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HISTORY OF CONGRESS.

JUNE, 1789.  Amendments to the Constitution.

[H. of R.]

He thought the best way to avoid the danger was to stay where we are.

Mr. Madison—I believe, Mr. Speaker, there are cases in which it is prudent to avoid coming to a decision at all, and cases where it is desirable to evade debate; if there were not cases of this kind, it would be unnecessary to guard our discussions with the previous question. My idea on the subject now before the House is, that it would be improper in this body to expose themselves to have such a proposition rejected by the Legislature of the State of Rhode Island. It would likewise be improper to express a desire on an occasion where a free agency ought to be employed, which would carry with it all the force of a command. How far this is contemplated on the present occasion, I cannot tell; but I heartily wish that as little may be said about it as possible. I conceive this to be one of the cases to which the previous question is applicable; and, if the gentleman means to call the House to a direct decision on this motion, I shall step between, and interpose the previous question.

Mr. Ames—I am against the previous question being taken, because I wish the House to consider the motion made by the gentleman from New York; it is admitted to be a question of considerable importance; if it is, it ought to be considered; otherwise, we are shutting the door on information, and putting it out of our power to ascertain the propriety or impropriety of the motion. How far this is contemplated on the present occasion, I cannot tell; but I heartily wish that as little may be said about it as possible. I conceive this to be one of the cases to which the previous question is applicable; and, if the House were to call the House to a direct decision on this motion, I shall step between, and interpose the previous question.

Mr. Madison rose, and reminded the House that this was the day that he had heretofore named for bringing forward amendments to the Constitution, as contemplated in the fifth article of the Constitution. He then addressed the Speaker as follows: This day, Mr. Speaker, is the day assigned for taking into consideration the subject of amendments to the Constitution. As I considered myself bound in honor and in duty to do what I have done on this subject, I shall proceed to bring the amendments before you as soon as possible, and advocate them until they shall be finally adopted or rejected by a Constitutional majority of this House. With a view of drawing your attention to this important object, I shall move that this House do now resolve itself into a Committee of the Whole on the state of the Union; by which an opportunity will be given, to bring forward some propositions, which I have many hopes will meet with the unanimous approbation of this House, after the fullest discussion and most serious regard. I therefore move you, that the House now go into a committee on this business.

Mr. Surrus was not inclined to interrupt the measures which the public were so anxiously expecting, by going into a Committee of the Whole at this time. He observed there were two modes of introducing this business to the House. One by appointing a select committee to take into consideration the several amendments proposed by the State Conventions; this he thought the most likely way to shorten the business. The other was, that the gentleman should lay his propositions on the table, for the consideration of the members; that they should be printed, and taken up for discussion at a future day. Either of these modes would enable the House to enter upon business better prepared than could be the case by a sudden transition from other important concerns to which their minds were strongly bent. He therefore hoped that the honorable gentleman would consent to bring the subject forward in one of those ways, in preference to going into a Committee of the Whole. For, said he, it must appear extremely impolitic to go into the consideration of amending the Government, before it is organized, before it has begun to operate. Certainly,
upon reflection, it must appear to be premature. I wish, therefore, gentlemen would consent to the discussion of this business which lies in an unfinished state—I mean particularly the collection bill—is necessary to be passed; else all we have hitherto done is of no effect. If we go into the discussion of this subject, it will take us three weeks or a month; and during all this time, every other business must be suspended, because we cannot proceed with either accuracy or dispatch when the mind is perpetually shifted from one subject to another.

Mr. Jackson.—I am of opinion we ought not to be in a hurry with respect to altering the Constitution. For my part, I have no idea of speculating in this serious manner on theory. If I agree to alterations in the mode of administering this Government, I shall like to stand on the sure ground of experience, and not be treading air. What experience have we had of the good or bad qualities of this Constitution? Can any gentleman affirm to me one proposition that is a certain and absolute amendment? I deny that he can. Our Constitution, sir, is like a vessel just launched, and lying at the wharf; or a bill, if you tried, you can hardly discover any one of her properties. It is not known how she will answer her helm, or lay her course; whether she will bear with safety the precious freight to be deposited in her hold. But, in this state, will the prudent merchant attempt alterations? Will he embarke without fear for the planing and taking boarding of the frame? He certainly will not. Let us, gentlemen, fit out our vessel, set up her masts, and expand her sails, and be guided by the experiment in our alterations. If she sails upon an uneven keel, let us right her by adding weight where it is wanting. In this way, we may remedy her defects to the satisfaction of all concerned; but if we proceed now to make alterations, we may deface a beauty, or deform a well proportioned piece of workmanship. In short, Mr. Speaker, I am not for amendments at this time; but if gentlemen should think it a subject deserving of attention, they will surely not neglect the more important business which is now unfinished before them. Without we pass the collection bill we can get no revenue, and without revenue the wheels of Government cannot move. I am against taking up the subject at present, and shall therefore be totally against the amendments, if the Government is not organized, that I may see whether it is grievous or not.

Mr. Burke thought amendments to the Constitution necessary, but this was not the proper time to bring them forward. He wished the Government completely organized before they entered upon this ground. The law for collecting the revenue is immediately necessary; the judiciary Department must be established; till this, and other important subjects are determined, he was against taking this up. He said it might interrupt the harmony of the House, which was necessary to be preserved in order to despatch the great objects of legislation. He hoped it would be postponed for the present, and pledged himself not to bring it forward hereafter. The bill is not before the Senate, and a proper attention is shown to this business. Indeed, I cannot conceive how it could be opposed; it think an almost omnipotent Emperor would not be hardy enough to set himself against it. Then why should we fear a power which cannot be improperly exercised?

We have proceeded to make some regulations under the Constitution; but have met with no inaccuracy, unless it may be said that the clause respecting vessels bound to or from one State be obliged to enter, clear, or pay duties in another, is somewhat obscure; yet that is not sufficient, I trust, in any gentleman's opinion, to induce an amendment. But let me ask what will be the consequence of taking up this subject? Are we going to finish it in an hour? I believe not; it will take us more than a day, a week, a month—will take a year to complete it! And will it be doing our duty to our country, to neglect or delay putting the Government in motion, when every thing depends upon its being speedily done?

Let the Constitution have a fair trial; let it be examined by experience, discovered by that test what its errors are, and then talk of amending; but to attempt it now is doing it at a risk, which is certainly imprudent. I have the honor of coming from a State that ratified the Constitution by the unanimous vote of the people of Georgia. They have manifested their attachment to it, by adopting a State Constitution framed upon the same plan as this. But although they are thus satisfied, I shall not be against such amendments as will gratify the inhabitants of other States; provided they are judged of by experience and not merely on theory. For this reason, I wish the consideration of the subject postponed until the 1st of March, 1790.

Mr. Goodhue.—I believe it would be perfectly right in the gentleman who spoke last, to move a postponement to the time he has mentioned; because he is opposed to the consideration of amendments altogether. But I believe it will be proper for us, which is incomplete, but essential to the public interest. When that is finished, I shall concur in taking up the subject of amendments.

Mr. Madison.—The gentleman from Georgia (Mr. Jackson) is certainly right in his opposition to my motion for going into a Committee of the Whole, because he is unfriendly to the object 1
have in contemplation; but I cannot see that the gentlemen who wish for amendments to be proposed at the present session, stand on good ground when they object to the House going into committee on this business.

When I first hinted to the House my intention of calling their deliberations to this object, I mentioned the pressing necessity of other important subjects, and submitted the propriety of postponing this till the more urgent business was despatched; but finding that business not despatched, when the order of the day for considering amendments arrived, I thought it a good reason for a farther delay; I moved the postponement accordingly. I am sorry the same reason still exists in some degree, but it operates with less force, when it is considered that it is not now proposed to enter into a full and minute discussion of every part of the subject, but merely to bring it before the House, that our constituents may see we pay a proper attention to a subject they have much at heart; and if it does not give that full gratification which is to be wished, they will discover that it proceeds from the urgency of business of a very important nature. But if we continue to postpone from time to time, and refuse to let the subject come into view, it may occasion suspicions, which, though not well founded, may tend to inflame or prejudice the public mind against our decisions. This may think we are not sincere in our desire to incorporate such amendments in the Constitution as will secure those rights, which they consider as not sufficiently guarded. The applications for amendments come from a very respectable number of our constituents, and it is certainly proper for Congress to consider the subject, in order to quiet that anxiety which prevails in the public mind. Indeed, I think it would have been of advantage to the Government if it had been practicable to have made some propositions for amendments the first business we entered upon; it would have stilled the voice of complaint, and made friends of many who doubted the merits of the Constitution. Our future measures would then have been more generally agreeably supported; but the justifiable anxiety to put the Government into operation prevented that; it therefore remains for us to take it up as soon as possible. I wish then to commence the consideration at the present moment; I hold it to be my duty to unfold my ideas, and explain myself to the House in some form or other without delay. I only wish to introduce the general subject, and, as I said before, I do not expect it will be decided immediately; but if some step is taken in the business, it will give reason to believe that we may come to a final result. This will inspire a reasonable hope in the advocates for amendments, that full justice will be done to the important subject; and I have reason to believe that their exertions will not be defeated. I hope the House will not decline my motion for going into a committee.

Mr. SHERMAN.—I am willing that this matter should be brought before the House at a proper time. I suppose a number of gentlemen think it their duty to bring it forward; so that there is no apprehension it will be passed over in silence. Other gentlemen may be disposed to let the subject rest until the more important objects of Government are attended to; and I should conclude, from the nature of the case, that the people expect the latter from us in preference to altering the Constitution; because they have ratified that instrument, in order that the Government may begin to operate. If this was not their wish, they might as well have rejected the Constitution, as North Carolina has done, until the amendments took place. The State I have the honor to come from adopted this system by a very great majority, because they wished for the Government; but they desired no amendments. I suppose this was the case in other States; it will therefore be imprudent to neglect much more important concerns for this. The executive part of the Government wants organization; the business of the revenue is incomplete, to say nothing of the judiciary business. Now, will gentlemen give up these points to go into a discussion of amendments, when no advantage can arise from it? For my part, I question if any alteration which can be now proposed would be an amendment, in the true sense of the word; but, nevertheless, I am willing to let the subject be introduced. If the gentleman only desires to go into committee for the purpose of receiving his propositions, I shall consent; in order that the Government being interrupted in completing the more important business, because I am well satisfied it will alarm the fears of twenty of our constituents where it will please one.

Mr. WHITE.—I hope the House will not spend much time on this subject, till the more pressing business is despatched; but, at the same time, I hope we shall not disappoint the expectations of the people who have ratified the Constitution, did it under the expectation that Congress would, at some convenient time, examine its texture and point out where it was defective, in order that it might be judiciously amended. Whether, while we are without experience, amendments can be digested in such a manner as to give satisfaction to a Constitutional majority of this House, I will not pretend to say; but I hope the subject may be considered with all convenient speed. I think it would tend to tranquilize the public mind; therefore I shall vote in favor of going into a Committee of the Whole, and, after receiving the subject, shall be content to refer it to a special committee to arrange and report. I fear, if we refuse to take up the subject, it will irritate many of our constituents, which I do not wish to do. If we cannot, after mature consideration, gratify their wishes, the cause of complaint will be lessened, if not removed. But a doubt on this head will not be a good reason why we should not take up the subject; I do not say this as it affects my immediate constituents, because I believe a majority of the district which elected me do not require alterations; but I know there are people in other parts who will not be satisfied unless some amendments are proposed.
Mr. Smyth, of South Carolina, thought the gentleman who brought forward the subject had done his duty: he had supported his motion with ability and candor, and if he did not succeed, he was not to blame. On considering what had been urged for going into a committee, he was induced to join the gentleman; but it would be merely to receive his propositions, after which he would move something to this effect: That, however desirous this House may be to go into the consideration of amendments to the Constitution, in order to establish the liberties of the people of America on the securest foundation, yet the important and pressing business of the Government prevents their entering upon that subject at present.

Mr. Page.—My colleague tells you he is ready to submit to the Committee of the Whole his ideas on this subject. If no objection had been made to his motion, the whole business might have been finished before this. He has done me the honor of showing me certain propositions which he has drawn up; they are very important, and I sincerely wish this House may receive them. After they are published, I think the people will wait with patience till we are at leisure to resume them. But it must be very disagreeable to them to have it postponed from time to time, in the manner it has been for six weeks past; they will be tired out by a fruitless expectation. Putting myself into the place of those who favor amendments, I should suspect Congress did not mean seriously to enter upon the subject; that it was vain to expect redress from them. I should begin to turn my attention to the alternative contained in the fifth article, and think of joining the Legislatures of those States which have applied for calling a new convention. How dangerous such an expedient would be I need not mention; but I venture to affirm, that unless you take early notice of this subject, you will not have power to deliberate. The people will clamor for a new convention; they will not trust the House any longer. Those, therefore, who dread the assembling of a convention, will do well to acquiesce in the present motion, and lay the foundation of a most important work. I do not think we need consume more than half an hour in the Committee of the Whole; this is not so much time but we may conveniently spare it, considering the nature of the business. I do not wish to divert the attention of Congress from the organization of the Government, nor do I think it need be done, if we comply with the present motion.

Mr. Vinning.—I hope the House will not go into a Committee of the Whole. It strikes me that the great amendment which the Government wants is expedition in the despatch of business. The wheels of the national machine cannot turn, until the impost and collection bill are perfected; these are the desiderata which the public mind is anxiously expecting. It is well known, that all we have hitherto done amounts to nothing, if we leave the business in its present state. True; but, say gentlemen, let us go into committee; it will take but a short time; yet may it not take a considerable proportion of our time? May it not be procrastinated into days, weeks, may, months? It is not the most facile subject that can come before the Legislature of the Union. Gentlemen’s opinions do not run in a parallel on this topic; it may take up more time to unite or concen-atre them than is now imagined. And what object is to be attained by going into a committee? If information is what we seek after, cannot that be obtained by the gentleman’s laying his propositions on the table; they can be read, or they can be printed. But I have two other reasons for opposing this motion; the first is, the uncertainty with which we must decide on questions of amendment, founded merely on speculative theory; the second is a previous question, how far it is proper to take the subject of amendments into consideration, without the consent of two-thirds of both Houses? I will submit it to gentlemen, whether the words of the Constitution, “the Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments,” do not bear my construction, that it is as requisite for two-thirds of both Houses to agree to the measure of granting amendments, as for two-thirds of both Houses to agree to the measure at present, as it will be to determine the necessity of amending at all. I take it that the fifth article admits of this construction, and think that two-thirds of the Senate and House of Representatives must concur in the expediency as to the time and manner of amendments, before we can proceed to consider amendments themselves. For my part, I do not see the expediency of proposing amendments. I think, sir, the most likely way to quiet the perturbation of the public mind, will be to pass salutary laws; to give permanency and stability to Constitutional regulations, founded on principles of equity and adjusted by wisdom. Although hitherto we have done nothing to tranquillize the agitation which the adoption of the Constitution threw some people into, yet the storm has abated and a calm succeeds. The people are not afraid of leaving the question of amendments to the discussion of their representatives; but is this the juncture for discussing it? What have Congress done towards completing the business of their appointment? They have passed a law regulating certain oaths; they have passed the impost bill; but are not vessels daily arriving, and the revenue slipping through our fingers? Is it not very strange that we neglect the completion of the revenue system? Is the system of jurisprudence unnecessary? And here let me ask gentle- men how they propose to amend that part of the Constitution which embraces the judicial branch of the Government, when they do not know the regulations proposed by the Senate, who are forming a bill on this subject?

If the honorable mover of the question before the House does not think he discharges his duty without bringing his propositions forward, let him take the mode I have mentioned, by which there will be little loss of time. He knows, as well as any gentleman, the importance of completing the business on your table, and that it is best to finish one subject before the introduction of another.
He will not, therefore, persist in a motion which tends to distract our minds, and incapacitate us from making a proper decision on any subject. Suppose every gentleman who desires alterations to be made in the Constitution were to submit his opinions to a Committee of the Whole, what would be the consequence? We should have strings of terms contradictory to each other, and be necessarily engaged in a discussion that would consume too much of our precious time.

