Remainder of Wednesday's Debate.

But, Sir, another species of argument has been urged against the clause—It has been said that it is improper or at least unnecessary to come to any decision on the subject. It has been said that it will be officious in this branch of the legislature to expound the constitution, so far as relates to the division of power between the President and Senate. Sir, it is undoubtedly of as much importance to this branch as to any other, that the constitution should be preserved entire: It is our duty as well as interest to take care that its principles be adhered to. A breach of the constitution in one point may lead to a breach in another. A breach in this point may destroy that equilibrium in the government, by which this House maintains its share of authority.—I do not think we can be charged with officious interference, as this bill before it can have effect, is to be submitted to both those branches who are particularly interested in it. The Senate may negative it—The President may object to it.

Sir, an objection strongly urged is, that the legislature itself has no right to expound the constitution; that whenever its meaning is doubtful, you must leave it undecided till the judiciary shall be called on to declare its meaning. I conceive, that in the ordinary course of things, the exposition of the constitution devolves on the judiciary. But I beg to know on what principle it can be contended that any one department derives from the constitution greater powers than another, in declaring what are the true limits of the constitution. We have a great charter which assigns certain great boundaries and fences to the several departments of government; if these constitutional boundaries be brought into question, I cannot conceive why any one of those independent branches has not a right to express its sentiments.

This is perhaps an omitted case; there is no one government that I know of, in which provision is made for a particular authority to determine the great constitutional limits, and the great division of power between the branches of government. In all systems there are points which must be settled by the branches themselves, and to which no other power is competent. If they cannot be, there is no resource left, but the will of the community to be collected, either by the mode which our constitution provides, or by a mode dictated by necessity. It is therefore a fair question before us, whether the great point may not as well be decided by the whole legislature as by a part—by us, as well as by the executive or the judiciary. As it will be equally constitutional, it cannot be less safe that the explanation should come from the legislature, particularly as it comprehends all those branches whose powers can be effected by it; besides, Sir, I do not see, how the question could be brought before the judges were the right of determining assigned to them. If there is any part of the government from which an opinion on this capital point can come with singular advantage, it is this house, who being not so immediately interested can form their opinion, and express their sense with less bias than any other. My conclusion from these reflections is, that the clause is perfectly constitutional; that it expresses the meaning of the constitution as a fair construction must explain it, and that it is not only consistent with liberty, but more favorable to it than any other possible interpretation.

Mr. Gerry was clearly of opinion with the gentleman last on the floor, that it was of importance to decide the question on its true principles. He declared that he should be ready to oppose every encroachment of the legislature on the just rights of the executive. He considered himself bound not only by an oath, but by an obligation equally strong, that of honor. Gentlemen had laboured to prove the constitutionality of the clause.—He said he had listened to their arguments, and was convinced that the clause was as inconsistent with the constitution as any set of words which could be inserted in the bill.

There appeared to be two questions. One, whether the people had delegated to the government at all the power of dismissing at pleasure. The other was, to whom it belonged As to the first, he agreed that the power had been delegated. It seemed to be proved by the arguments of the gentlemen, that otherwise the clause in the constitution respecting the judges was nugatory. As to the second question, it was agreed that the power must rest in some department. He believed that gentlemen in support of the clause would agree that the house did not possess the power, any more than the judges—It lay therefore either with the President, or the President and Senate: And if so, it appeared to him, that the clause in either case was useless.—For if the Senate would assent to the clause when sent up by the House, they would assent to the provision contained in it when the President should exercise it. If the Senate thought the power ought to be vested in the supreme executive, they would freely consent to his using it; if not, they would reject this clause. In either case the clause was nugatory.

Mr. Gerry argued that by the operation of the clause there would be a clashing of powers, and some which the Senate were allowed to possess would be rendered of no effect. Their power of appointment would be defeated in its object, by the power of the President to remove; and the power of judging on impeachments, would be rendered vain by the power of dismissing; for a power of judging implied a power of acquittal, which would in its operation, be totally insignificant, if the President could immediately displace an officer whom they had judged and declared innocent.

He insisted that as to the danger of abuses, the remedy against them, which had been mentioned, that is, the power of impeaching the President if he dismissed a good man, involved an absurdity. How could the House impeach the President, when they had declared that he could lawfully do as he pleased? Would they impeach him for exercising a discretion which they had given him in a most unlimited manner?

If the legislature gave him an unlimited controul over all officers, he would have, he said, the absolute controul over the treasury. We might as well give him the appropriation of monies; for it would be of little consequence to make laws, when the President by looking at an officer, could make it his interest to break that law. It must be expected that from this general controul, there would rise up a government of revenue instead of a government of laws. It would be easy for the President to cover all his crimes by an application of the revenue to those who were his judges, and such an application would certainly be made, in case of a corrupt President; and corruption in him was what it was necessary to guard against.

Mr. Gerry further observed, that giving the President the power to remove, would virtually give him a considerable power of appointment, independent of the Senate; for if the Senate should reject his favorite, and agree to his nomination of one less agreeable to him, he might immediately remove the latter on the recess of the Senate, and introduce the favorite; for the constitution had vested him expresly with the power of appointing in the recess of the Senate.

