years.

It certainly could not be in the contemplation of the Senate to take away the responsibility of The President: Incapacity is not impeachable: Must the public service suffer by depriving The President of the power to remove an officer thus circumstanced? I trust, Sir, the clause will not be struck out.

Mr. WHITE supported his motion—He considered impeachments unnecessary to be applied to upon all occasions: They were proper as they respected officers who were to hold their places during good behavior: these were The President, Vice-President, and the Supreme Judges; but as the principle, that the power of removal ought to rest with the power that appointed did not apply to the two first, there was no mode of removal for them, but by impeachment before the Senate.

He had no idea that such an officer as the Minister of Foreign Affairs should not be removed but by impeachment: It might be highly inexpedient to have the reasons of his dismissal publicly known: In that case, The President, with advice of Senate, might have power to remove him without assigning any cause: The constitution implied this, as it provided that the JUDGES only should hold their places during good behavior.

He differed from his colleague in the principle which he had advanced, that the whole executive power was vested exclusively in The President in all cases where the Constitution had not specified an exception: The Constitution had given the Senate a voice in the appointment of officers, and they certainly had a power to dismiss from office.

It had been urged, that the power could be more safely entrusted with The President; but the House was bound to adhere to the Constitution, that prescribed certain limits, which the legislature could not exceed: No officer could be legally dismissed without a trial; upon the clause in debate, an officer might be retained in office, contrary to the sentiments of the Legislature.

To obviate the difficulties which it had been suggested would arise upon the plan which he thought the constitution pointed out, he supposed that The President might be invested with the power of a temporary suspension and appointment of officers in the recess of the Senate; but an absolute power for those purposes cannot be given consistently with the Constitution.

Mr. BOURNOR was in favor of the clause; he observed, That much had been said upon the subject; but its importance was so great, as rendered a full discussion necessary, and could not be considered as time lost. If the power contended for, could in the least infringe the Constitution, or the rights of the several branches of the Legislature, he would most heartily oppose it. But the clause he considered as a legislative construction of the Constitution, which it was highly necessary to settle at the present time. Nothing can be shewn to prove that removals are to take place only by impeachments. The reasoning of those who contend for the power's being invested in The President, does not conclude against the remedy by impeachment; it only proves that there is another mode provided in the Constitution.

It is proper and necessary that the power of removal should reside somewhere; but this power does not prevent impeachments of any officer, however protected by the favor of him in whom that power is vested. The Constitution says, that an officer shall be removed by impeachment; but it does not say, that he shall not be removed without impeachment: The Constitution does not say, that that shall be the only mode: It has given the Senate a voice in appointing; but this by no means implies a right of removing. Suppose the President should complain to the Senate of the misconduct of an officer, what would be the consequence, if the Senate should take upon themselves to be judges? Would they not call upon the accused to state the reasons of his conduct? Would not such an investigation place the President in a situation inferior to the Senate? And should the Senate decide in favor of the officer, what would The President's situation then be?

He considered the Senate as the only security and barrier between the House and the President, and in this view, as a Court of Judicature, to operate as a check between them. This security ought to be in a situation always to be appealed to, and to guard against his misconduct: If the Senate is not this independent body, there is no resort left to the House: If the President was unduly attached to an officer, who was obnoxious to the people, and was determined to support him; if in consequence of the public clamor, he should be compelled to bring the matter before the Senate, and they should decline removing him—would they be unbiassed and unprejudiced to hear the impeachment that should be made by the House? They would be improper judges, having pre-judged and pledged themselves to acquit the offender: The same difficulty might occur in an attempt to impeach the President for refusing to dismiss an unfaithful and odious officer.

In cases of sickness or incapacity, if the President is not invested with a power of removal, will the people submit to such officers? Divest the President of this power, and you destroy his responsibility: We ought not to leave this matter to the slow operations of law: The government in this case would suffer an interregnum: We must leave this responsibility with The President, or we shall effectually defeat the operation of the Constitution.

Mr. SMITH (S. C.) in reply observed, That gentlemen on the opposite side of the question were not consistent with themselves. Some contended that the power of removal was given by the Constitution; others that this House ought to give it; the question therefore recurred, either the Constitution has given the power to the President when it is unnecessary; or it has not given it, in which case it is improper for this House to do it. Gentlemen have said, that it is the duty of the Legislature to construe this point; but this House has no right to expound the Constitution—neither has the Senate: It will be an infringement of the rights of the Judiciary: If one House has this right, the other is equally entitled to it, and on a question in which each was concerned, they would see with different eyes, and disagree in their expostions. Much mischief has arisen in the several States from legislative constructions of their Constitutions. It appears to me (Mr. SMITH further observed,) that this House has no more right to invest the President with this power, than we have to invest ourselves with it.

The mode of impeachment for crimes will not be tedious and dilatory as some gentlemen seem to suppose: There will be no juries in such cases; and to be protected from the summary modes used in foreign despotic countries, is the glorious privilege of freemen. Gentlemen have said that the Constitution makes no provision for cases of delirium, incapacity, &c. let the law then provide for such cases. The power contended for is not drawn from precedent; there is no such power given by the State Constitutions, upon the principles of which, the system under which we are now deliberating is founded. Mr. SMITH concluded by adverting to several historical facts—and by observing that the forms of law were designed to secure the rights of the subject, and might prove highly necessary to guard a deserving officer from injustice, and popular phrenzy.

Mr. GERRY was opposed to the clause—he supposed it would invest a power in the President to annul the most essential checks of the Constitution: He thought that if it was considered as merely a question of expediency, there was danger of making a breach in the constitution; if it is a constitutional question, every idea of expediency should be abandoned. He was for a strict adherence to the constitution; he conceived that no construction of that, would warrant delegating such a power to the President: It was conceded by some gentlemen in favour of the clause, that the constitution was not definite upon the subject, and if there was a doubt, it did not allow the liberty of a discretionary construction.

