

poses all that which is requisite to the acquisition of the object of the power. It has been contended on one side, but is not conceded on the other; that the power of appointments is not vested in the Senate. That the President is to nominate and appoint is evident.—Treaties are to be made by the President, by and with the advice and consent of the Senate—Does the Senate make treaties? But not to recapitulate arguments, it was upon another idea (Mr. Sedgwick observed that) he rose.

The institution of the office to be established by this bill originates in the idea of the incompetency of man. All the powers necessarily devolve upon the President which this officer is to be appointed to execute—hence the reason and propriety of the absolute dependence on, and responsibility of this officer to the President.—The executive department is extensive, and naturally divides itself into a variety of different branches—all these branches are, or ought to be amenable to the chief magistrate, hence his responsibility is greatly increased, provided the officers of these several branches are made dependent upon him—but can this responsibility be reasonably or justly expected of him, while the persons executing the duties of these departments are independent of him? The truth is, all these executive officers are as many auxiliaries of the supreme executive, and therefore their responsibility is naturally resolved into that of the President as constituent parts of it: And without an entire dependence upon him the idea of responsibility in him is weakened and destroyed. In cases of incapacity and disqualification, which perhaps can be known only by long acquaintance and the frequent recurring of evidence, what is to be done? must the President before he shall be relieved from the burden of such an officer, or the public service placed in an eligible situation by displacing unfit and introducing proper characters—I say must the President appear before a court of impeachment? must he be one party and the accused another? Let gentlemen consider what must be the result of such a situation of things.

The responsibility of the Senate is lost in contemplating the difficulty of impeaching the members of a collective body. It has been said, that the judges are the only suitable persons to determine this question; but from the reasoning of others this point is by no means clear: An appeal to the judiciary must be conceded as foreign, and can not engage the serious attention of the committee at the present moment.

Mr. LEE replied to the various objections of Mr. White: He then proceeded to state the merits of the question, and observed, That it is a maxim in government, that the legislative, executive, and judicial powers, should be kept separate and distinct as possible.

In the formation of the Constitution of the several States, particular attention has been paid to this essential point.

The Constitution under which this House is now sitting, is framed upon the same principle; and it lays with this body to keep those powers in that state of separation: It is of consequence that the people should form just ideas of these distinct powers, and know where they are severally deposited, so that by this means, the public jealousy may at all times receive a proper direction: On this, the liberties of the people depend—that modification of the branches which invests them with the powers peculiar to their original design, is the only way to create that responsibility, without which the government never can be watched and guarded. This responsibility must necessarily rest principally with the executive branch; it is in vain to look for it in the other branches: It is that branch which is naturally referred to as the centre of this responsibility; it is congenial to the ideas which we connect with the institution of the office of Chief Magistrate; it is implied in the very expression: Now if the ministers of those departments which are created to carry into effect the great executive objects of government, are independent of the President, or are rendered accountable to the joint control of the Senate and the President, it is evident that the idea of responsibility is dissipated, and in a great measure lost—will this be agreeable to the wishes of the people? Upon the whole I cannot see the danger which gentlemen appear to apprehend from that construction of the Constitution which this clause is calculated to give: On the other hand it appears to me perfectly consonant to its spirit and design; and it is the duty of the House to give a decisive opinion on the case.

Mr. BOUNDNOT: I have, Sir, attended with the greatest care to the arguments which have been offered upon both sides of the subject before the committee, and from the whole am convinced, that the efficacy of the government depends on a just decision of this question: I shall always turn my attention to the Constitution; it is our only safe directory: I cannot agree with the gentleman from Virginia, that this Congress cannot with propriety explain and modify the principles of the Constitution; for if this is a fact, we have no business here: Congress has a right to exercise all the powers that are deducible from the Constitution: We are not to be influenced by ratifications, or by the seceding States: I contend that this power is vested in the President, and that it is the duty of this House to declare it: The powers of the respective branches ought to be defined and separated: One great objection to the Constitution is, that the powers are not properly separated.

Mr. BOUNDNOT then repeated the arguments upon appropriating the respective powers, and observed, that officers were appointed and commissioned by the President, and not by the Senate: The officer at the head of the department of Foreign Affairs is to obey the orders of the President, and consequently must be dependent upon him, or else his obedience cannot be commanded: If we forbear by a legislative act to declare that the power of removal is in the President, shall we not leave our great executive departments in confusion, and sow the seeds of jealousy and dissatisfaction among the several branches of government? Gentlemen have proposed as a substitute the power of suspension; but this power will be found as exceptionable as the other, and liable to great abuses. The President will be cautious of unnecessary removals; the Senate may refuse to fill the vacancies; what will be the consequence? It is painful to reflect upon the subject in this point of view: The power must then rest with the President; it will be impossible for him to perform the duties of his department without it.