Though the State I represent had the honor of taking the lead in the adoption of this Constitution, and did it by a unanimous vote; and although I have the strongest predilection for the present form of Government, yet I am open to information, and willing to be convinced of its imperfections. If this be done, I shall cheerfully assist in correcting them. But I cannot think this a proper time to enter upon the subject, because more important business is suspended; and, for want of experience we are as likely to do injury by our prescriptions as good. I wish to see every proposition which comes from that worthy gentleman on the science of Government; but I think it can be presented better by staying where we are, than by going into committee, and therefore shall vote against his motion.

Mr. Madison—It is no part of my business to be necessary to the loss of a single moment of time by the House. If I had been indulged in my motion, and we had gone into a Committee of the Whole, I think we might have rose and resumed the consideration of other business before this time; that is, so far as it depended upon what I proposed to bring forward. As that mode seems not to give satisfaction, I will withdraw the motion, and move you, sir, that a select committee be appointed to consider and report such amendments as are proper for Congress to propose to the Legislatures of the several States, conformably to the fifth article of the Constitution.

I will state my reasons why I think it proper to propose the amendments, and state the amendments themselves, so far as I think they ought to be proposed. If I thought I could fulfil the duty which I owe to myself, and my constituents, to let the subject pass over in silence, I most certainly should not trespass upon the indulgence of this House. But I cannot do this, and am therefore compelled to beg a patient hearing to what I have to lay before you. And I do most sincerely believe, that if Congress will devote but one day to this subject, so far as to satisfy the public that we do not disregard their wishes, it will have a salutary influence on the public councils, and prepare the way for a favorable reception of our future measures. It appears to me that this House is bound by every mark of prudence, not to let the first session pass over without proposing to the State Legislatures, some things to be incorporated into the Constitution, that will render it as acceptable to the whole people of the United States, as it has been found acceptable to a majority of them. I wish, among other reasons why something should be done, that those who had been friendly to the adoption of this Constitution may have the opportunity of proving to those who were opposed to it that they were as sincerely devoted to liberty and a Republican Government, as those who charged them with wishing the adoption of this Constitution in order to lay the foundation of an aristocracy or despotism. It will be a desirable thing to extinguish from the bosom of every member of the community, any apprehensions that there are those among his cotemates who wish to deprive them of the liberty for which they valiantly fought and honorably bled. And if there are amendments desired of such a nature as will not injure the Constitution, and they can be ingrafted so as to give satisfaction to the doubting part of our fellow-citizens, the friends of the Federal Government will evince that spirit of deference and concession for which they have hitherto been distinguished.

It cannot be a secret to the gentlemen in this House, that, notwithstanding the ratification of this system of Government by eleven of the thirteen United States, in some cases unanimously, in others by large majorities; yet still there is a great number of our constituents who are dissatisfied with it; among whom are many respectable for their talents and patriotism, and respectable for the jealousy they have for their liberty, which, though mistaken in its object, is in its motive. There is a great body of the people falling under this description, who at present feel much inclined to join their support to the cause of Federalism, if they were satisfied on this one point. We ought not to disregard their inclination, but, on principles of amity and moderation, conform to their wishes, and express ourselves the great rights of mankind secured under this Constitution. The acquiescence which our fellow-citizens show under the Government, calls upon us for a like return of moderation. But perhaps there is a stronger motive than this for our going into a consideration of the subject. It is to provide those securities for liberty which are required by a part of the community, I hope in a particular manner to those two States that have not thought fit to throw themselves into the bosom of the Confederacy. It is a desirable thing, on our part as well as theirs, that a re-union should take place as soon as possible. I have no doubt, if we proceed to take those steps which would be prudent and requisite at this juncture, that in a short time we should see that disposition prevailing in those States which have not come in, that we have seen prevailing in those States which have embraced the Constitution.

But I will candidly acknowledge that, over and above all these considerations, I do conceive that the Constitution may be amended; that is to say, if all power is subject to the abuse of the powers of the General Government may be guarded against in a more secure manner than is now done, while no one advantage arising from the exercise of that power shall be damaged or endangered by it. We have in this way something to gain, and, if we proceed with caution, nothing to lose. And in this case it is necessary to proceed with caution; for while we
feel all these inducements to go into a revival of the Constitution, we must feel for the Constitution itself and make that revival a moderate one. I shall be unwilling to see a door opened for a reconsideration of the whole structure of the Government—for a reconsideration of the principles and the substance of the powers given; because there is no doubt if such a door were opened, we should very likely to stop at that point which would be safe to the Government itself. But I do wish to see a door opened to consider, as far as to incorporate these provisions for the security of rights, against which I believe no serious objection has been made by any class of our constituents: such as would be likely to meet with the concurrence of two-thirds of both Houses, and the approbation of three-fourths of the State Legislatures. I will not propose a single alteration which I do not wish to see take place, as intrinsically proper in itself, or proper because it is wished for by a respectable number of my fellow-citizens; and therefore I shall not propose a single alteration which is likely to meet the concurrence required by the Constitution. There have been objections of various kinds made against the Constitution. Some were levelling against its structure because the President was without a council; because the Senate, which is a legislative body, had judicial powers in trials on impeachments; and because the powers of the Council were obstructed in other respects, in a manner that did not correspond with a particular theory; because it grants more power than is supposed to be necessary for every good purpose, and controls the ordinary powers of the State Governments. I know some respectable characters who opposed this Government on these grounds, but I believe that the great mass of the people who opposed it, disliked it because it did not contain effective provisions against the encroachments on particular rights, and those safeguards which they have been long accustomed to have interposed between them and the magistrate who exercises the sovereign power; nor ought we to consider them safe, while a great number of our fellow-citizens think these securities necessary.

It is a fortunate thing that the objection to the Government has been made on the ground I stated; because it will be practicable, on that ground, to obviate the objection, so far as to satisfy the public mind that their liberties will be perpetual, and this without endangering any part of the Constitution, which is considered as essential to the existence of the Government by those who promoted its adoption.

The amendments which have occurred to me, proper to be recommended by Congress to the State Legislatures, are these:

I propose that there be prefixed to the Constitution a declaration, that all power is originally vested in, and consequently derived from, the people.

That Government is instituted and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty, with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety.

That the people have an indubitable, unalienable, and indefeasible right to reform or change their Government, whenever it be found adverse or inadequate to the purposes of its institution.

Secondly, that in article 1st, section 2, clause 3, these words be struck out, to wit: “The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative, and until such enumeration shall be made, and that in place thereof be inserted these words, to wit: “After the first actual enumeration, there shall be one Representative for every thirty thousand, until the number amounts to ______, after which the proportion shall be so regulated by Congress, that the number shall never be less than ______, nor more than ______, but each State shall, after the first enumeration, have at least two Representatives; and prior thereto.”

Thirdly, that in article 1st, section 6, clause 1, there be added to the end of the first sentence, these words, to wit: “But no law varying the compensation last ascertained shall operate before the next ensuing election of Representatives.”

Fourthly, that in article 1st, section 9, between clauses 3 and 4, be inserted these clauses, to wit: “The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.

The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.

The people shall not be restrained from peaceably assembling and consulting for their common good; nor from applying to the Legislature by petitions, or remonstrances, for redress of their grievances.

The right of the people to keep and bear arms shall not be infringed; a well armed and well regulated militia being the best security of a free country: but no person religiously scrupulous of bearing arms shall be compelled to render military service in person.

No soldier shall in time of peace be quartered in any house without the consent of the owner; nor at any time, but in a manner warranted by law.

No person shall be subject, except in cases of impeachment, to more than one punishment or one trial for the same offence; nor shall be compelled to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor be obliged to relinquish his property, where it may be necessary for public use, without a just compensation.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The rights of the people to be secured in their
persons, their houses, their papers, and their other property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched, or the persons or things to be seized.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to be informed of the cause and nature of the accusation, to be confronted with his accusers, and the witnesses against him; to have a compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

The exceptions here or elsewhere in the Constitution, made in favor of particular rights, shall not be so construed as to diminish the just importance of other rights retained by the people, or as to enlarge the powers delegated by the Constitution; but either as actual limitations of such powers, or as inserted merely for greater caution.

Fifthly. That in article 1st, section 10, between clauses 1 and 2, be inserted this clause, to wit:

No State shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases.

Sixthly. That, in article 3d, section 2, be annexed to the end of clause 2d, these words, to wit:

But no appeal to such court shall be allowed where the value in controversy shall not amount to _________ dollars: nor shall any fact triable by jury, according to the course of common law, be otherwise re-examinable than may consist with the principles of common law.

Seventhly. That in article 3d, section 2, the third clause be struck out, and in its place be inserted the clauses following, to wit:

The trial of all crimes (except in cases of impeachments, and cases arising in the land or naval forces, or in the militia when on actual service, in time of war or public danger) shall be by an impartial jury of freeholders of the vicinage, with the requisite of unanimity for conviction, of the right of challenge, and other accustomed requisites; and in all crimes punishable with loss of life or member, presentment or indictment by a grand jury shall be an essential preliminary, provided that in cases of crimes committed within any county which may be in possession of an enemy, or in which a general insurrection may prevail, the trial may by law be authorized in some other county of the same state, as near as may be to the seat of the offence.

In cases of crimes committed not within any county, the trial may by law be in such county as the laws shall have prescribed. In suits at common law, between man and man, the trial by jury, as one of the best securities to the rights of the people, ought to remain inviolate.

Eighthly. That immediately after article 6th, be inserted, as article 7th, the clauses following, to wit:

The powers delegated by this Constitution are appropriated to the departments to which they are respectively distributed: so that the Legislative Department shall never exercise the powers vested in the Executive or Judicial, nor the Executive exercise the powers vested in the Legislative or Judicial, nor the Judicial exercise the powers vested in the Legislative or Executive Departments.

The powers not delegated by this Constitution, nor prohibited by it to the States, are reserved to the States respectively.

Ninthy. That article 7th be numbered as article 8th.

The first of these amendments relates to what may be called a bill of rights. I will own that I never considered this provision so essential to the Federal Constitution as to make it improper to ratify it, until such an amendment was added: at the same time, I always conceived, that in a certain form, and to a certain extent, such a provision was neither improper nor altogether useless. I am aware that a great number of the most respectable friends to the Government, and champions for republican liberty, have thought such a provision not only unnecessary, but even improper; nay, I believe some have gone so far as to think it even dangerous. Some policy has been made use of, perhaps, by gentlemen on both sides of the question: I acknowledge the ingenuity of those arguments which were drawn against the Constitution, by a comparison with the policy of Great Britain, in establishing a declaration of rights; but there is too great a difference in the case to warrant the comparison: therefore, the arguments drawn from that source were in a great measure inapplicable. In the declaration of rights which that country has established, the truth is, they have gone no farther than to raise a barrier against the power of the Crown; the power of the Legislature is left altogether indefinite. Although I know whenever the great rights, the trial by jury, freedom of the press, or liberty of conscience, come into question, the invasion of them is resisted by able advocates, yet their Magna Charta does not contain any one provision for the security of those rights, respecting which the people of America are most alarmed. The freedom of the press and rights of conscience, those choicest privileges of the people, are unguarded in the British Constitution.

But although the case may be widely different, and it may not be thought necessary to provide limits for the legislative power in that country, yet a different opinion prevails in the United States. The people of many States have thought it necessary to raise barriers against power in all forms and departments of Government, and I am inclined to believe, if once bills of rights are established in all the States as well as the Federal Constitution, we shall find, that, although some of them are rather unimportant, yet, upon the whole, they will have a salutary tendency. It may be said, in some instances, they do no more than state the perfect equality of mankind. This, to be sure, is an absolute truth, yet it is not absolutely necessary to be inserted at the head of a Constitution.
In some instances they assert those rights which are exercised by the people in forming and establishing a plan of Government. In other instances, they specify those rights which are retained when particular powers are given up to be exercised by the Legislature. In other instances, they specify positive rights, which may seem to result from the nature of the compact. Trial by jury cannot be considered as a natural right, but a right resulting from a social compact, which regulates the action of the community, but is as essential to secure the liberty of the people as any one of the pre-existent rights of nature. In other instances, they lay down dogmatic maxims with respect to the construction of the Government; declaring that the Legislative, Executive, and Judicial branches, shall be kept separate and distinct. Perhaps the best way of securing this in practice is, to provide such checks as will prevent the encroachment of the one upon the other.

But, whatever may be the form which the several States have adopted in making declarations in favor of particular rights, the great object in view is to limit and qualify the powers of Government, by excepting out of the grant of power those cases in which the Government ought not to act, or to act only in a particular mode. They point these exceptions sometimes against the abuse of the Executive power, sometimes against the Legislative, and, in some cases, against the community itself; or, in other words, against the majority in favor of the minority.

In our Government it is, perhaps, less necessary to guard against the abuse in the Executive Department than any other; because it is not the stronger branch of the system, but the weaker. It therefore must be levelled against the Legislative, for it is the most powerful, and most likely to be abused, because it is under the least control. Hence, so far as a declaration of rights can tend to prevent the exercise of undue power, it cannot be doubted but such declaration is proper. But I confess that I do conceive, that in a Government modified like this of the United States, the great danger lies rather in the abuse of the community than in the Legislative body. The prescriptions in favor of liberty ought to be levelled against that quarter where the greatest danger lies, namely, that which possesses the highest prerogative of power. But this is not found in either the Executive or Legislative departments of Government, but in the body of the people, operating by the majority against the minority.

It may be thought that all paper barriers against the power of the community are too weak to be worthy of attention. I am sensible they are not so strong as to satisfy gentlemen of every description who have seen and examined thoroughly the texture of such a defense; yet, as they have a tendency to impress some degree of respect for them, to establish the public opinion in their favor, and to raise the attention of the whole community, it may be one means to control the majority from those acts to which they might be otherwise inclined.

It has been said, by way of objection to a bill of rights, by many respectable gentlemen out of doors, and I find opposition on the same principles likely to be made by gentlemen on this floor, that they are unnecessary articles of a Republican Government, upon the presumption that the people have those rights in their own hands, and that is the proper place for them to rest. It would be a sufficient answer to say, that this objection lies against such provisions under the State Governments, as well as under the General Government; and there are, I believe, but few gentlemen who are inclined to push their theory so far as to say that a declaration of rights in those cases is either ineffectual or improper. It has been said, that in the Federal Government they are unnecessary, because the powers are enumerated, and it follows, that all that are not granted by the Constitution are retained; that the Constitution is a bill of powers, the great residuum being the rights of the people; and, therefore, a bill of rights cannot be so necessary as if the residuum was thrown into the hands of the Government. I admit that these arguments are not entirely without foundation; but they are not conclusive to the extent which has been supposed.

It is true, the powers of the General Government are circumscribed, they are directed to particular objects; but even if Government keeps within those limits, it has certain discretionary powers with respect to the means, which may admit of abuse to a certain extent, in the same manner as the powers of the State Governments under their constitutions may to an indefinite extent; because in the Constitution of the United States, there is a clause granting to Congress the power to make all laws which shall be necessary and proper for carrying into execution all the powers vested in the Government of the United States, or in any department or officer thereof; this enables them to fulfill every purpose for which the Government was established. Now, may not Congress be considered necessary and proper by Congress,(for it is for them to judge of the necessity and propriety to accomplish those special purposes which they may have in contemplation,) which laws in themselves are neither necessary nor proper; as well as improper laws could be enacted by the State Legislatures, for fulfilling the more extended objects of those Governments? I will state an instance, which I think in point, and proves that this might be the case. The General Government has a right to pass all laws which shall be necessary to collect its revenue; the means for enforcing the collection are within the direction of the Legislature: may not general warrants be considered necessary for this purpose, as well as for some purposes which it was supposed at the framing of their constitutions the State Governments had in view? If there was reason for restraining the State Governments from exercising this power, there is like reason for restraining the Federal Government.

It may be said, indeed it has been said, that a bill of rights is not necessary, because the establishment of this Government has not repealed those declarations of rights which are added to...
the several State constitutions; that those rights of the people which had been established by the most solemn act, could not be annihilated by a subsequent act of that people, who, meant and declared at the head of the instrument, that they ordained and established a new system, for the express purpose of securing to themselves and posterity the liberties they had gained by an arduous conflict.

I admit the force of this observation, but I do not look upon it as conclusive. In the first place, it is too uncertain a ground to leave this provision upon, if a provision is at all necessary to secure rights so important as many of those I have mentioned are conceived to be, by the public in general, as well as those in particular who opposed the adoption of this Constitution. Besides, some States have no bills of rights, there are others provided with very defective ones, and there are others whose bills of rights are not only defective, but absolutely improper; instead of securing some in the full extent which republican principles would require, they limit them too much to agree with the common ideas of liberty.