It had been observed, he said, that this was a case omitted; and that Congress had a power of supplying the defect—But they ought to consider on what ground they stood. An attempt to supply such a case might appear an attempt at an amendment to the constitution. The system had provided a mode of making amendments—The legislature could pursue that alone. Any attempt to obtain amendments in another form, would be a high crime and misdemeanor; perhaps something worse. Gentlemen, he said, appeared to be leading them on to what might be deemed treason against the constitution. The system, it could not be denied, was in many parts obscure and unintelligible. If it was once determined that Congress might explain and declare what the constitution was, it could not be denied that they could change it at pleasure. This obscurity had been one of the great arguments against accepting it. It had been urged that it was remarkably obscure—It was indeed, he said, most studiedly obscure. By this very act, the House were, he asserted, assuming a power to form a constitution. If the people of the United States supposed that it is in the power of the legislature to give constructions to the constitution, they would revolt from it. The idea of the legislature having a right to make any alterations in the constitution was repugnant to the feelings of every freeman, and to the principles of the revolution.

He then took notice of the argument that the legislative and executive ought to be kept distinct; and asked what department the Senate was, when acting with the President? clearly an executive one. If so, the argument fell to the ground.—If they acted as legislative, it would be absurd. They were a constitutional council to the President, and were completely executive.

If the power was vested in the Senate, it had been said the executive would be a two-headed monster; but it was already a two-headed monster, and if it was the desire of gentlemen to make it less monstrous, it ought to be made a consistent monster. He thought it would be monstrous indeed to give the Senate the power of appointing, and deprive them of that power of dismissing officers.

He concluded with asserting that the clause in debate was useless and unnecessary, and inconsistent with the constitution. It was an officious interposition of the House in a business which did not properly come before it.

Mr. Benson supposed there was a power in the legislature of supplying the omission in the constitution, and determining by what power officers should be removed.—The constitution had given the power to the government generally to remove at pleasure: for it could not be rationally contended that all offices should be held during good behaviour.

Could the gentleman be serious, he asked, when he suggested that this was a case to be proposed to a convention of the people for an amendment to the constitution? Did the gentleman suppose that when ever a doubt arose respecting any part of the constitution, it should be referred to a convention, and that the different doubts of different individuals should all be settled in this way? Did he suppose that no part of the constitution was to be taken by construction? It was unquestionable, he said, that no constitution or law could possibly be formed which would not involve the necessity of construction.

Mr. Benson proceeded to prove the impropriety of vesting the power in the Senate, by shewing the difficulty and embarrassments which would result. He would put the case of the officer to which the bill related. To him were to be committed the negociations with foreign ministers; a very delicate trust. The supreme executive, in controuling this department, would frequently be obliged to act on suspicion, and that of the most delicate kind, and the circumstances on which it was founded, not proper to be explained. He would be in a situation which would render it improper to make use of the evidences of his suspicion—Was it to be supposed then that the Senate would implicitly submit to his will and his proposal. They would not; they would certainly require the reasons. Suppose he should tell them that he suspected the man's fidelity, they must then proceed farther and insist on a full communication. Was it not to be supposed that this officer would have at least one friend in the Senate, who would contend for a hearing, and a fair trial? The President was then to be the complainant, and a subordinate officer the defendant; and the Senate would sit in judgment between the chief magistrate of the United States, and one of his officers. He begged gentlemen to tell him if this absurd scene looked like good government. In every instance of a proposition for removal, on account of incapacity, or any other cause, an enquiry would take place, for a man would always have some friend to demand this in his favor. All these inconveniences would be done away by giving the President the power to remove the officer.

One argument, strongly urged, he said, was, that the same power which appoints, should have the right to remove. But a distinction properly took place here. If the President and Senate were to be considered as one body deliberating together in the business of appointments, and if the appointment itself was their joint act, and each individual had a right to make propositions, the reasoning might hold good. But on the contrary, they acted as distinct bodies; the Senate had only a simple negative or affirmative; and no member had a power to offer an original proposition—The moment this simple principle was deviated from, the power in the Senate which was only intended as a check, would become an original authority, and the executive department would be split, divided, and distracted.

But it had been proposed that the President should have the power of suspending. What would be the consequence of this? If the Senate should on their convening restore the officer, the President would have a man forced on him whom he considered as unfaithful, and who was disagreeable to him; a man who was properly his meer instrument. How would business be conducted? What communication—what confidence could exist between the President, and the reinstated officer? The executive administration would become impracticable; it would be made up of discordant materials, and its operations would be subject to perpetual divisions and jarring—In short, it appeared to him indispensible, to the exercise of the authority which the constitution had vested in the President, that he should have the power of removal; and he was convinced that the liberties of the people would not derive a particle of additional security from restraining or witholding any part of this power.

Mr. Smith (S. C.) entered into a general reply to the arguments in favour of the clause, and was answered by Mr. Vining. This concluded the business of Wednesday.

[*Being unavoidably prevented from attending the debates on Wednesday last, we are indebted to the* Daily Advertiser *for the foregoing: The importance of the subject to which they allude, will, we trust, apologize for the re-publication.*—A. B.—Americanus.—Price Current—*and many other articles omitted, will appear in our next.*

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