Mr. JACKSON observed, That the decision upon the clause in this bill involves the fate of the other two, the War and Treasury departments; and it is evidently the object of the Bill, to establish the principle in the present instance, before the department of the Treasury is brought forward.

I contend Sir, that the several branches of the Legislature are plainly pointed out in the constitution; and those of the President are particularly enumerated: The heads also of the several departments are enumerated and designated as separate; and the President is not considered as the head of the whole: He is to receive their advice and require their opinions in writing—this is the express language of the constitution; If they are then merely parts or appendages of the executive, this provision in the Constitution will be nugatory. I beg leave to differ from gentlemen in regard to constructions—I consider them as dangerous: The Constitution has pointed out these departments—Congress may arrange them; but this is different from construing the system: If we presume to define and construe the Constitution, there is no limits to the business; if one is made, we may go on from alpha to omega. The various branches cannot in the nature of things be so separate and independent as some gentlemen pretend: Let us revert to that excellent writer Publius: He has proved that the Senate are armed with executive power; and on the other hand the President has a share in legislation. Gentlemen have said, that the power contended for is necessary to prevent a misapplication of the public money; but I contend Sir, if we give this power to the President, he will have the liberties of the people in his hands; for if the officers should oppose his measures, however bad, he may displace them at pleasure—and whose hands will the Treasury then fall into? The purse and the sword are paramount to all other considerations: Give a man an uncontrollable dominion over these, and you make him a despot; give him these, and where will be your boasted liberties?

It has been said, that the power being vested in the Senate would be equally dangerous; but I ask, where is the greater danger from

power, in the one, or the many? The Senate is continually reverting to the mass of the people; the state legislatures will be a check upon them. The President has already got the sword—give him the purse with the army and navy, and what is there left? What can he not do? With the command of the public chest, he would always be able to secure his election, and thus perpetuate his political existence. Let us look round us this very moment, and see what strides we are making towards venality and corruption. We already hear the high sounding titles of His Highness, and Most Honorable, which ten years ago would have exalted a man to a station as high as Haman's gallows: These titles have been echoed in the newspapers of Boston, a town which fifteen years since would acknowledge no King but the Lord of Hosts.

Mr. JACKSON further observed, that the principle he had repeatedly advanced, respecting the great departments being pointed out in the constitution specifically, and not as necessarily connected with the President, had not been attended to; he called upon gentlemen to shew the fallacy of this principle: It was clearly in his mind, that it went to shew the unconstitutionality of delegating this power to the President; and he hoped the clause would not be adopted by the committee.

Mr. SCOTT: I have listened with great attention to the debates upon this question, and putting the arguments of some gentlemen together, they amount to just this; the raising a great number of frightful pictures, which at first sight appear very terrific indeed; but when minutely examined, turn out to be the harmless progeny of a disordered imagination: Let us examine one or two of these pictures as a sample of the whole groupe; that we may judge whether there is such danger in giving this power to the President; and that security which some gentlemen pretend in striking out the clause in the bill.

One of those pictures represents the President grasping the money chest, after having arbitrarily removed the officer whose duty it is to guard the treasury: Then, Sir, in the background, we see the President with the army the navy and the money chest engaging against the liberties of America and reducing the people to abject slavery; so fudden is the alarm, and so terrible the onset, that we are hardly allowed time to say Farewell to Liberty: And all this in consequence of the President's having a power to remove the officer of the treasury.

But, Sir, the fact is, that our money may be in the treasury by millions, and without special appropriation by the legislature, neither the President nor this officer can touch a farthing of it, unless they steal it: This being the case, I see as little safety to the treasury from the independence of this officer, as danger to it, from his dependence on the President.

But the President may come with his army at his back, and seize the money chest: In this case I see but little advantage in the officers independence; for if he should stand in the President's way, I think he will be very apt to take him, and the money too.

From this view of the matter, it appears that gentlemen have been arguing from premises that do not exist, in order that they may draw strong conclusions from them. They have been drawing pictures on a hard wall, to batter them down with their knuckles.

Another of these frightful pictures is raised out of a comparison of the relationship between the President and the people, with that between the Senate and the people, and here we have run deep into the science of calculating kindred, and it seems to be concluded by the supporters of this motion, that the Senate are a much nearer kin to the people than the President; therefore this stranger, the President, must not be intruded with the removal of officers; but our near kinsmen the Senate.

But the fact is, that the President, above all the officers of government, both from the nature of his appointment and the duties of his office, may justly and truly be denominated THE MAN OF THE PEOPLE, whereas the Senate are the mere representatives of the sovereignties of the several States composing the Union, which sovereignties are the only effectual bar that can ever be raised against the just execution of the federal government, and perhaps a very efficient check to keep the federal government within proper constitutional bounds, and which representatives have (officially) little or nothing to do with the people or their interests.