It has been objected also against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed at that enumeration; and it might follow by implication, that those rights which were not singled out, were intended to be assented into the hands of the General Government, and were consequently insecure. This is one of the most plausible arguments I have ever heard urged against the admission of a bill of rights into this system; but I conceive, that it may be guarded against. I have attempted it, as gentlemen may see by turning to the last clause of the fourth resolution.

It has been said that it is unnecessary to load the Constitution with this provision, because it was not found effectual in the constitution of the particular States. It is true, there are a few particular States in which some of the most valuable articles have not, at one time or other, been violated; but it does not follow but they may have, to a certain degree, a salutary effect against the abuse of power. If they are incorporated into the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the Legislative or Executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights. Besides this security, there is a great probability that such a declaration in the federal system would be enforced; besides the States, the nations will jealously and closely watch the operations of this Government, and be able to resist with more effect every assumption of power, than, any other power on earth can do; and the greatest opponents to a Federal Government admit the State Legislatures to be sure guardians of the people’s liberty. I conclude, from this view of the subject, that it will be proper in itself, and highly politic, for the tranquility of the public mind, and the stability of the Government, that we should offer something in the form I have proposed, to be incorporated in the system of Government, as a declaration of the rights of the people.

In the next place, I wish to see that part of the Constitution revised which declares that the number of Representatives shall not exceed the proportion of one for every thirty thousand persons, and allows one Representative to every State which rates below that proportion. If we attend to the discussion of this subject, which has taken place in the State conventions, and even in the opinion of the friends to the Constitution, an alteration here is proper. It is the sense of the people of America, that the number of Representatives ought to be increased, but particularly that it should not be left in the discretion of the Government to diminish them, below that proportion which certainly is in the power of the Legislature, as the Constitution now stands; and they may, as the population of the country increases, increase the House of Representatives to a very unwieldy degree. I confess I always thought this part of the Constitution defective, though not dangerous; and that it ought to be particularly attended to whenever Congress should go into the consideration of it.

There are several minor cases enumerated in my proposition, in which I wish also to see some alteration take place. That article which leaves it in the power of the Legislature to ascertain its own emolument, is one to which I allude. I do not believe this is a power which, in the ordinary course of Government, is likely to be abused. Perhaps of all the powers granted, it is least likely to abuse; but there is a seeming impropriety in leaving any set of men without control to put their hand into the public coffers, to take out money to put in their pockets; there is a seeming indecency in such power, which leads me to propose a change. We have a guide to this alteration in several of the most valuable articles which the different conventions have proposed. I have gone, therefore, so far as to fix it, that no law varying the compensation, shall operate until there is a change in the Legislature; in which case it cannot be for the particular benefit of those who are concerned in determining the value of the service.

I wish, also, in revising the Constitution, we may throw into that section, which interdicts the abuse of certain powers in the State Legislatures, some other provisions of equal, if not greater importance than those already made. The words: "No State shall pass any law of attainted, ex post facto law," &c., were wise and proper restrictions in the Constitution. I think there is more danger of those powers being abused by the State Governments than by the Government of the United States. The same may be said of other powers which they possess, if not controlled by the general principle, that laws are unconstitutional which infringe the rights of the community. I should, therefore, wish to extend this interdiction, and add, as I have stated in the 5th resolution, that no State shall violate the equal
right of conscience, freedom of the press, or trial by jury in criminal cases; because it is proper that every Government should be disarmed of powers which trench upon those particular rights. I know, in some of the State constitutions, the power of the Government is confined by such a declaration; but others are not. I cannot see any reason against obtaining even a double security on those points; and nothing can give a more sincere proof of the attachment of those who opposed this Constitution to these great and important rights, than to see them join in obtaining the security I have now proposed; because it must be admitted, on all hands, that the State Governments are as liable to attack these invaluable privileges as the General Government is, and therefore ought to be as cautiously guarded against.

I think it will be proper, with respect to the judiciary powers, to satisfy the public mind on those points which I have mentioned. Great inconvenience has been apprehended to suits from the distance they would be dragged to obtain justice in the Supreme Court of the United States, upon an appeal on an action for a small debt. To remedy this, declare that no appeal shall be made unless the matter in controversy amounts to a particular sum; this, with the regulations respecting jury trials in criminal cases, and suits at common law, it is to be hoped, will quiet and reconcile the minds of the people to that part of the Constitution.

I find, from looking into the amendments proposed by the State conventions, that several are particularly anxious that it should be declared in the Constitution, on the power not therein delegated shall be reserved to the several States. Perhaps other words may define this more precisely than the whole of the instrument now does. I admit they may be deemed unnecessary; but there can be no harm in making such a declaration, if gentlemen will allow that the fact is as stated. I am sure I understand it so, and do therefore propose it.

These are the points on which I wish to see a revision of the Constitution take place. How far they will accord with the sense of this body, I cannot take upon me absolutely to determine; but I believe every gentleman will readily admit that nothing is in contemplation, so far as I have mentioned, that can endanger the beauty of the Government in any one important feature, even in the eyes of its most sanguine admirers. I have proposed nothing that does not appear to me as proper in itself, or eligible as patronised by a respectable number of our fellow-citizens; and if we can make the Constitution better in the opinion of those who are opposed to it, without weakening its frame, or abridging its usefulness in the judgment of those who are attached to it, we act the part of wise and liberal men to make such alterations as shall produce that effect.

Having done what I conceived was my duty, in bringing before this House the subject of amendments, and also stated such as I wish for and approve, and offered the reasons which occurred to me in their support, I shall content myself, for the present, with moving "that a committee be appointed to consider of and report such amendments as ought to be proposed by Congress to the Legislatures of the States, to become, if ratified by three-fourths thereof, part of the Constitution of the United States." By agreeing to this motion, the subject may be going on in the committee, while other important business is proceeding to a conclusion in the House. I should advocate greater despatch in the business of amendments, if I were not convinced of the absolute necessity there is of pursuing the organization of the Government; because I think we should obtain the confidence of our fellow-citizens, in proportion as we fortify the rights of the people against the encroachments of the Government.

Mr. Jackson.—The more I consider the subject of amendments, the more I am convinced it is improper. I revere the rights of my constituents as much as any gentleman in Congress, yet I am against inserting a declaration of rights in the Constitution, and that for some of the reasons referred to by the gentleman last up. If such an addition is not dangerous or improper, it is at least unnecessary; that is a sufficient reason for not entering into the subject at a time when there are urgent calls for our attention to important business. Let me ask gentlemen, what reason there is for the suspicions which are to be removed by this measure? Who are Congress, that such apprehensions should be entertained of them? Do we not belong to the mass of the people? Is there a single right that, if infringed, will not affect us and our constituents as much as any other person? Do we not return at the expiration of two years into private life, and is not this a security against encroachments? Are we not sent here to guard those rights which might be endangered, if the Government was an aristocracy or a despotism? View for a moment the situation of Rhode Island, and say whether the people's rights are more secure under State Legislatures than under a Government of limited powers. Their liberty is changed to licentiousness. But do gentlemen suppose bills of rights necessary to secure liberty? If they do, let them look at New York, New Jersey, Virginia, South Carolina, and Georgia. Those States have no bills of rights, and is the liberty of the citizens less safe in those States, than in the other of the United States? I believe it is not.

There is a maxim in law, and it will apply to bills of rights, that when you enumerate exceptions, the exceptions operate to the exclusion of all circumstancases that are omitted; consequently, unless you except every right from the grant of power, those omitted are inferred to be resigned to the discretion of the Government.

The gentleman endeavors to secure the liberty of the press; pray how is this in danger? There is no power given to Congress to regulate this subject as they can commerce, or peace, or war. Has any transaction taken place to make us suppose such an amendment necessary? An honor-
able gentleman, a member of this House, has been attacked in the public newspapers on account of sentiments delivered on this floor. Have Congress taken any notice of it? Have they ordered the writer before them, even for a breach of privilege, although the Constitution provides that a member shall not be questioned in any place for any speech or debate in the House? No; these things are offered to the public view, and held up to the ignominy of the world. These are principles which will always prevail. I am not afraid, nor are other members, I believe, our conduct should meet the severest scrutiny. Where, then, is the necessity of taking measures to secure what neither is nor can be in danger?

I hold, Mr. Speaker, that the present is not a proper time for considering of amendments. The States of Rhode Island and North Carolina are not in the Union. As to the latter, we have every presumption that she will come in. But in Rhode Island I think the anti-federal interest yet prevails. I am sorry for it, particularly on account of the firm friends of the Union, who are kept waiting the blessing of the Confederacy by their countrymen. These persons are worthy of our patronage; and I wish they would apply to us for protection; they should have my consent to be taken into the Union upon such application. I understand there are some important mercantile and manufacturing towns in that State who ardently wish to live under the laws of the General Government; if they were to come forward and request us to take measures for this purpose, I would give my sanction to any which would be likely to bring about such an event.

But to return to my argument. It being the case that those States are not yet come into the Union, when they join us, we shall have another host of amendments to amendments to the bill of rights to frame. Now, in my judgment, it is better to make but one work of it whenever we set about the business.

But in what a situation shall we be with respect to those foreign Powers with whom we desire to be in treaty? They look upon us as a nation emerging into figure and importance. But what will be their opinion, if they see us unable to retain the national advantages we have just gained? They will smile at our infantine efforts to obtain consequence, and treat us with the contempt we have hitherto borne by reason of the imbecility of our Government. Can we expect to enter into a commercial competition with any of them, while our system is incomplete? And how long will it remain in such a situation, if we enter upon amendments, God only knows. Our instability will make us objects of scorn. We are not content with two revolutions in less than fourteen years; we must enter upon a third, without necessity or propriety. Our faith will be like the punica fides of Carthage; and we shall have none that will repose confidence in us.

Why will gentlemen press us to propose amendments, while we are without experience? Can they assure themselves that the amendments, as they call them, will not want amendments, as soon as they are adopted? I will not tax gentlemen with a desire of amusing the people; I believe they venerate their country too much for this; but what more can amendments lead to? That part of the Constitution which is proposed to be altered, may be the most valuable part of the whole; and perhaps those who now clamor for alterations, may, ere long, discover that they have married a good Government, and rendered their own liberties insecure. I again repeat it, this is not the time for bringing forward amendments; and, notwithstanding the honorable gentleman's ingenious arguments on that point, I am now more strongly persuaded it is wrong.

If we actually find the Constitution bad upon experience, or the rights and privileges of the people in danger, I here pledge myself to step forward among the first friends of liberty to prevent the evil; and if nothing else will avail, I will draw my sword in the defence of freedom, and cheerfully immolate at that shrine my property and my life. But how are we now proceeding? Why, on nothing more than theoretical speculation, pursuing a mere false idea, which may lead us into serious embarrassments. The imperfections of the Government are now unknown; let it have a fair trial, and I will be bound they show themselves; then we can tell where to apply the remedy, so as to secure the great object we are aiming at.

There are, Mr. Speaker, a number of important bills on the table which require despatch; but I am afraid, if we enter on this business, we shall not be able to attend to them for a long time. Look, sir, over the long list of amendments proposed by some of the adopting States, and say, when the House could get through the discussion; and I believe, sir, every one of those amendments will come before us. Gentlemen may set themselves called by duty or inclination to oppose them. How are we then to extricate ourselves from this labyrinth of business? Certainly we shall lose much of our valuable time, without any advantage whatsoever. I hope, therefore, the gentleman will press us no further; he has done his duty, and acquitted himself of the obligation under which he lay. He may now accede to what I take to be the sense of the House, and let the business of amendments lie over until next Spring; that will be soon enough to take it up to any good purpose.

Mr. Genry.—I do not rise to go into the merits or demerits of the subject of amendments, nor shall I make any other observations on the motion for going into a Committee of the Whole on the state of the Union, which is now withdrawn, than merely to say, that, referring the subject to that committee, is treating it with the dignity its importance requires. But I consider it improper to take up this business, when our attention is occupied by other important objects. We should dispatch the subjects now on the table, and let this lie over until a period of more leisure for discussion and attention. The gentleman from Virginia says it is necessary to go into a consideration of this subject, in order to satisfy the people.
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For my part, I cannot be of his opinion. The people know we are employed in the organization of the Government, and cannot expect that we should forego this business for any other. But I would not have it understood, that I am against entering upon amendments when the proper time arrives. I shall be glad to set about it as soon as possible, but I would not stay the operations of the Government on this account. I think with the gentleman from Delaware, (Mr. Vining,) that the great wheels of the political machine should first be set in motion; and with the gentleman from Georgia, (Mr. Jackson,) that the vessel ought to be got under way, lest she lie by the wharf till she be shot off her rudder, and run herself a wreck ashore.

I say I wish as early a day as possible may be assigned for taking up this business, in order to prevent the necessity which the States may think themselves under of calling a new convention. For I am not, sir, one of those blind admirers of this system, who think it all perfection; nor am I so blind as not to see its beauties. The truth is, it partakes of humanity; in it is blended virtue and vices, errors and excellence. But I think if it is referred to a new convention, we run the risk of losing some of its best properties; this is a case I never wish to see. Whatever might have been my sentiments of the ratification of the Constitution without amendments, my sense now is, that the salvation of America depends upon the establishment of this Government, whether amended or not. If the Constitution which is now ratified should not be supported, I despair of ever having a Government of these United States.

I wish the subject to be considered early for another reason. There are two States not in the Union; it would be a very desirable circumstance to gain them. I should therefore be in favor of such amendments as might tend to invite them; and gain their confidence; good policy will dictate to us to expedit that event. Gentlemen say, that we shall not obtain the consent of two-thirds of both Houses to amendments. Are gentlemen willing then to throw Rhode Island and North Carolina into the situation of foreign nations? They have told you that they cannot accede to the Union, unless certain amendments be made to the Constitution; if you deny a compliance with their request in that particular, you refuse an accommodation to bring about that desirable event, and leave them detached from the Union.

I have another reason for going early into this business. It is necessary to establish an energetic Government. My idea of such a Government is, that due deliberation be had in making laws, and efficiency in the execution. I hope, in this country, the latter may obtain without the dread of despotism. I would wish to see the execution of good laws irresistible. But from the view which we have already had of the disposition of the Government, we seem really to be afraid to administer the powers with which we are invested lest we give offence. We appear afraid to exercise the Constitutional powers of the Government, which the welfare of the State requires, lest a jealousy of our powers be the consequence. What is the reason of this timidity? Why, because we see a great body of our constituents opposed to the Constitution as it now stands, who are apprehensive of the enormous powers of Government. But if this business is taken up, and it is thought proper to make amendments, it will remove this difficulty. Let us deal fairly and candidly with our constituents, and give the subject a full discussion; after that, I have no doubt but the decision will be such as, upon examination, we shall discover to be right. If it shall then appear proper and wise to reject the amendments, I dare to say the reasons for so doing will bring conviction to the people out of doors, as well as it will to the members of this House; and they will acquiesce in the decision, though they may regret the disappointment of their fondest hopes for the security of the liberties of themselves and their posterity. Thus, and thus only, the Government will have its due energy, and accomplish the end for which it was instituted.

I am against referring the subject to a select committee, because I conceive it would be disrespectful to those honorable gentlemen who have proposed amendments. The conventions of the States consisted of the most wise and virtuous men in the community; they have ratified this Constitution, in full confidence that their objections would at least be considered; and shall we, sir, preclude them by the appointment of a special committee, to consider of a few propositions brought forward by an individual gentleman? Is it hopeful contemplation that the committee should have the subject at large before them, or that they should report upon the particular amendments just mentioned, as they think proper? And are we to be precluded from the consideration of any other amendments but those the committee may report? A select committee may be considered improper, because it is putting their judgments against that of the conventions which have proposed amendments; but if the committee are to consider the matter at large, they will be liable to this objection, that their report will only be waste of time. For if they do not bring forward the whole of the amendments recommended, individual members will consider themselves bound to bring them forward for the decision of the House. I would therefore submit, if gentlemen are determined to proceed in the business at this time, whether it is not better that it should go, in the first instance, to a Committee of the Whole, as first proposed by the gentleman from Virginia?