Mr. AMES observed, that every question which touches the constitution is a serious question: In order to obtain the advantages which are to be expected from the constitution, powers are delegated. To guard against abuses, checks are provided: That an officer should be removed, when the reasons which gave rise to his appointment, no longer exist, will not be disputed; but the question is, how this is to be done? There is no government in which the officers hold their places during good behaviour: The officers of the judiciary, from the nature and peculiar delicacy of their trust, were formed into a distinct branch, and hold their offices upon that tenure; but in respect to others, acting in aid of the President, who were appointed upon differed principles, and for different purposes, it is necessary that they should hold their places during pleasure: The confidence which the government has in the virtues and abilities of an officer, should be the only ground of his appointment, and the only bond of connection between him and his principal; when that confidence ceases, the power under whose direction he acts, should certainly have power to displace him.

There may be numerous and various causes of removal, which do not amount to a crime: If it is admitted that officers ought to be dismissed when their continuance operates to the injury of government, whether innocent or not of any crime, the only question then is, how and by whom they shall be displaced? Impeachments are not the only mode to be resorted to. In the British government officers are removed immediately when they become odious and can no longer render service to the public: While the forms of impeachment are preparing, the mischief may be done: It may as frequently be necessary to prevent as to punish crimes. The situation and advantages of the supreme executive, will furnish him with the means to detect a villainous design, before it is ripe for execution; he might, for example, discover in the officers of the treasury a project for embezzling the public money; some sudden and decisive remedy would in such case be indispensable.

It is generally agreed, that removals will be a proper remedy; the question is by whom? If the constitution is against the power's being vested in The President, there is an end of the enquiry. The committee ought to be clear that the constitution is opposed. The gentleman from Virginia, (Mr. Madison) has made so many just remarks to prove the constitutionality of this power, that it is unnecessary to go over the ground again.

If it should be granted that the constitution is silent, it certainly comes within the cognizance of the Legislature. The powers of the several branches ought not to be blended. The President is the executive; this is confessedly an executive power: It is not creating a new power; it already exists, and is as great now as it will be when particularly appropriated. Officers should have the terror of punishment constantly held over their heads for delinquency.—The immediate influence and controul of the President over his assistants is necessary, it is the essence of good government. That responsibility which is so important and absolutely necessary, can never be found in the Senate: besides, the blending of distinct powers always produces a corruption of those powers; for this reason the Senate should never have the power of interfering: Protection for protection in office, will be the consequence, and a numerous train of evils more easily foreseen than remedied.—Upon the whole, there appears to be three opinions upon the subject before the committee, the first is, that investing this power in the President, is against the constitution—the second, that it is not—and the third is, that the constitution is silent with respect to it: It is therefore necessary that the House should come to a declaration; if that declaration is right, it will become a rule; if not, the Judges will determine it.

Mr. LIVERMORE was opposed to the clause, and urged several reasons for striking it out.—Adjourned.

WEDNESDAY, JUNE 17.

In committee of the whole, upon the bill for establishing the department of foreign affairs—the question whether the clause which invests the President with the power of removing officers should be struck out, still under consideration, and was largely debated; but no decision was had upon the question when the committee rose, and the House adjourned.

THURSDAY, JUNE 18.

A petition from ROBERT FRAZIER was read and laid on the table.

The Senate sent down the bill upon tonnage, in which they have concurred with amendments—these amendments being read, the order of the day was called for, when the House went into a committee of the whole; and the subject of yesterday's debate was resumed: The committee sat until near four o'clock, and then rose without coming to a vote upon the question.

FRIDAY, JUNE 19.

House met agreeably to adjournment, and formed itself into a committee of the whole, upon the bill for establishing the Department of Foreign Affairs. The motion which had been under debate since Tuesday, for striking out the clause which empowers the President to remove officers, still under consideration. Lengthy debates ensued—sketches of which shall appear in our next. The question upon the motion being at length taken, it passed in the negative, 33 being in favor of retaining the clause, and 20 against it.

The committee then proceeded in the discussion of the bill. Mr. BENSON proposed the following clause for insertion, viz. That the Secretary for the Department of Foreign Affairs immediately after his appointment, be empowered to take into his custody all the books and papers belonging to the late Department of Foreign Affairs established by the United States in Congress assembled: This clause was adopted.

The further discussion of the bill produced some alterations and amendments, which being completed, the committee rose, and the chairman made his report. The Speaker having taken the chair, a message was received by the Secretary from the Senate, with the impost bill, informing the Honorable House that they insisted on some of the amendments which they had proposed, and receded from others.

The Secretary also informed the Honorable House, that the committee appointed to view the rooms in the Federal Hall, had proceeded in that business and made a partial report, which was now sent down for concurrence.—Adjourned until Monday.

[The Debates of the Hon. House of Representatives of the United States upon the Clause in the Bill for establishing the Department of Foreign Affairs, which empowers The President to remove the Officer at the head of that department, without advice of Senate, have been highly interesting, animated, and ingenious. The galleries have been unusually crowded, notwithstanding the heat of the weather; and the most profound attention observed. The zeal and earnestness, with which the several Speakers have supported the argument on both sides of the question, fully demonstrate the deep conviction which they felt of the importance of the subject. This discussion has served to unfold and explain the principles of the Constitution; and the extreme anxiety which has been shewn to adhere to its spirit and meaning, by every one of the Speakers, evinces that they all consider it as the only rule of their Faith and Practice, in the course of their Political Existence.]