Hence it appears that although this picture is not quite so ludicrous as the other, it is equally an airy phantom, and so of the rest.

Mr. GOODHUE observed, that the great object of the present constitution is to provide those powers, which we suffered so much for the want of, under the old confederation: It is clearly within the meaning and design of the constitution, that all those powers which are necessary to carry the government into execution, should be vested in the several branches; of this description is the power which the clause in this bill declares is vested in the President; and although this power enables him to remove an officer, yet the power of impeachment residing in the Senate, the President cannot continue an officer in his place, without their consent, however great a favorite he may be.

Mr. GERRY observed upon the danger and impropriety of the committee's undertaking to expound the constitution, or to construe its various parts: The clause in the bill has been called a declaration of the sense of the committee on the meaning of the constitution; upon this idea, it ought to be denominated a declaratory act; but he contended that Congress had no power to make a declaratory act.

Mr. SHERMAN: The more I hear the question discussed, the more I think the clause should be struck out: It is said, that the power is vested in the President by the constitution; if so, why should we officiously go to tell the President of it? It appears to me, it would be more proper to leave the matter to his determination according to the constitution: The President is authorized to do every thing necessary to discharge the duties of the executive; but it is considered, that by restricting him from the power of appointing and removing officers at his will and pleasure, the liberties of the people are more effectually secured. The exercise of this power in England has swallowed up all the rights and privileges of the nation, by giving all the power of government in a measure into the hands of the executive branch.

It has been said, that the Senate are considered as a council of advice; but I think they are not considered in the constitution as merely an advisory body; their CONSENT is also necessary in appointments; and they should have the power of dismissal consequently: Those who do not suppose that the constitution invests the power in the President, and are in favor of the clause, suppose that the power should be given him by law: This would be safer, than construing the constitution, as conveying such a power: But it appears to me, that the best way will be to leave the constitution to speak for itself, whenever the public exigencies may require it; and not make a declaration, which may involve consequences unfavorable to the freedom and happiness of the people.

Mr. AMES said it was disagreeable to ask the attention of the committee, when their patience was already weary, and their curiosity faded: Still he hoped to be of some use in bringing the various arguments to a point.

If the Constitution has vested this power in any branch, it is agreed to be in the President alone, or in the President with advice of the Senate: But we are warned with great solemnity to forbear this enquiry. It is said to be unnecessary and dangerous. It is true we may decide wrong; but we are bound to decide. We are as much sworn to exercise lawful powers for the common good, as to refrain from assuming powers not given us. We are as responsible for forbearing to act, as for acting. Shall we leave this question to be contended between the President and Senate? Is it not disingenuous to say, it is too perplexed, and too important for us to determine, and to throw the burden of it upon the President? After so long debate, a decision must be had. It could not be avoided by striking the words out. That was deciding. We must resolve it for ourselves, as it may never come before the judges.

The executive power is vested in the President. If the Constitution had stopped there, and had not defined any duties, either he would have had no power at all, or he would derive from that general expression, all the powers properly belonging to the execu-

tive. The Senate's power of advice is an exception from the rule. This exception must be construed strictly to reconcile the Constitution with itself: For without the power in question, how can he see that the laws are executed, as he is required to do? It is the control over officers. Take that out of his hands, and he is stripped of the power of his office. He is no longer responsible, or he not only advise secretly, but as their own discretion may direct. They are not answerable. The blame divided among so many will fall upon none.

We are servants, it is true; but we are watchmen—and we should be unfaithful in both characters, if we should so administer the government, as to destroy its great principles, and most essential advantages.

This power seems, therefore, to fall within the lawful limits of the President, to be necessary to controul officers, and to preserve to the executive his independence.

If gentlemen on the other side should not be satisfied with this construction, a conclusion almost as strong results from their doubts as from their assent: For they must bring more proof of the Senate's power of advising, or admit the power to be in the President alone; unless they prefer rejecting both doctrines, and agree to dispose of the power as it may be expedient. In that case, the dreadful array of objections drawn from the Constitution will avail nothing. The Constitution has not imposed any duty upon the Senate, which this construction in favor of the President will prevent being done; nor is there a single letter or clause, which by any fair or unfair construction, is opposed to it. The argument drawn from the Constitution, rests solely upon this principle, which is to be found in it, but is said to be reasonable, that the power of removal from office is incident to the power of appointing to office. This is an assumed principle, and if denied, cannot be proved. Certainly it is often not true. But if true, it is not favorable to their doctrine; for the President has expressly the power of nominating and appointing, though he must obtain the consent of the Senate. He is the agent. They may prevent action; but cannot act. It is not easy to illustrate this point by examples which will exactly correspond. But suppose that a man devotes to his executor land, to be sold (with the advice of a certain person) on certain conditions: The executor sells with the consent, and upon the conditions required in the will: The conditions are broken. Shall the executor re-enter for the breach of them; or has the person whom he was obliged to advise with in the sale, any power to restrain him? The executor may remove the wrongful possessor from the land, though perhaps by the will he may hold it in trust for some other person's benefit. In this manner the President may remove from office, though, when vacant, he cannot fill it without advice of Senate.