Some gentlemen consider it necessary to do this to satisfy our constituents. I think referring the business to a special committee will be attempting to amuse them with trifles. Our fellow-citizens are possessed of too much discernment not to be able to discover the intention of Congress by such procedure. It will be the duty of their representatives to tell them, if they were not able to discover it of themselves, they require the subject to be fairly considered; and if it be found to be improper to comply with their reasonable expectations, to tell them so. I hope
there is no analogy between federal and punic faith; but unless Congress shall candidly consider the amendments which have been proposed in confidence by the State conventions, federal faith will not be considered very different from the punica fides of Carthage. The ratification of the Constitution in several States would never have taken place, had they not been assured that the objections would have been duly attended to by Congress. And I believe many members of these conventions would never have voted for it, if they had not been persuaded that Congress would notice them with that candor and attention which their importance requires. I will say nothing respecting the amendments themselves; they ought to stand or fall on their own merits. If any of them are eligible, they will be adopted; if not, they will be rejected.

Mr. LAYENNOX was against this motion; not that he was against amendments at a proper time. It is enjoined on him to act a rational part in procuring certain amendments, and he meant to do so; but he could not say what amendments were requisite, until the Government was organized. He supposed the judiciary law would contain certain regulations that would remove the anxiety of the people respecting such amendments as related thereto, because he thought much of the minutiae respecting suits between citizens of different States, &c. might be provided for by law. He could not agree to make jury trials necessary on every occasion; they were not practised even at this time, and there were some cases in which a cause could be better decided without a jury than with one.

In addition to the judiciary business, there is that which relates to the revenue. Gentlemen had let an opportunity go through their hands of getting a considerable supply from the impost on the Spring importations. He reminded them of this; and would tell them now was the time to finish that business; for if they did not sow in seed-time, they would be beggars in harvest. He was well satisfied in his own mind, that the people of America did not look for amendments at present; they never could imagine it to be the first work of Congress.

He wished the concurrence of the Senate upon entering on this business, because if they opposed the measure, all the House did would be mere waste of time; and there was some little difficulty on this point, because it required the consent of two-thirds of both Houses to agree to what was proper on this occasion. He said, moreover, it would be better to refer the subject generally, if referred to them at all, than to take up the propositions of individual members.

Mr. SUTHERLAND.—I do not suppose the Constitution to be perfect, nor do I imagine if Congress and all the Legislatures on the continent were to revise it, that their united labors would make it perfect. I do not expect any perfection on this side the grave in the works of man; but my opinion is, that we are not at present in circumstances to make it better. It is a wonder that there has been such unanimity in adopting it, considering the ordeal it had to undergo; and the unanimity which prevailed at its formation is equally astonishing; amidst all the members from the twelve States present at the Federal Convention, there were only three who did not sign the instrument to attest their opinion of its goodness. Of the eleven States who have received it, the majority have ratified it without proposing a single amendment. This circumstance leads me to suppose that we shall not be able to propose any alterations that are likely to be adopted by nine States; and gentlemen know, before the alterations take effect, they must be agreed to by the Legislatures of three-fourths of the States in the Union. Those States which have not recommended alterations, will hardly adopt them, unless it is clear that they tend to make the Constitution better. Now, how this can be made out to their satisfaction I am yet to learn; they know of no defect from experience. It seems to be the opinion of gentlemen generally that this is not the time for entering upon the discussion of amendments; our only question therefore is, how to get rid of the subject. Now, for my own part, I would prefer to have it referred to a Committee of the Whole, rather than a special committee, and therefore shall not agree to the motion now before the House.

Mr. GENTRY moved, that the business lie over until the 1st day of July next, and that it be the order for that day.

Mr. SUTHERLAND.—I consider the subject of amendments of such great importance to the Union, that I shall be glad to see it undertaken in an orderly manner. I am not, Mr. Speaker, disposed to sacrifice substance to form; therefore, whether the business shall originate in a Committee of the Whole or in the House, is a matter of indifference to me, so that it be put in train. Although I am seriously inclined to give this subject a full discussion, yet I do not wish it to be fully entered into at present, but it should be suspended to a future day, when we shall have more leisure. With respect to referring to a select committee, I am rather against it; because I consider it as treating the applications of the State conventions rather slightly; and I presume it is the intention of the House to take those applications into consideration as well as any other. If it is not, I think it will give fresh cause for jealousy; it will rouse the alarm which is now suspended, and the people will become clamorous for amendments. They will decline any further application to Congress, and resort to the other alternative pointed out in the Constitution. I hope, therefore, this House, when they do go into the business, will receive these propositions generally. This, I apprehend, will tend to tranquillize the public mind, and promote that harmony which ought to be kept up between those in the exercise of the powers of Government, and those who have clothed them with the authority, or, in other words, between Congress and the people. Without a harmony and confidence subsisting between them, the measures of Government will prove abortive, and we shall have still to lament...
that imbecility and weakness which have long marked our public councils.

Mr. Vining found himself in a delicate situation respecting the subject of amendments. He came from a small State, and therefore his sentiments would not be considered of so much weight as the sentiments of those gentlemen who spoke the sense of much larger States. Besides, his constituents had prejudged the question, by a unanimous adoption of the Constitution, without suggesting any amendments thereto. His sense accorded with the declared sense of the State of Delaware, and he was doubly bound to object to amendments which were either improper or unnecessary. But he had good reasons for opposing the consideration of even proper alterations at this time. He would ask the gentleman who pressed them, whether he would be responsible for the risk the Government would run of being injured by an interregnum? Proposing amendments at this time, is suspending the operations of Government, and may be productive of its ruin.

He would not follow the gentleman in his arguments, though he supposed them all answerable, because he would not take up the time of the House; he contended himself with saying, that a bill of rights was unnecessary in a Government deriving all its powers from the people; and the Constitution enforced the principles in the strongest manner by the practical declaration prefixed to that instrument; he alluded to the words, "We the people do ordain and establish."

There were many things mentioned by some of the State Conventions which he would never agree to, on any conditions whatever; they changed the principles of the Government, and were therefore obnoxious to its friends. The honorable gentleman from Virginia had not touched upon any of them; he was glad of it, because he could by no means bear the idea of an alteration respecting them; he referred to the mode of obtaining direct taxes, judging of elections, &c.

He found he was not speaking to the question; he would therefore return to it, and declare he was against committing the subject to a select committee; if it was to be committed at all, he preferred a Committee of the Whole, but hoped the subject would be postponed.

Mr. Madison found himself unfortunate in not satisfying gentlemen with respect to the mode of introducing the business; he thought, from the dignity and peculiarity of the subject, that it ought to be referred to a Committee of the Whole. He accordingly made that motion first, but finding himself not likely to succeed in that way, he had changed his ground. Fearing again to be discarded, he would change his mode, and move the propositions he had stated before, and the House might do what they thought proper with them. He accordingly moved the propositions by way of resolutions to be adopted by the House.

Mr. Livermore objected to these propositions, because they did not take up the amendments of the several States.

Mr. Page was much obliged to his colleague for bringing the subject forward in the manner he had done. He conceived it to be just and fair. What was to be done when the House would not refer it to a committee of any sort, but bring the question at once before them? He hoped it would be the means of bringing about a decision.

Mr. Lawrence moved to refer Mr. Madison's motion to the Committee of the Whole on the state of the Union.

Mr. Lee thought it ought to be taken up in that committee; and hoped his colleague would bring the propositions before the committee, when on the state of the Union, as he had originally intended.

Mr. Boudinot wished the appointment of a select committee, but afterwards withdrew his motion.

At length Mr. Lawrence's motion was agreed to, and Mr. Madison's propositions were ordered to be referred to a Committee of the Whole. Adjourned.

Tuesday, June 9.

On motion, Resolved, That so much of the standing rules and orders as direct that, upon a division of the House on any question, the members who vote in the affirmative shall go to the right, and those in the negative shall go to the left of the Chair, be rescinded; and that, in future, when a division is called for, those in the affirmative of the question shall rise from their seats, and those in the negative remain sitting.

COLLECTION OF DUTIES.

The House, according to the order of the day, resolved itself into a Committee of the Whole House on the bill to regulate the collection of duties imposed on goods, wares, and merchandises, imported into the United States. Mr. Trumbull in the Chair. Previous to making any further nomination of ports of entry and delivery, it was moved, that the shores, bays, rivers, creeks, and harbors, be divided into as many districts as there are ports of entry in the United States. This motion, after a discussion, was adopted.

It was moved to insert a clause, whereby masters of ships and other vessels, loaded with goods, wares, and merchandise, and bound into the United States from any foreign port, should be obliged to produce duplicate manifests of their respective cargoes, to any officers of the customs that may demand the same, previous to their entering the port of destination.

This motion gave rise to a lengthy conversation, which terminated in withdrawing the motion.

It was then voted, that a collector, a naval officer, and a surveyor, should be appointed for each of the following ports, viz: Boston, New York, Philadelphia, Baltimore, Norfolk, and Portsmouth; Alexandria, Virginia; Georgetown, Maryland;
the opinion of respectable commercial characters was in favor of the proposed duties, particularly
the duty on spirits, which, agreeably to their
ideas, could be easily collected, even if it had been
set at a higher rate.

TUESDAY, JUNE 16.

A motion was made by Mr. Warren of Virginia,
and adopted, that seats be provided for such mem-
bers of the Senate as please to attend the debates
within the bar of the House.

The House then proceeded to consider the re-
mainder of the amendments proposed by the Sen-
eate to the impost bill. The House did not con-
cur in the same fixed by the Senate for this act to
be in force, viz: the 1st of July next; but sub-
tituted the 1st of August; when the following be-
ning read, were acceded to, viz:

To insert playing cards at a duty of ten cents
per pack.

Cotton at three cents per pound.

To allow a drawback on brandy and geneva ex-
ported from the United States.

After the words "exported out of the limits of
the United States," to add the following, viz: as
settled by the late treaty of peace.

To strike out the sentence which provided for
allowing a drawback of five cents per gallon on
spirits distilled from molasses in the United States,
and exported out of the same.

The discount of ten per cent. on goods, wares,
and merchandise, imported in vessels built in the
United States, and owned by a citizen or citizens
thereof, was extended to goods, &c. imported in
vessels not built in the United States, but which
were owned by a citizen or citizens thereof, on
the 1st of May last, and continued so till the time
of the importation of such goods.

DEPARTMENT OF FOREIGN AFFAIRS.

The House then resolved itself into a Commit-
tee of the Whole on the bill for establishing an
Executive department, to be denominated the De-
partment of Foreign Affairs; Mr. Turnbull in the
Chair.

The first clause, after recapitulating the title of
the officer and his duties, had these words: "To
be removable from office by the President of the
United States."

Mr. White.—The Constitution gives the Presi-
dent the power of nominating and, by and with
the advice and consent of the Senate, appointing
to office. As I conceive the power of appointing
and dismissing to be united in their natures, and
a principle that never was called in question in
any Government, I am averse to that part of the
clause which subjects the Secretary of Foreign
Affairs to be removed at the will of the President.
In the Constitution, a special provision is made for
the removal of the judges; that I acknowledge to
be a deviation from my principle; but as it is a
Constitutional provision, it is to be admitted. In
all cases not otherwise provided for in the Con-
stitution, I take it, that the principle I have laid
down is the governing one. Now the Constitu-
tion has associated the Senate with the President,
in appointing the heads of departments. The Secre-
tary of Foreign Affairs is the head of a de-
partment; for the words of the law declare, that
there shall be a department established, at the head
of which shall be an officer to be so denominated.
If, then, the Senate are associated with the Presi-
dent in the appointment, they ought also to be as-
sociated in the dismissal from office. Upon the
justness of this construction, I take the liberty of
reviving the motion made in the Committee of
the Whole, for striking out these words: "to be
removable from office by the President of the
United States."

Mr. Sumner of South Carolina.—The gentle-
man has anticipated me in his motion; I am clear-
ly in sentiment with him that the words ought to
go out. It is in the recollection of the committee,
that when the subject was last before us, this pow-
er was excepted to; and although the words were
then allowed to stand, it was generally understood
that it should be further debated. I then was op-
posed to giving this power to the President, and
am still of opinion that we ought not to make
this declaration, even if he has the power by the
Constitution.

I would premise that one of these two ideas are
just: either that the Constitution has given the
President the power of removal, and therefore it
is nugatory to make the declaration there; or it
has not given the power to him, and therefore it
is improper to make an attempt to confer it upon
him. If it is not given to him by the Constitu-
tion, but belongs conjointly to the President and
Senate, we have no right to deprive the Senate
of their Constitutional prerogative; and it has
been the opinion of sensible men that the power
was lodged in this manner. A publication of no
inconsiderable eminence in the class of politi-
cal writings on the Constitution, has advanced this
sentiment. The author, or authors, (for I have
understood it to be the production of two gentle-
men of great information,) of the work published
under the signature of Publius, has these words:

"It has been mentioned as one of the advan-
tages to be expected from the co-operation of the
Senate in the business of appointments, that it
would contribute to the stability of the Adminis-
tration. The consent of that body would be ne-
cessary to displace as well as appoint. A change
of the Chief Magistrate, therefore, would not oc-
casion so violent or so general a revolution in the
officers of the Government, as might be expected
if he were the sole disposer of offices. Where a
man in any station has given satisfactory evidence
of his fitness for it, a new President would be re-
strained from attempting a change in favor of a
person more agreeable to him, by the apprehen-
sion that the discontinuance of the Senate might
frustrate the attempt, and bring some degree of
discredit upon himself. Those who can best es-
timate the value of a steady Administration, will
be most disposed to prize a provision which con-
nects the official existence of public men with the
approbation or disapprobation of that body, which,
from the greater permanency of its own compo-
sition, will, in all probability, be less subject to
inconstancy than any other member of the Gov-
ernment."

Here this author lays it down, that there can be no
doubt of the power of the Senate in the
business of removal. Let this be as it may, I
am clear that the President alone has not the
power of Constituting or removing the powers
of the several branches of Government are there
defined; the President has particular powers as-
signed him; the Judiciary have in like manner
powers assigned them; but you will find no such
power as removing from office given to the Presi-
dent. I call upon gentlemen to show me where it
is said that the President shall remove from office.
I know they cannot do it. Now, I infer from this,
that, as the Constitution has not given the Presi-
dent the power of removability, it meant that he
should not have that power; and this inference is
supported by that clause in the Constitution which
provides that all civil officers of the United States
shall be removed from office on impeachment for,
and by conviction of treason, bribery, or other
high crimes and misdemeanors. Here is a parti-
cular mode prescribed for removing; and if there
is no other mode directed, I contend that the Con-
stitution contemplated only this mode. But let
me ask gentlemen if any other mode is necessary.
For what cause should a man be removed from
office? Do gentlemen think that sickness or
ignorance would be a sufficient cause? I believe,
if they will reflect, they cannot instance any per-
son who was removed for ignorance. I venture
to say there never was an instance of this nature
in the United States. There have been instances
where a person has been removed for offences.
The same may again occur, and are therefore ju-
dicially provided for in the Constitution. But
in this case, is he removed for his ignorance, or
his error, which is the consequence of his igno-
rance? I suppose it is for his error, because the
public are injured by it, and not for incapacity.
The President is to nominate the officer, and the
Senate to approve. Here is provision made
against the appointment of ignorant officers.
They cannot be removed for causes which sub-
sisted before their coming into office. Their igno-
rance, therefore, must arise after they are ap-
pointed. But this is an unlikely case, and one
that cannot be contemplated as probable.

I imagine, sir, we are declaring a power in the
President which may hereafter be greatly abused;
for it is not always to express confidence in
which such entire confidence can be placed
as in the present. Perhaps gentlemen are so much
dazzled with the splendor of the virtues of the
present President, as not to be able to see into fu-
turity. The framers of the Constitution did not
confine their views to the first person who was
looked up to fill the Presidential chair. If they
had, they might have omitted those checks and
guards, with which the powers of the Executive
are surrounded. They knew, from the course of
human events, that they could not expect to be so
highly favored of heaven as to have the blessing
of his administration more than seven or fourteen
years; after which, they supposed a man might
get into power, who, it was possible, might mis-
behave. We ought to follow their example, and
contemplate this power in the hands of an ambi-
tious man, who might apply it to dangerous pur-
poses. If we give this power to the President, he
may, from caprice, remove the most worthy men
from office. His will and pleasure will be an
slight tenure by which an office is to be held, and
of consequence you render the officer the mere
State-dependent, the abject slave of a person who
may be disposed to abuse the confidence his fel-
low-citizens have placed in him.

Another danger may result. If you desire an
officer to be a man of capacity and integrity, you
may be disappointed. A gentleman possessed of
these qualities, knowing he may be removed at
the pleasure of the President, will be loth to risk
his reputation on such insecure ground. As the
matter stands in the Constitution, he knows, if he
is suspected of doing any thing wrong, he shall
have a fair trial, and the whole of his transaction
be developed by an impartial tribunal. He will
have confidence in himself when he knows he can
only be removed for improper behaviour. But if
he is subjected to the whim of any man, it may
deter him from entering into the service of his
country; because, if he is not subservient to that
person's pleasure, he may be turned out, and the
public may be led to suspect that sickness or
ignorance was the reason for his dismissal. This
impression cannot be removed, as a public inquiry
cannot be obtained. Besides this, it ought to be
considered, that the person who is appointed
will probably quit some other office or business
in which he is occupied. Ought he, after making
this sacrifice in order to serve the public,
to be turned out of place, without even a reason
being assigned for such behavior? For if the
President does not do this with an ill intention;
he may have been misinformed. For it is pre-
sumable that a President may have around him
men envious of the honors and emoluments of
persons in office, who will insinuate suspicions
into his honest breast, that may produce a removal.
Be this as it may, the event is still the same to
the removed officer. "The public suppose him guilty
of malpractices. Hence his reputation is blasted,
his property sacrificed. I say his property is sa-
crificed, because I consider his office as his pro-
erty. He is stripped of this, and left exposed to
the malevolence of the world, contrary to the
principles of the Constitution, and contrary to the
principles of all Chief Magistracy, which are,
that no man shall be despoiled of his property, but
by a fair and impartial trial.

These are serious considerations, and such, I
trust, as will make impressions on the minds of
gentlemen anxious to promote the public welfare,
and secure distributive justice to themselves and
their posterity.

When this subject was laid before the com-
mittee, it was said that it appeared absurd that an
inferior officer should be removed only by im-
peachment. There is a clause in the Constitution
empowering Congress to vest the appointment of
inferior officers in the President alone, in courts
of law, or heads of departments. These offices may also be established on such terms as the Legislature shall judge proper; but neither the appointment or removal of heads of departments can be otherwise performed than is directed by the Constitution.

To return to my argument. I have stated that if the power is given by the Constitution, the declaration in the law is nugatory; and I will add, if it is not given, it will be nugatory also to attempt to vest the power. If the Senate participate, on any principle whatever, in the removal, they will never consent to transfer their power to another branch of the Government; therefore, they will not pass a law with such a declaration in it.

Upon this consideration alone, if there was no other, the words should be struck out, and the question of right, if it is one, left to the decision of the Judiciary. It will be time enough to determine the question when the President shall remove an officer in this way. I conceive it can properly be brought before that tribunal; the officer will have a right to a mandamus to be restored to his office, and the judges would determine whether the President exercised a Constitutional authority or not.

Some gentlemen think the Constitution takes no notice of this officer, as the head of a department; they suppose him an inferior officer in aid of the Executive. This, I think, is going too far; because the Constitution, in the words authorizing the President to call on the heads of departments for their opinions in writing, contemplates several departments. It says, "the principal officer in each of the Executive departments."

I have seriously reflected on this subject, and am convinced that the President has not this power by the Constitution, and that, if we had the right to invest him with it, it would be dangerous to do so.

Mr. Huntington.—I think the clause ought not to stand. It was well observed that the Constitution was silent respecting the removal, otherwise than by impeachment. I would likewise add, that it mentions no other cause of removal, than treason, bribery, or other high crimes and misde- meanors. It does not, I apprehend, extend to cases of infirmity or incapacity. Indeed, it appears hard to me, that after an officer has become old in an honorable service, he should be impeached for this infirmity. The Constitution, I think must be the only rule to guide us on this occasion; as it is silent with respect to the removal, Congress ought to say nothing about it, because it implies that we have a right to bestow it, and I believe this power is not to be found among the enumerated powers delegated by the Constitution to Congress.

It was said, if the President had this authority, it would make him more responsible for the conduct of the office. But if we have a vicious President, who inclines to abuse this power, which God forbid, his responsibility will stand us in little stead. Therefore, that idea does not satisfy me that it is proper the President should have this power.

Mr. Sedgwick.—I wish the words to be struck out, because I conceive them to be unnecessary in this place. I do conceive, Mr. Speaker, that this officer will be the mere creature of the law; and that very little need be said to prove to you that of necessity this ought to be the case. I apprehend, likewise, that it requires but a small share of abilities to point out certain cases in which a person ought to be removed from office without being guilty of treason, bribery, or malfeasance; and the nature of things demands that it should be so. Suppose, sir, a man becomes insane by the visitation of God, and is likely to ruin our affairs, are the hands of Government to be confined from warding off the evil? Suppose a person in office, not possessing the talents he was judged to have at the time of the appointment, is the error not to be corrected? Suppose he acquires vicious habits, an inexcusable ignorance, or total neglect of the duties of his office, which forebode mischief to the public welfare, is there no way to arrest the threatened danger? Suppose he becomes odious and a public enemy, and the measures which he pursues, (and this he may do without committing any positive offence against the law,) must be preserved his office in despite of the public will? Suppose him grasping at his own aggrandizement, and the elevation of his con- nexions, by every means short of the treason defined by the Constitution, hurrying your affairs to the precipitation of destruction, endangering your domestic tranquillity, plundering you of the means of defence, by alienating the affections of your allies, and promoting the spirit of discord; is there no way suddenly to seize the worthless wretch, and hurl him from the pinnacle of power? Must the tardy, tedious, desultory road, by way of impeach- ment, be travelled over by man who, barely confining himself within the letter of the law, is employed in drawing off the vital prin- ciple of the Government? Sir, the nature of things, the great objects of society, the express objects of this Constitution, require that this thing should be otherwise.

Well, sir, this is admitted by gentlemen; but they say the Senate is to be united with the President in the exercise of this power. I hope, sir, this is not the case; because it would involve us in the most serious difficulty. Suppose a discovery of any of those events which I have just enumerated were to take place when the Senate is not in session, how is the remedy to be applied? This is a serious consideration, and the evil could be avoided no other way than by the Senate's sitting always. Surely no gentleman of this House contemplates the necessity of incurring such an expense. I am sure it will be very ob- jectionable to our constituents; and yet this must be done, or the public interest be endangered by keeping an unworthy officer in place until that body shall be assembled from the extremes of the Union.

It has been said that there is danger of this power being abused, if exercised by one man. Certainly the danger is as great with respect to the Senate, who are assembled from various parts.
of the continent, with different impressions and opinions. It appears to me that such a body is more likely to abuse this power than the man whom the united voice of America calls to the Presidential chair. As the nature of the Government requires the power of removal, I think it is to be exercised in this way by a hand capable of exerting itself with effect, and the power must be conferred upon the President by the Constitution, as the executive officer of the Government.

I believe some difficulty will result from determining this question by a mandamus. A mandamus is used to replace an officer who has been removed contrary to law; now, this officer being the creature of the law, we may declare that he shall be removed for incapacity, and, if so declared, the removal will be according to law.

Mr. Madison. If the question of the Constitution is to be left to its natural course, with respect to the Executive powers of this Government, I own that the insertion of this sentiment in law may not be of material importance, though, if it is nothing more than a mere declaration of a clear grant made by the Constitution, it can do no harm; but if it is a part of the Constitution, I suppose an exposition of the Constitution may come with as much propriety from the Legislature, as any other department of the Government. If the power naturally belongs to the Government, and the Constitution is undetermined as to the body which is to exercise it, it is likely that it is committed to the discretion of the Legislature, and the question will depend upon its own merits.

I am clearly of opinion with the gentleman from South Carolina (Mr. Smith) that we ought in this, and every other case, to adhere to the Constitution, so far as it will serve as a guide to us, and that we ought not to be swayed in our decisions by the character of the man who is the present Chief Magistrate, but to consider it with respect to the merit of men who, in the ordinary course of things, may be supposed to fill the Chair. I believe the power here declared is a high one, and, in some respects, a dangerous one; but, in order to come to a right decision on this point, we must consider both sides of the question: the possible abuses which may spring from the single will of the First Magistrate, and the abuse which may spring from the combined will of the Executive and Senatorial disinclination.

When we consider that the First Magistrate is to be appointed at present by the suffrages of three millions of people, and, in all human probability, in a few years' time by double that number, it is not to be presumed that a vicious or bad character will be selected. If the Government of any country on the face of the earth was ever effectually guarded against the election of ambitious or designing characters to the first office of the State, I think it may with truth be said to be the case under the Constitution of the United States. With all the infirmities incident to a popular election, corrected by the particular mode of conducting it, as directed under the present system, I think we may fairly calculate that the instances will be very rare in which an unworthy man will receive that mark of the public confidence which is required to designate the President of the United States. Where the people are disposed to give such an elevation to one of their fellow-citizens, I own that I am not afraid to place my confidence in him, especially when I know he is impeachable for any crime or misdemeanor before the Senate, at all times; and that, at all events, he is impeachable before the community at large every four years, and liable to be displaced if his conduct shall have given umbrage during the time he has been in office. Under these circumstances, although the trust is a high one, and in some degree, perhaps, a dangerous one, I am not sure but it will be safer here than placed where some gentlemen suppose it ought to be.

It is evidently the intention of the Constitution, that the first Magistrate should be responsible for the Executive department; so far therefore as we do not make the officers who are to aid him in the duties of that department responsible to him, he is not responsible to his country. Again, is there no danger that an officer, when he is appointed by the concurrence of the Senate, and is, in that body, may choose rather to risk his establishment on the favor of that branch, than rest it upon the discharge of his duties to the satisfaction of the Executive branch, which is constitutionally authorized to inspect and control his conduct? And if it should happen that the officers connect themselves with the Senate, they may mutually support each other, and for want of enough reduce the power of the President to a mere vapor; in which case, his responsibility would be annihilated, and the expectation of it unjust. The high Executive officers, joined in cabal with the Senate, would lay the foundation of discord, and end in an assumption of the Executive power, only to be removed by a revolution of the Government. I believe no principle is more clearly laid down in the Constitution than that of responsibility. After premising this, I will proceed to an investigation of the merits of the question upon Constitutional ground.

I have, since the subject was last before the House, examined the Constitution with attention, and I acknowledge that it does not perfectly correspond with the ideas I entertained of it from the first glance. I am inclined to think, that a free and systematic interpretation of the plan of Government will leave us less at liberty to abate the responsibility than gentlemen imagine. I have already acknowledged that the powers of the Government must remain as apportioned by the Constitution. But it may be contended, that where the Constitution is silent, it becomes a subject of legislative discretion; perhaps, in the opinion of some, an argument in favor of the clause may be successfully brought forward on this ground: I, however, leave it for the present untouched.

By a strict examination of the Constitution, on what appears to be its true principles, and considering the great departments of the Government in the relation they have to each other, I have my
doubts whether we are not absolutely tied down to the construction declared in the bill. In the first section of the first article, it is said, that all Legislative powers herein granted shall be vested in a Congress of the United States. In the second article, it is affirmed that the Executive power shall be vested in a President of the United States of America. In the third article, it is declared that the Judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as Congress may, from time to time, ordain and establish. I suppose it will be readily admitted, that so far as the Constitution has separated the powers of these great departments, it would be improper to combine them together; and so far as it has left any particular department in the entire possession of the powers incident to that department, I conceive we ought not to qualify them further than they are qualified by the Constitution. The Legislative powers are vested in Congress, and are to be exercised by them uncontrolled by any other department, except the Constitution has qualified it otherwise. The Constitution has qualified the Legislative power, by authorizing the President to object to any bill it may pass, requiring, in this case, two-thirds of both Houses to concur in making a law; but still the absolute Legislative power is vested in the Congress with this qualification alone.

The Constitution affirms, that the Executive power shall be vested in the President. Are there exceptions to this proposition? Yes, there are. The Constitution says, that in appointing to office, the Senate shall be associated with the President, unless in the case of inferior officers, when the law shall otherwise direct. Have we a right to extend this exception? I believe not. If the Constitution has invested all Executive power in the President, I venture to assert that the Legislature has no right to diminish or modify his Executive authority.

The question now resolves itself into this, Is the power of displacing an Executive power? I conceive that if any power whatsoever is in its nature Executive, it is the power of appointing, overseeing, and controlling those who execute the laws. If the Constitution had not qualified the power of the President in appointing to office, by associating the Senate with him in that business, would it not be clear that he would have the right, by virtue of his Executive power, to make such appointment? Should we be authorized, in defiance of that clause in the Constitution, to unite the Senate with the President in the appointment to office? I conceive not. If it is admitted that we should not be authorized to do this, I think it may be disputed whether we have a right to associate them in removing persons from office, the one power being as much of an Executive nature as the other; and the first only is authorized by being excepted out of the general rule established by the Constitution, in these words, "the Executive power shall be vested in the President." The Judicial power is vested in a Supreme Court; but will gentlemen say the judicial power can be placed elsewhere, unless the Constitution has made an exception? The Constitution justifies the Senate in exercising a judiciary power in determining on impeachments; but can the judicial power be further blended with the powers of that body? They cannot. I therefore say it is incontrovertible, if neither the Legislative nor Judicial powers are subjected to qualifications, other than those demanded to retain it in the bill, the Executive powers are equally unaccountable as either of the others; and inasmuch as the power of removal is of an Executive nature, and not affected by any Constitutional exception, it is beyond the reach of the Legislative body.

If this is the true construction of this instrument, the clause in the bill is nothing more than explanatory of the meaning of the Constitution, and therefore not liable to any particular objection on that account. If the Constitution is silent, and it is a power the Legislature have a right to confer, it will appear to the world, if we strike out the clause, as if we doubted the propriety of vesting it in the President of the United States. I therefore think it best to set it in the bill.

Mr. Vinick.—I hoped, Mr. Chairman, after the discussion this subject had received on a former occasion, that it would have been unnecessary to re-examine it. The arguments against the clause are reiterated: but, I trust, without a chance of success. They were fully answered before; and I expect the impression in the least thing, are not already offended. The House, as well as the Committee of the Whole, have determined that those words shall be inserted in the bill; the special committee could therefore do no less than place them where they are; a deference is due to the decision of the House.

The House has determined to make a declaration of their construction on the Constitution. I am perfectly in sentiment with the majority on this occasion; and contend, that if this power is not in the President, it is not vested in any body whatever. It cannot be within the Legislative power of the Senate, because it is of an adverse nature; it cannot be within the Executive power of the Senate, because they possess none but what is expressly granted by the Constitution. If gentlemen will point out where the Constitution concedes this power upon the Senate, I will read my recantation, and subscribe to the justness of their doctrine.

I am not satisfied that removability shall be acquired only by impeachment. Were the advocates of this doctrine aware of its consequences, when they advanced it? The Senate has the sole power of trying impeachments; the President is here out of the question. If no officer can be Constitutionally removed but by impeachment, it applies to subordinate officers as well as heads of departments. For the Constitution only gives power to Congress to establish officers by law, and vests the appointment in the President. If these officers are not removable but by impeachment, what is to become of our affairs, when any of the accidents occur which were enumerated by the
gentleman from Massachusetts (Mr. SEDGWICK?)

Are we to take the circuitous route of impeachment? The dilatory and inefficient process by that mode, will not apply the remedy to the evil till it is too late to be of advantage. Experience has fixed an eternal stigma upon the system of impeachment; witness the case I mentioned, the other day, of Warren Hastings before the British Lords; what delays and uncertainty with the forms of trial, denial of evidence, arguments of counsel, and deliberate decision! I ask gentlemen, can there be a greater evil than this in any Government? Why, then, will gentlemen advocate a doctrine so obnoxious to the principles of the Constitution, when a more favorable construction is at hand?