We are told that it is dangerous to adopt constructions, and that what is not expressly given, is retained. Surely it is as improper in this way to confer power upon the Senate, as upon the President.

The result is, that if the power is not in the President solely, it is clearly not in the President and Senate. For the very arguments which make the former doubtful, make the latter absurd. Because the question was not free from doubt, he was safe in voting for the words in question. If the Senate has not the power, which the arguments on both sides prove with almost equal force, then the President is vested with it, or it is in the disposal of the Legislature.

Certainly we shall not, of choice, confer it on the Senate. For the doubt whether the President is not already entitled to it, is an argument against placing it in any other hands. Besides the Senate is not always sitting—is not responsible. It is out of their line of duty as legislators: They are to try; not accuse offenders: They are not to give orders, but on complaint to judge of the breach of them.

We are warned against betraying liberty: We are told that all power tends to abuse. And yet we cannot avoid trusting it out of our hands. What is intended by this? To the people it is of no importance as it respects their power. They cannot remove bad officers: They can neither gain nor lose power by it. For the question is only which of their servants shall have the power already granted. Wise and worthy as the Senators are, the power in their hands will not only tend to abuse, but cannot tend to any thing else. Many free governments have been subverted. The world has profited by their experience, and agreed upon certain maxims: That all power is a trust; that to prevent abuse it must be distributed into three branches, who must be made independent, and to watch and check one another. If all power is given to the executive, it is a despotism. If the senatorial branch is invested with the executive authority, it is an aristocracy, which of all tyrannies is the worst. As one usurps the powers of the other, or has them conferred upon it, the government will vibrate towards one of these points. These are to watch one another, and the people are to watch them all—and liberty may long be safe. Neglecting or despising these maxims, the ancient commonwealths were destroyed. A voice issues from the earth which hides their ruins, and proclaims to mankind the sacredness of those truths which are at this moment in controversy. It is said that the constitution has in fact blended the legislative and executive powers. This has been an objection against the constitution. If it is true, we should refrain, not extend the evil. But perhaps with the sole power of removal in the President, the check of the Senate in appointments is proper: It is merely a check: It affords the most solid answer to the objection. There is much less objection to the advisory power in appointments than in removals from office. The first may prevent a man's coming into office; but the latter holds him in office. The first is the transaction of an instant: The latter, a permanent thing. It creates a continued connection. It is obvious how this will nurse faction: How much it will promote intrigue to procure protectors, and to shelter tools. It is infusing poison into the Constitution. It is an impure, unchaste connection: There is ruin in it: It is tempting the integrity of the Senate with forbidden fruit. It should not be possible for a branch of the legislature to hope for a share of the executive power, which they are bound to watch: For they may be tempted to encrease the executive power, by the hope of partaking in the exercise of it. People are seldom jealous of their own power, and if they may become partners with the executive, will they be suitable watchmen?

Instead of being champions for liberty, they will become conspirators against it. The executive should be so far independent, as to defeat any attempts by either of the legislative branches to usurp his prerogatives. In every possible event, his power should be exclusive of their partnership. But the proposed executive control of the Senate is setting that body above the President. It tends to establish an aristocracy by law; and at the moment of endangering the principles of our free and excellent Government, the people are to be amused with the sound of liberty: For in this lies the danger to liberty: It infuses a principle of mortality into a government, which the lovers of mankind have withheld might last to the end of the world. With a mixture of executive and legislative powers, no government can long remain free. With a corrupt executive, liberty may long be preserved. But with a corrupt legislative, it is impossible. A government so formed, would be the most formidable curse that could befall this country. Probably an enlightened people would force and amend the error in season. But if time was allowed for such a compound to produce its natural effects, it would either banish liberty, or the people would be driven to exercise the primary rights of nature, and to destroy a monster which would destroy them.—He admired the free principles of the Constitution, and should vote for the clause on account of its conformity to those principles.

WEDNESDAY, JUNE 24.
The engrossed bill for establishing an executive department to be denominated the department of foreign affairs, which was referred to this day, was again read; and upon the question, shall this bill pass to be enacted? the yeas and nays were called for, when it appeared that there were 29 in the affirmative and 22 in the negative.