As to the principle of the gentleman from Virginia, (Mr. WHITE) that he who appoints must remove; it may be a good one, but it is not a general one. Under this Government, officers appointed by the people are removed by the representatives of the State Legislatures. I take it that the best principle is, that he who is responsible for the conduct of the officer, ought to have the power of removing him; by adhering to this principle, we shall be led to make a right decision on the point in debate. Perhaps it might be equally right that the responsible person should have the appointment of those who are to aid him. But this case is qualified by an express stipulation in the Constitution; and, therefore, must be submitted to the people. Notwithstanding the responsibility kept up: the President takes the lead in the business; he nominates, wherefore he becomes answerable for the officer. But whose officer is he? Not the Senate's; for they have no Executive business to perform. The executive duties are all vested in the President. Then the President executes the duties of foreign affairs. He is answerable for his conduct—to whom? To the Constitution; and, therefore, he cannot appoint. This is a check to an improper choice; but does not destroy the responsibility of the President, if he nominates a vicious or improper character.

It may be contended, on the gentleman's principles, that the President shall have the power of removal; because it is he who appoints. The Constitution says, he shall nominate, and, under certain qualifications, appoint. The Senate do not appoint; their judgment only is required to acquiesce in the President's nomination. Where, then, is the natural responsibility placed? Because where that is, ought to be the power of removal. The Constitution contemplates no other principle. If we were to insert a contrary one, the Government must go to destruction.

Mr. WHITING.—Mention has been made of impeachments, as the only mode of removing an officer. I will explain my ideas on this point, in order that the clause may be masters of my particular objections to the clause. I consider impeachments necessary to be employed in cases respecting an officer who is appointed during good behaviour. Thus the judges can only be removed by impeachment. The President and Vice President hold their offices for the terms mentioned in the Constitution, not liable to be removed from office in any other way. These circumstances are a deviation from my general principle; but have nevertheless a proper ground to be supported on. The electors who appoint the President, cannot assemble to exercise the authority which would naturally be in them. With respect to the judges, it is found necessary for the proper and uncorrupt administration of justice, and the security of freedom, to have them independent in their stations so that they be not removable at pleasure. To them, therefore, the doctrine of impeachment is peculiarly applicable. It may properly be extended further, in cases where the President is desirous of retaining an officer who ought not to be retained. This House has the power of controlling him, and may impeach the officer before the Senate. In either of these three cases impeachments are necessary.

I have no doubt in my mind, but an officer can be removed without a public trial. I think there are cases in which it would be improper that his misdemeanors should be publicly known. The tranquility and harmony of the Union might be endangered, if his guilt was not secreted from the world. I have therefore no hesitation in declaring as my sentiment, that the President and Senate may dismiss him.

The Constitution contemplates a removal in some other way besides that by impeachment; or why is it declared in favor of the judges only, that they shall hold their offices during good behaviour? Does not this strongly imply, that, without such an exception, there would have been a discretionary power in some branch of the Government to dismiss even them?

My colleague (Mr. MADISON) has acknowledged the clause to be unnecessary. If the Constitution is allowed its free operation. Now it is my wish that it should have such an operation, and not be wrested by a declaration in a law contrary to what I take to be the true construction. If we are silent on this point, it will probably be allowed a fair interpretation when the power is required to be exercised; but if it could not be adjusted easily in that place, I would rather the Judiciary should decide the point, because it is more properly within their department.

I differ also with my colleague in the principle that he has laid down, that this is in its nature an Executive power. The Constitution supposes power incident to Government, and arranges it into distinct branches, with or without each other; but it enumerates under each Department the powers it may exercise. The Legislature may exercise its authority in passing laws relating to any of its particular powers. The Executive power is vested in the President; but the Executive powers so vested, are those enumerated in the Constitution. He may nominate, and, by and with the advice and consent of the Senate, appoint all officers, because the Constitution gives this power, and not because the power is in its nature a power incident to his department. My ideas of
the Legislative and Executive powers are precisely the same. The Legislature may do certain acts because the Constitution says they shall have power to do them, and the Executive Magistrate is authorized to exercise powers because they are vested in him by the same instrument. It has given him the power of appointment under certain qualifications; the power of removal is incident to the power of appointment, and both equally dependent upon the arrangement made in the Constitution; consequently, a discretion from office must be brought about by the same modification as the appointment.

Several objections have arisen from the inconvenience with which the power must be exercised, if the Senate is blended with the Executive; and therefore it is inferred that the President ought exclusively to have this power. If we were framing a Constitution, these arguments would have their proper weight, and I might approve such an arrangement. But at present, I do not consider we are at liberty to deliberate on that subject. The Constitution is already formed, and we can go no farther in distributing the powers than the Constitution warrants.

It was objected that the President could not remove an officer unless the Senate was in session; but yet the emergency of the case might demand an instant dismissal. I should imagine that no inconvenience would result on this account; because, on my principle, the same power which can make a temporary appointment, can make an equal suspension; the powers are opposite to each other.

The gentleman says, we ought not to bend the Executive and Legislative powers further than they are blended in the Constitution. I contend we do not. There is no expression in the Constitution which says that the President shall have the power of removal from office; but the contrary is strongly implied; for it is said, that Congress may establish offices by law, and vest the appointment, and consequently the removal, in the President alone, in the courts of law, or heads of Departments. Now, this shows that Congress are not at liberty to make any alteration by law in the mode of appointing superior officers; and, consequently, that they are not at liberty to alter the manner of removal.

Let us, then, leave the constitution to a free operation, and let the President, with or without the Senate, carry it into execution. Then, if any one supposes himself injured by their determination, let him have recourse to the law; and its decision will establish the true construction of the Constitution.

Mr. Boudinot.—This is a question, Mr. Speaker, that requires full consideration, and ought only to be settled on the most candid discussion. It certainly involves the right of the Senate to a very important power. At present, I am so impressed with the importance of the subject, that I dare not absolutely decide on any principle, although I am firmly persuaded we ought to retain the clause in the bill; and, so far as it has been examined, I agree that it is a Legislative construction of the Constitution necessary to be settled for the direction of your officers. But if it is a deviation from the Constitution, or in the least degree an infringement upon the authority of the other branch of the Legislature, I shall most decidedly be against it. But I think it will appear, on a full consideration of this business, that we can do no otherwise than agree to this construction, in order to preserve to each Department the full exercise of its power, and to give this House security for the proper conduct of the officers who are to execute the laws.

The arguments adduced, are to show that the power of removal lies either in the President and Senate, or the President alone, except in the cases of removal by impeachment. There is nothing I take it, in the Constitution, or the reason of the thing, that officers should be only removable by impeachment. Such a provision would be derogatory to the powers of Government, and subservient of the rights of the people. What says the Constitution on the point? (I fear, sir, it has not been rightly comprehended.) That the House of Representatives shall have the sole power of impeachment; that the Senate shall try all impeachments; and judgment shall not extend further than to remove from office, and disqualification to hold it in future. Then comes the clause declaring absolutely that he shall be removed from office on impeachment for, and on conviction of treason, bribery, or other high crimes or misdemeanors. It is the clause which guards the rights of the House, and enables them to pull down an improper officer, although he should be supported by all the power of the Executive. This, then, is a necessary security to the people, and one that is wisely provided in the Constitution. But I believe it is nowhere said that officers shall never be removed but by impeachment; it says they may be removed on impeachment. Suppose the Secretary of Foreign Affairs shall misbehave, and we impeach him; notwithstanding the clearest proof of guilt, the Senate might only impose some trifling punishment, and retain him in office, if it were not for this declaration in the Constitution.

Neither this clause, nor any other, goes so far as to say it shall be the only mode of removal; therefore we may proceed to inquire what the other is. Let us examine whether it belongs to the Senate and President. Certainly, sir, there is nothing that gives the Senate this right in express terms: but they are authorized, in express words to be concerned in the appointment. And does this necessarily include the power of removal? If the President complains to the Senate of the misconduct of an officer, and desires their advice and consent to the removal, what are the Senate to do? Most certainly they will inquire if the complaint is well founded. To do this, they must call the officer before them to answer. Who, then, are the parties? The executive officer against his assistant; and the Senate are to sit as judges to determine whether sufficient cause of removal exists. Does not this set the Senate over the head of the President?
But suppose they shall decide in favor of the officer, what a situation is the President then in, surrounded by officers with whom, by his situation, he is compelled to act, but in whom he can have no confidence, reversing the privilege given him by the Constitution, to prevent his having officers imposed upon him who do not meet his approbation?

But I have another more solid objection, which places the question in a more important point of view. The Constitution has placed the Senate as the only security and barrier between the House of Representatives and the President. Suppose the President has desired the Senate to concur in removing an officer, and they have declined; or suppose the House has applied to the President and Senate to remove an officer obnoxious to them, and they determine against the measure, the House can have recourse to nothing but an impeachment, if they suppose the criminality of the officer will warrant such a procedure. Will the Senate then be that upright court which they ought to appeal to on this occasion, when they have prejudged your cause? I conceive the Senate will be too much under the control of the former house to form a proper body. To me it appears for this House to apply to for impartial justice.

As the Senate are the dernier resort, and the only court of judicature which can determine on cases of impeachment, I am for preserving them free and independent, both on account of the officer and this House. I therefore conceive that it was not the intention of the Constitution to vest the power of removal in the President and Senate; but, as it must exist somewhere, it rests on the President alone. I conceive this point was made fully to appear by the honorable gentleman from Virginia, (Mr. Madison,) inasmuch as the President is the supreme Executive officer of the United States.

If the doctrine of the gentleman from South Carolina is true, then it follows, that every officer has perpetuity in office, at least during good behaviour. If this is to be the case, there was no necessity for declaring in the Constitution that the judges shall hold their offices during good behaviour. This would be destroying the responsibility of the President, and establishing such a principle in the Government as would be extremely dangerous.

It was asked, if ever we knew a person removed from office by reason of sickness or ignorance. If there never was such a case, it is, perhaps, nevertheless proper that they should be removed for those reasons; and we shall do well to establish the principle.

Suppose your Secretary of Foreign Affairs rendered incapable of thought or action by a paralytic stroke: I ask whether there would be any propriety in keeping such a person in office, and whether the salus populi, the first object of republican Governments, does not absolutely demand his dismissal. Can it be expected that the President is responsible for an officer under these circumstances, although when he went into office he might have been a wise and virtuous man, and the President well inclined to risk his own reputation upon the integrity and abilities of the person?

I conceive it will be improper to leave the determination of this question to the judges. There will be some indelicacy in subjecting the Executive action in this particular to a suit at law; and there may be much inconvenience if the President does not exercise this prerogative until it is decided by the courts of justice.

From these considerations, the safety of the people, the security of this House, and the adherence to the spirit of the Constitution, I am disposed to think the clause proper; and as some doubts respecting the construction of the Constitution have arisen, I think it also necessary. Therefore, I hope it will remain.

Mr. Sumner, of South Carolina.—I have attended to the arguments of the gentlemen who oppose the motion for striking out, and I apprehend that their reasoning is not perfectly consistent. The construction of some gentlemen is, that the power of removal is given to the President by the Constitution. Others are of opinion that the Constitution is silent; and therefore the House ought to give it. To oppose these adverse arguments, I must return to my strong ground on which my opponents dare not venture. I state again, that if the Constitution has given the power, it is unnecessary to give it here; or if it has not given it, we have no right to confer it; because it is not within the enumerated powers delegated to Congress.

Gentlemen have said that it is proper to give a legislative construction of the Constitution. I differ with them on this point. I think it an infringement of the powers of the judiciary. It is said, we ought not to blend the legislative, executive, or judiciary powers, further than is done by the Constitution; and yet the advocates for preserving each department pure and untouched by the others, call upon this House to exercise the powers of the judges in expounding the Constitution. What authority has this House to explain the law? But if it has this privilege, the Senate is also invested with it as part of the Legislature; and, in exercising it on the present question, we shall be likely to differ. If the Constitution is silent, and gentlemen admit this, it is possible the Senate may view it with a favorable eye to their own right, and reject the bill on account of this clause. A great deal of mischief has arisen in the several States, by the Legislatures undertaking to decide Constitutional questions. Sir, it is the duty of the Legislature to make laws; your judges are to expound them.

It has been said, that cases of impeachment do not extend to officers who are indolent or delirious. I said before, that if a person become indolent, he will neglect his duty, and for that cause I presume he may be impeached. Gentlemen have found out that impeachment is a tedious process; I apprehend the person who is impeached will not think it a dilatory process, but such a one as is wisely inserted in the Constitution for the protection of his person and property. The delay of
which gentlemen complain is the greatest bulwark of liberty. Our ancestors, who were tenacious of their privileges, guarded them in the best manner they could devise to prevent the inroads of despotism. As well may gentlemen complain of the tedious process in other criminal cases, by indictment of a grand jury and trial by a petit jury. I hope it is not contemplated (if it is, I hope never to see adopted in this country a summary process) to hurry on judgment without reflection. Such doctrine may suit the meridian of Turkey, where a Cadi can give the order and the bowstring at the same moment.

If the Constitution does not extend to insanity, or disability by reason of sickness, then let the law declare him removed until his recovery. But gentlemen’s arguments go to prove that the Constitution authorizes the removal for this reason. Why, the same argument would apply to the President and Vice President, if they were to become delirious; yet I think they could not constitutionally be removed for such a cause.

The Constitution declares that an officer shall be removed by impeachment for treason, bribery, or other high crimes and misdemeanors; yet this doctrine of gentlemen will enable the President, or the President with the advice of the Senate, to inflict the punishment without trial, when the Constitution requires it to be done on impeachment and conviction. This appears to me so inconsistent, that I can by no means be reconciled to it. If the process we used in the Convention is to be proper to amend it in that particular; and when the subject of amendments is taken up, let Congress recommend it with the other improvements to that system. But we cannot now proceed on this idea. For my part, I think, under the Constitution as it now stands, we have no other way to remove an officer by impeachment.

The gentleman from Virginia has said, that the power of removal is Executive in its nature. I do not believe this to be the case. I have turned over the Constitutions of most of the States, and I do not find that any of them have granted this power to the Governor. In some instances, I find the Executive Magistrate suspends, but none of them have the right to remove officers; and I take it that the Constitution of the United States has distributed the powers of Government on the same principles which most of the State Constitutions have adopted. For it will not be contended that the State Governments did not furnish the members of the late convention with the skeleton of this Constitution.

The gentlemen have observed, that it would be dangerous if the President had not this power. But is there not danger in making your Secretary of Foreign Affairs dependent upon the will and pleasure of the President? Can gentlemen see the danger on one side only? Suppose the President avers to a just and honorable war which Congress have embarked in, can he not counterbalance the Secretary of War (for it is in contemplation to establish such an officer) in the waste of public stores, and misapplication of the supplies? Nay, cannot he drag our officer into a compliance with his designs, by threatening him with a removal by which his reputation and property would be destroyed? If the officer were established on a better tenure, he would dare to be honest; he would know himself invulnerable in his integrity, and defy the shafts of malevolence, though aimed with Machiavelian policy. He would be a barrier to the Executive officer, and save the State from ruin.

But, Mr. Chairman, the argument does not turn upon the expediency of the measure. The great question is with respect to its constitutionality. And as yet I have heard no argument advanced sufficiently cogent to prove to my mind that the Constitution warrants such a disposition of the power of removal; and until I am convinced that it is both expedient and constitutional, I cannot agree to it.

Mr. Gerry.—Some gentlemen consider this as a question of policy; but to me it appears a question of constitutionality, and I presume it will be determined on that point alone. The best arguments I have heard urged on this subject come from the honorable gentleman from Virginia. (Mr. Madison.) He says the Constitution has vested the Executive power in the President; and that he has a right to exercise it under the qualifications therein made. He lays it down as a maxim, that the Constitution vesting in the President the Executive power, naturally vests him with the power of appointment and removal. Now I would be glad to know from that gentleman by what means we are to decide this question. Is his maxim supported by precedent drawn from the practice of the individual States? The direct contrary is established. In many cases the Executives are not in particular vested with the power of appointment; and do they exercise the power by virtue of their office? It will be found that other branches of the Government make appointments. How then can gentlemen assert that the powers of appointment and removal are incident to the Executive Department of Government? To me it appears at best but problematical. Neither is it clear to me that the power that appoints naturally possesses the power of removal. As we have no certainty on either of these points, I think we must consider it as established by the Constitution.

It has been argued, that if the power of removal vests in the President alone, it annuls or renders nugatory the clause in the Constitution which directs the concurrence of the Senate in the case of appointments; it behoves us not to adopt principles subversive of those established by the Constitution. It has been frequently asserted on former occasions, that the Senate is a permanent body, and was so constructed in order to give durability to public measures. If they are not absolutely permanent, they are not a voting principle, which gives them a salutary stability. This is not the case either with the President or House of Representatives; nor is the Judiciary equally lasting, because the officers are subject to natural dissolution. It appears to
me that a permanency was expected in the Mag-
istry; and therefore the Senate were com-
bined in the appointment to office. But if the
President alone has the power of removal, it is in
his power at any time to destroy all that has been
done. It appears to me that such a principle
would be destructive of the intention of the Con-
stitution expressed by giving the power of appoint-
ment to the Senate. It also subverts the clause
which gives the Senate the sole power of trying
impeachments, because the President may remove
the officer in order to screen him from the effects
of their judgment on an impeachment. Why
should we construe any part of the Constitution
in such a manner as to destroy its essential prin-
ciples, when a more consonant construction can
be obtained?

It appears very clear to me, that however this
power may be distributed by the Constitution, the
House of Representatives have nothing to do with it. Why then should we interfere in the
business? Are we afraid that the President and
Senate are not sufficiently informed to know their
respective duties? Our interposition argues that
they want judgment, and are not able to adjust
their powers without the wisdom of this House to
assist them; to say the least on this point, it must
be deemed indecent for us to intermeddle with
them. If the fact is, as we seem to suspect, that
they do not understand the Constitution, let it go
before the proper tribunal; the judges are the
Constitutional umpires on such questions. Why,
let me ask gentlemen, shall we commit an infrac-
tion of the Constitution for fear the Senate or
President should not comply with its directions?

It has been said by my colleague, that these
officers are the creatures of the law; but it seems
as if we were not content with that; we are
making them the mere creatures of the President.
They dare not exercise the privilege of their crea-
tion, if the President shall order them to forbear;
behave as holds of life, his word will be sovereign
over them, and will soon swallow up the small security we have in the Senate's concurrence to the appointment, and we shall
shortly need no other than the authority of the
Supreme Executive officer to nominate, appoint,
continue, or remove.

Mr. Adams.—When this question was agitated
at a former period, I took no part in the debate.
I believe it was then proposed, without any idea
or intention of drawing on a lengthy discussion,
and to me it appeared to be well understood
and settled by the House; but since it has been re-
iterated and contested again, I feel it my boun-
duty to deliver the reasons for voting in the man-
er I then did, and shall now do. Mr. Chairman,
I look upon every question which touches the
Constitution as serious and important, and there-
fore worthy of the fullest discussion, and the
most solemn decision. I believe, on the present
occasion, we may come to something near cer-
tainty, by attending to the leading principles of
the Constitution. In order that the good purposes
of a Federal Government should be answered, it
was necessary to delegate considerable powers;
and the principle upon which the grant was
made, intended to give sufficient power to do all
possible good, but to restrain the rulers from
doing mischief.

The Constitution places all Executive power
in the hands of the President, and could he per-
sonally execute all the laws, there would be no
occasion for establishing auxiliaries; but the cir-
umscribed powers of human nature in one man,
demand the aid of others. When the objects are
widely stretched out, or greatly diversified, mean-
dering through such an extent of territory as that
the United States possess, a minister cannot see
with his own eyes every transaction, or feel with
his hands the minute that pass through his de-
partment. He must therefore have assistants.

But in order that he may be responsible to his
country, he must have a choice in selecting his
assistants, a control over them, with power to
remove them when he finds the qualities which induced their appointment cease to exist.

There are officers under the Constitution who
hold their office by a different tenure; your judges
are appointed during good behaviour; and from
the delicacy and peculiar nature of their trust, it
is right it should be so, in order that they may be
independent and impartial in administering jus-
tice between the Government and its citizens.

But the removability of the one class, or immov-
ability of the other, is founded on the same prin-
ciple, the security of the people against the abuse
of power. Does any gentleman imagine that an
officer is entitled to his office as to an estate? Or
does the Legislature establish them for the con-
veniencery of an individual? For my part, I con-
ceive it intended to carry into effect the purposes
for which the Constitution was intended.

The Executive powers are delegated to the
President, with a view to have a responsible offi-
cer to superintend, control, inspect, and check
the officers necessarily employed in administering
the laws. The only bond between life, his word,
he employs, is the confidence he has in their
integrity and talents; when that confidence ceases,
the principal ought to have power to remove
those whom he can no longer trust with safety.

If an officer shall be guilty of neglect or infidelity,
there can be no doubt but he ought to be removed;
yet there may be numerous causes for removal
which do not amount to a crime. He may pro-
pose to do a mischief; but I believe the mere
intention would not be cause of impeachment.

He may lose the confidence of the people upon
suspicion, in which case it would be improper to
retain him in service; he ought to be removed
at any time, when, instead of doing the greatest
possible good, he is likely to do an injury to the
public interest by being continued in the admin-
istration.

I presume gentlemen will generally admit that
officers ought to be removed when they become
obnoxious; but the question is, how shall this
power be exercised? It will not, I apprehend, be
contended, that all officers hold their offices during
good behaviour. If this be the case, it is a most
singular government. I believe there is not ano-
ther in the universe that bears the least semblance to it in this particular; such a principle, I take it, is contrary to the nature of things. But the manner how to remove is the question. If the officer misbehaves, he can be removed by impeachment; but in this case is impeachment the only mode of removal? It would be found very inconvenient to have a man continue in office after he has been impeached, and when all confidence in him was suspended or lost. Would not the end of impeachment be defeated by this means? If Mr. Hastings, who was mentioned by the gentleman from Delaware, (Mr. W. Virginia,) preserved his command in India, could he not defeat the impeachment now pending in Great Britain? If that doctrine obtains in America, we shall find impeachments come too late; while we are preparing the process, the mischief will be perpetrated, and the offender will escape. I apprehend it will be as frequently necessary to prevent crimes as to punish them; and it may often happen that the only prevention is by removal. The superintending power possessed by the President will, perhaps, enable him to discover a base intention before it is ripe for execution. It may happen that the Treasurer may be disposed to betray the public chest to the enemy, and so injure the Government beyond the possibility of reparation; should the President be restrained from removing so dangerous an officer, under the slow authority of an impeachment was complied with, when the nature of the case rendered the application of a sudden and decisive remedy indispensably necessary?

But it will, I say, be admitted, that an officer may be removed. The question then is, by whom? Some gentlemen say by the President alone; and others, by the President, and by and with the advice of the Senate. By the advocates of the latter mode, it is alleged, that the Constitution is in the way of the power of removal being by the President alone. If this is absolutely the case, there is no end to all further inquiry. But before we suffer this to be considered as an insuperable impediment, we ought to be clear that the Constitution prohibits him the exercise of what, on a first view, appears to be a power incident to the Executive branch of the Government. The gentleman from Virginia (Mr. Madison) has made so many observations to evince the constitutionality of the clause, that it is unnecessary to go over the ground again. I shall therefore confine myself to answer only some remarks made by the gentleman from South Carolina. (Mr. Extra.) The powers of the President are defined in the Constitution; but it is said that he is not expressly authorized to remove from office. If the Constitution is silent also with respect to the Senate, the argument may be retorted. If this silence proves that the power cannot be exercised by the President, it certainly proves that it cannot be exercised by the President, by and with the advice and consent of the Senate. The power of removal is incident to Government; but, not being distributed by the Constitution, it will come before the Legislature, and, like every other omitted case, must be supplied by law.

Gentlemen have said, when the question was formerly before us, that all powers not intended to be given up to the General Government were retained. I beg gentlemen, when they undertake to argue from implication, to be consistent, and admit the force of other arguments drawn from the same source. It is a leading principle in our free Governments, that the duties of the Legislative and Executive powers should be kept distinct; yet the attempt to blend the Executive and Legislative departments in exercising the power of removal, is such a mixing as ought not to be carried into practice on arguments grounded on implication. And the gentleman from Virginia, (Mr. Warren’s) reasoning is wholly drawn from implication. He supposes, as the Constitution qualifies the President’s power of appointing to office, by subjecting his nomination to the concurrence of the Senate, that the qualification follows of course in the removal.

If this is to be considered as a question undecided by the Constitution, and submitted on the footing of expediency, it will be well to consider where the power can be most usefully deposited for the security and benefit of the people. It has been said, by the gentleman on the other side of the House, (Mr. Smith,) that there is an impropriety in allowing the exercise of this power; that it is a dangerous power, and may result to the liberty and property of the officer, who may be turned out of business without a moment’s warning. I take it, the question is not whether such power shall be given or retained; but because it is admitted on all hands, that the officer may be removed; so that it is no grant of power; it raises no new danger. If we strike out the clause, we do not keep the power of removal, so that the gentleman will derive none of the security he contemplates by agreeing to the motion for striking out. It will be found that the nature of the business requires it to be conducted by the head of the Executive; and I believe it will be found even there that more injury will arise from not removing improper officers than from displacing good ones. I believe experience has convinced us that it is an irksome business; and officers are more frequently continued in place after they become unfit to perform their duties, than turned out while their talents and integrity are useful. But advantages may result from keeping the power of removal in terrorum over the heads of the officers; they will be stimulated to do their duty to the satisfaction of the principal, who is to be responsible for the whole Executive department.

The gentleman has supposed there will be great difficulties in getting officers of abilities to engage in the service of their country upon such terms. There has never yet been any scarcity of proper officers in any department of the Government of the United States; even during the war, when men risked their lives and property by engaging in such service, there were candidates enough. But why should we connect the Senate in the removal? Their
attention is taken up with other important business, and they have no constitutional authority to watch the conduct of the Executive officers, and therefore cannot use such authority with advantage. If the President is inclined to shelter himself behind the Senate, with respect to having continued an improper person in office, we lose the responsibility, which is our greatest security; the blame among so many will be lost. Another reason occurs to me against blending these powers. An officer who superintends the public revenue will naturally acquire a great influence. If he obtains support in the Senate, upon an attempt of the President to remove him, it will be out of the power of the House, when applied to by the First Magistrate, to impeach him with success; for the very means of proving charges of mal-conduct against him will be under the power of the officer; all the papers necessary to convict him may be withheld while the person continues in his office. Protection may be rendered for protection, and as this officer has such extensive influence, it may be exerted to procure the removal of his friends, which will add to the calamity.

I do not say these things will take effect now, and if the question only related to what might take place in a few years, I should not be uneasy; on this point, because I am sensible the gentlemen who form the present Senate are above corruption; but in future ages, (and I hope this Government may be perpetuated to the end of time,) such things may take place, and it is our duty to provide against evils which may be foreseen, but, if neglected, will be irreparable.

I beg leave to observe further, that there are three opinions entertained by gentlemen on this subject. One is, that the power of removal is prohibited by the Constitution; the next is, that it requires it by the President; and the other is, that the Constitution is totally silent. It therefore appears to me proper for the House to declare what is their sense of the Constitution. If we declare justly on this point, it will serve for a rule of conduct to the Executive Magistrate: if we declare improperly, the judiciary will revise our decision; so that at all events, I think we ought to make the declaration.

Mr. Lawton—I am for striking out this clause, Mr. Chairman, upon the principles of the Constitution, from which we are not at liberty to deviate. The honorable gentleman from Massachusetts, (Mr. Sedgwick,) calls the Minister of Foreign Affairs the creature of the law, and that very properly; because the law establishes the office, and has the power of creating him in what shape the Legislature pleases. This being the case, we have a right to create the office under such limitations and restrictions as we think proper, provided we can obtain the consent of the Senate; but it is very improper to draw as a conclusion, from having the power of giving birth to a creature, that we should therefore bring forth a monster, merely to show that we had such power. I call that creature a monster that has not the proper limbs and features of its species. I think the creature we are forming is unnatural in its proportions. It has been often said, that the Constitution declares the President, by and with the advice and consent of the Senate, shall appoint this officer. This, to be sure, is very true, and so is the conclusion which an honorable gentleman (Mr. Wurce) from Virginia drew from it, that an officer must be discharged in the way he was appointed.

I believe, Mr. Chairman, this question depends upon a just construction of a short clause in the Constitution. "The President shall have power, by and with the advice and consent of the Senate to appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States." Here is no difference with respect to the power of the President to make treaties and appoint officers, only it requires in the one case a larger majority to concur than in the other. I want to know by any power the Senate suppose that gentlemen mean, when they argue in favor of removal by the President alone, to contemplate the extension of the power to the repeal of treaties; because, if they do, there will be little occasion for us to sit here. But let me ask these gentlemen, as there is no real or imaginary distinction between the appointment of ambassadors and ministers, or Secretaries of Foreign Affairs, whether they mean that the President should have the power of recalling or dismissing ambassadors and military officers, for the words in the Constitution are "all other officers," as well as he can remove your Secretary of Foreign Affairs. To be sure they cannot extend it to the judges, because they are secured by a subsequent article, which declares they shall hold their offices during good behaviour; they have an inheritance which they cannot be divested of; but on conviction of some crime. But I presume gentlemen mean to apply it to all those who have not an inheritance in their offices. In this case, it takes the whole power of the President and Senate to create an officer, but half the power can uncreate him. Surely a law passed by the whole Legislature cannot be repealed by one branch of it; so I conceive, in the case of appointments it requires the same force to supersede an officer as to put him in office.

I acknowledge that the clause relative to impeachment is for the benefit of the people; it is intended to enable their representatives to bring a bad officer to justice who is screened by the President; but I do not conceive, with the honorable gentleman from South Carolina, (Mr. Smith,) that it by any means excludes the usual ways of superseding officers. It is said in the Constitution that the House shall have power in choosing their own officers. We have chosen a clerk, and, I am satisfied, a very capable one; but will any gentleman contend we may not discharge him and choose another, and another, as often as we see cause? And so it is in every
other instance; where they have the power to make, they have likewise the power to unmake. It will be said by gentlemen that the power to make does not imply the power of unmaking; but I believe they will find very few exceptions in the United States.

Were I to speak of the expediency, every one of my observations would be against it. When an important and confidential trust is placed in a man, it is worse than death to him to be displaced without cause; his reputation depends on the single will of the President, who may ruin him on bare suspicion. Nay, a new President may turn him out on mere caprice, or in order to make room for a favorite. This contradicts all my notions of propriety; every thing of this sort should be done with due deliberation; every person ought to have a hearing before he is punished. It is on these considerations that I wish the general principles laid down by the gentleman from Virginia (Mr. Warren) may be adhered to.

I will add one word more and have done. This seems, Mr. Chairman, an eminent power to be aimed at the Senate. What have they done to chagrin us? Or why should we attempt to abridge their powers, because we can reach them by our regulations in the shape of a bill? I think we had better let it alone. If the Constitution has given them this power, they will reject this part of the bill, and they will exercise that privilege. I think judiciously, however, they may the power of removal. If the Constitution has not given it to them, it has not vested it anywhere else; consequently, this House would have no right to confer it.

On motion, the committee rose and reported progress.

WEDNESDAY, June 17.

GEORGE MATTHEWS, from Georgia, appeared and took his seat.

DEPARTMENT OF FOREIGN AFFAIRS.

The House resolved itself into a Committee of the Whole, on the bill establishing an Executive department, to be denominated the Department of Foreign Affairs; Mr. Trumbull in the Chair. The clause, "to be removable by the President," being under consideration—

Mr. Hartley.—I was not present when this question was first brought before the House; but I heard the arguments which were yesterday urged against the President’s exercising the power of removal, and am by no means satisfied that they are well founded. If no better are brought forward, I shall be against striking out. It was contended by one gentleman that the appointment to this office was to be during good behaviour; and asserted by others that the President had not the power of removal without the advice and consent of the Senate. I mean to offer a few remarks on these positions; but first I would observe that this is an office of considerable importance, if we are to judge by the duties assigned in the body of the bill. In all commercial countries it will require men of high talents to fill such an office, and great responsibility. It is necessary to connect the business in such a manner as to give the President of the United States a complete command over it; so, in whatever hands it is placed, or however modulated, it must be subjected to his inspection and control. This certainly is the fair construction of the Constitution, and a practical recognition of the principles upon which republican Governments are founded in general, and this in particular.

I apprehend, Mr. Chairman, that this officer cannot be considered as appointed during good behaviour, even in point of policy; but with respect to the Constitutionality, I am pretty confident he cannot be viewed in that light. The Constitution declares the tenure of the officers it recognizes, and says one class of them shall hold their offices during good behaviour—they are the judges of your Supreme and other Courts; but as to any other officer being established on this firm tenure, the Constitution is silent. It then necessarily follows, that we must consider every other according to its nature, and regulate it in a corresponding manner. The business of the Secretary of Foreign Affairs is of an executive nature, and must consequently be attached to the Executive Department.

I think the gentleman from South Carolina goes too far in saying, that the clause respecting impeachments implies that there is no other mode of removing an officer. I think it does; but because one mode is pointed out by the Constitution, there is no other, especially if that provision is intended for nothing more than a punishment for a crime. The fourth section of the second article says, that all civil officers shall be removed on conviction of certain crimes. But it cannot be the intention of the Constitution to prevent by this a removal in every other way: such a principle, if once admitted, would be attended with very inconvenient and mischievous consequences.

The gentleman further contends, that every man has a property in his office, and ought not to be removed but for criminal conduct; he ought not to be removed for inability. I hope this doctrine will never be admitted in this country. A man when in office ought to have abilities to discharge the duties of it; if he is discovered to be unfit, he ought to be immediately removed, but not on the principles that gentleman contends for.

If he has an estate in his office, his right must be purchased, and a practice like what obtains in England will be adopted here; we shall be unable to dismiss an officer without allowing him a pension for the interest he is deprived of. Such doctrine may suit a nation which is strong in proportion to the number of dependents upon the Crown, but will be very pernicious in a Republic like ours. When we have established an office, let the provision for the benefit of the officer be sufficient to compensate his services; but never let it be said that he has an estate in his office when he is found unfit to perform his duties. If offices are to be held during good behaviour, it is easy to foresee that we shall have as many factions as heads of departments. The consequence would
be corruption in one of the great departments of Government; and if the balance is once destroyed, the Constitution must fall amidst the ruins. From this view of the subject, I have no difficulty to declare, that the Secretary of Foreign Affairs is an officer during pleasure, and not during good behaviour, as contended for.

Mr. Wilmot (Mr. Wilmot) holds the same principles, but differs with respect to the power which ought to exercise the privilege of removal. On this point, we are reduced to a matter of construction; but it is of high importance to the United States that a construction should be rightly made. But gentlemen say it is inconsistent with the Constitution to make this declaration; that, as the Constitution is silent, we ought not to be explicit. The Constitution has expressly pointed out several matters which we can do, and some which we cannot do; but in other matters it is silent, and leaves them to the discretion of the Legislature. If this is not the case, why was the last clause of the eighth section of the first article overturned? It gives power to Congress to make all laws necessary and proper to carry the Government into effect.

I look upon it that the Legislature have therefore a right to exercise their discretion on such questions; and however attentively gentlemen may have examined the Constitution on this point, I must say they have discovered no clause which forbids this House interfering in business necessary and proper to carry the Government into effect.

The Constitution expressly grants to the President the power of filling all vacancies during the recess of the Senate. This is a temporary power like that of removal, and liable to very few of the objections which have been made. When the President has removed an officer, another must be appointed; but this cannot be done without the advice and consent of the Senate: where then is the danger of a system of favoritism? The President, notwithstanding the supposed depravity of mankind, will hardly remove a worthy officer, to make way for a person whom the Senate may reject. Another reason why the power of removal should be lodged with the President, rather than the Senate, arises from their connexion with the people. The President is the representative of the people in a near and equal manner; he is the guardian of his country. The Senate are the representatives of the State Legislatures; but they are very unequal in that respect. Each State sends two members to that House, although their proportions are as ten to one. Hence arises a degree of insecurity to an impartial administration; but if they possessed every advantage of equality, they cannot be the proper body to inspect into the proper behaviour of officers, because they have no Constitutional powers for this purpose. It does not always imply criminality to be removed from office, because it may be proper to remove for other causes; neither do I see any danger which may result from the exercise of this power by the President, because the Senate is to be consulted in the appointment which is afterwards to take place. Under these circumstances, I repeat it, that I have no doubt in my own mind, that this office is during pleasure, and that the power of removal which is a more temporary one, ought to be in the President, whose powers, taken together, are not very numerous, and the success of this Government depends upon their being unimpaired.

Mr. Lawrence.—I was in hopes, as this question was pretty fully discussed before, the House would not have been troubled again with it. But as much as has again been said in opposition, I should not feel a conscious discharge of my duty, unless I offered those sentiments which have forcibly impressed my mind with their weight, and induced me to vote in favor of the clause.

It has been objected against this clause, that the granting of this power is unconstitutional; it was also objected, that if not unconstitutional, it is unnecessary; that the Constitution must contain in itself the power of removal, and have given it to some body else; that the power of appointment to be exercised; that therefore the law could make no disposition of it, and the attempt to grant it was unconstitutional, or the law is unnecessary; for if the power is granted in the way the clause supposes, the Legislature can neither add to nor diminish the power by making the declaration.

With respect to the unconstitutionality of the measure, I observe that if it is so, the Constitution must have given the power expressly to some person or body other than the President; otherwise it cannot be said with certainty that it is unconstitutional in us to declare that he shall have the power of removal. I believe it is not contended that the Constitution expressly gives this power to any other person; but it is contended that the objection is collected from the nature of the body which has the appointment, and the particular clause in the Constitution which declares that all officers shall be removed on conviction. It will be necessary to examine the expressions of that clause; I believe it will be found not to comprehend the case we have under consideration. I suppose the Constitution contemplates somewhere the power of removal for other causes besides those expressed as causes of impeachment. I take it, that the clause in the Constitution respecting impeachments, makes a provision for removal against the will of the President; because the House can carry the offender before a tribunal which shall remove him, notwithstanding the desire of the Chief Magistrate to keep him in office. If this is not to be the construction, then a particular clause in the Constitution will be nugatory. The Constitution declares that the judges shall hold their offices during good behaviour. This implies that other officers shall hold their offices during a limited time, or according to the will of some person; because if all persons are to hold their offices during good behaviour, and to be removed only by impeachment, then this particular declaration in favor of the judges will be useless. We
are told that an officer must misbehave before he can be removed. This is true with respect to those officers who hold their commissions during good behaviour, but it cannot be true of those who are appointed during pleasure, they may be removed for incapacity, or if their want of integrity is suspected; but the question is, to find where this power of removal resides.

It has been argued, that we are to find this in the construction arising from the nature of the authority which appoints. Here I would meet the gentlemen, who appoints? The Constitution gives an advisory power to the Senate; but it is considered that the President makes the appointment. The appointment and responsibility are actually his; for it is expressly declared, that he shall nominate and appoint, though their advice is required to be taken. If from the nature of the appointment we are to collect the authority of removal, then I say the power resides, as it is lodged in the President; because by the Constitution he has the power of appointment; instantly as the Senate have advised the appointment, the act is required to be executed by the President. The language is explicit: “He shall nominate, and, by and with the advice and consent of the Senate, appoint;” so that if the gentleman’s general principle, that the power of appointing shall remove be true, it follows that the removal is to be President.

It has been stated as an objection, that we should extend the powers of the President, if we give him the power of removal; and we are not to construe the Constitution in such way as to enlarge the Executive power to the injury of any other; that, as he is limited in the powers of appointment by the control of the Senate, he ought to be equally limited in the removal.

If there be any weight in this argument it applies as forcibly against vesting the power conjointly in the President and Senate; because if we are not to extend the powers of the Executive beyond the express detail of duties found in the Constitution, neither are we at liberty to extend the duties of the Senate beyond those precise points fixed in the same instrument; of course, if we cannot say the President alone shall remove, we cannot say the President and Senate may exercise such power.

It is admitted, that the Constitution is silent on this subject, but it is also silent with respect to the appointments it has vested in the Legislature. The Constitution declares, that Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or heads of departments; yet says nothing with respect to the removal. Now, let us suppose the Legislature to have vested the power of appointment in the President in cases of inferior officers; can the intention of the Constitution in this, contemplating this mode of appointment, for the sake of convenience, be ever carried into effect? If we say nothing respecting the removal, what would be the consequence if the Legislature should not make the declaration? Could it be supposed that he would not have the authority to dismiss the officer he had so appointed? To be sure he could; then, of course, in those cases in which the Constitution has given the appointment to the President, he must have the power of removal for the sake of consistency. For no person will say that if the President should appoint an inferior officer, he should not have the power to remove him when he thought proper, if no particular limitation was determined by the law. Thus stands the matter with respect to the Constitution. There is no express prohibition of the power or positive grant. If then we collect the power by inference from the Constitution, we shall find it pointed strongly in favor of the President, much more so than in favor of the Senate combined with him.

This is a case omitted, or is it not. If it is omitted, and the power is necessary and essential to the Government and to the great interests of the United States, who are to make the provision and supply the defect? Certainly the Legislature is the proper body. It is declared they shall establish offices by law. The establishment of an office implies every thing relative to its formation, constitution, and termination; consequently, the Congress are authorized to declare their judgment on each of these points. But, if the arguments of the gentleman from South Carolina (Mr. Sumter) prevail, that as the Constitution has not meditated the removal of an officer in any other way than by impeachment, it would be assumed in Congress to vest the President, courts of law, or heads of departments, with power to dismiss their officers in any other manner. Would a regulation of this kind be effectual to carry into effect the great objects of the Constitution? I contend it would not. Therefore, the principle which opposes the carrying of the Constitution into effect, must be rejected as dangerous, and incompatible with the general welfare. Hence, all those suppositions, that, because the Constitution is silent, the Legislature must not supply the defect, are to be treated as chimera and illusory inferences.

I believe it is possible that the Constitution may be misconstrued by the Legislature; but, will any gentleman contend, that it is more probable that the Senate, one branch only of the Legislature, should make a more upright decision on any point than the whole Legislature, especially on a point in which they are supposed by some gentlemen to be so immediately interested, even admitting that honorable body to have more wisdom and more integrity than this House? Such an inference can hardly be admitted; but I believe it seldom or never was contended, that there was more wisdom or security in a part than in the whole.

But, supposing the power to vest in the Senate, is it more safe in their hands than where we contend it should be? Would it be more satisfactory to our constituents for us to make such a declaration in their favor? I believe not.

With respect to this and every case omitted, but which can be collected from the other provisions made in the Constitution, the people look
up to the Legislature, the concurrent opinion of the two branches, for their construction; they conceive those cases proper subjects for legislative wisdom; they naturally suppose, where provisions are to be made, they ought to spring from this source, and this source alone.

From a view of these circumstances, we may be induced to regard the question in force. Shall we now venture to supply the defect? For my part, I have no hesitation. We should supply the defect; we should place the power of removal in the great Executive officer of the Government.

In the Constitution, the heads of departments are considered as the mere assistants of the President, in the performance of his Executive duties. He has the superintendence, the control, and the inspection of their conduct; he has an intimate connexion with them; they must receive from him his orders and directions; they must answer his inquiries in writing when he requires it. Shall the person having these superior powers to govern, with such advantages of discerning and detecting the base intentions of his officers, their delinquencies, their defective abilities, or their negligence, be restrained from applying these advantages to the most useful, nay, in some cases, the only useful purpose which can be answered by them?

It appears to me, that the power can be safely lodged here. But it has been said by some gentlemen, that if it is lodged here, it will be subject to abuse; that there may be a change of officers, and a complete revolution throughout the whole Executive department, upon the election of every new President. I admit this may be the case, and contend that it should be the case, if the President thinks it necessary. I contend, that every President ought to brought a man about whom he can place the most confidence, provided the Senate approve his choice. But we are not from hence to infer, that changes will be made in a wanton manner, and from capricious motives; because the Presidents are checked and guarded in a very safe manner with respect to the appointment of their successors; from all which it may be fairly presumed, that changes will be made on principles of policy and propriety only.

Will the man chosen by three millions of his fellow-citizens be such a wretch as to abuse them in a wanton manner! For my part, I should think with the gentleman from Virginia (Mr. Madison) that a character thus selected and honored by his country is entitled to my confidence, and I see no reason why we should suppose he is more inclined to do harm than good. Elected as he is, I trust, we are secure. I do not draw these observations from the safety I conceive under the present Administration, or because our Chief Magistrate is possessed of irradiated virtues, but because the lustre of his conduct, the moral influence he exercises upon this Western hemisphere, and incites the admiration of the world! But I calculate upon what our mode of election is likely to bring forward, and the security which the Constitution affords. If the President abuses his trust, will he escape the popular censure when the period which terminates his elevation arrives? And would he not be liable to impeachment for displacing a worthy and able man, who enjoyed the confidence of the people?

We ought not to consider one side alone, we should consider the benefit of such an arrangement as well as the difficulties. We ought also to consider the difficulties arising from the exercise of the power of removal, by the President. It was well observed by an honorable gentleman (Mr. Snedowick) on this point, that the Senate must continue in session the whole year, or be hastily assembled from the extremities and all parts of the continent, whenever the President thinks a removal necessary. Suppose an ambassador or minister plenipotentiary negotiating or intriguing contrary to his instructions, to the injury of the United States, before the Senate can be assembled to accede to his recall; the interest of his country may be betrayed, and the evil irrevocably perpetrated. A great number of such instances might be enumerated, sufficient to convince gentlemen that, with respect to the expediency, the power of removal ought not to be in the Senate.

I take it, Mr. Chairman, that it is proper for the Legislature to speak their sense upon those points on which the Constitution is silent. I believe the judges will never decide that we are guilty of a breach of the Constitution, by declaring a Legislative opinion in cases where the Constitution is silent. If the laws shall be in violation of any part of the Constitution, the judges will not hesitate to decide against them; where the power is incident to the Government, and the Constitution is silent, it can be no impediment to a Legislative grant; I hold it necessary in such cases to make provision. In the case of removal, the Constitution is silent; the wisdom of the Legislature should therefore declare where the power resides.

Mr. Jackson.—Much time, Mr. Chairman, has been taken up in discussing this question; but, considering its importance, I trust no complaint will be made on this account. Although I am at all times unwilling to trespass on the committee, I cannot sit still and pass this subject with a silent vote. As a Constitutional question, it is of great moment, and worthy of full discussion. I am, sir, a friend to the full exercise of all the powers of Government, and deeply impressed with the necessity there exists of having an energetic Executive. But, friend as I am to an efficient Government, I value the liberties of my fellow-citizens beyond every other consideration; and where I find them endangered, I am willing to forego every other blessing to secure them. I hold it as good a maxim as it is an old one, of two evils to choose the least.

It has been mentioned, that in all Governments the Executive Magistrate has the power of dismissing officers under him. This may hold good in Europe, where monarchs claim their powers jure divino, but it never can be admitted in America, under a Constitution delegating only enumerated powers. It requires more than a mere ipse dixit to demonstrate that any power is in its na...
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The executive, and consequently given to the President of the United States by the present Constitution; but if this power is incident to the Executive branch of Government, it does not follow that it vests in the President alone, because he alone does not possess all Executive powers. The Constitution has lodged the power of forming treaties, and all Executive business, in the President, connected therewith, in the President, but it is qualified by and with the advice and consent of the Senate, provided two-thirds of the Senate agree therein; the same has taken place with respect to appointing officers. From this I infer, that those arguments are done away which the gentleman from Virginia (Mr. Madison) used to prove, that it was contrary to the principles of the Constitution that we should blend the Executive and Legislative powers in the same body. It may be wrong that the great powers of Government should be blended in this manner; but we cannot separate them; the error is adopted in the Constitution, and can only be eradicated by weeding it out of that instrument; it may therefore be a proper subject for amendment, when we come to consider that business again.

It has been observed, that the President ought to have this power to remove a man when he becomes obnoxious to the people or disagreeable to himself. Are we, then, to have all the officers the mere creatures of the President? This thirst of power will introduce a treasury bench into the House, and we shall have ministers obtrude upon us to govern and direct the measures of the Legislature, and to support the influence of their masters. And shall we establish a different influence between the people and the President? I suppose these circumstances must take place, because they have taken place in other countries. The Executive power falls to the ground in England if it cannot be supported by the Parliament; therefore a high game of corruption is played, and a majority secured to the ministry by the introduction of placemen and pensioners.

The gentlemen have brought forward arguments drawn from possibility. It is said, that our Secretary of Foreign Affairs may become unfit for his office by a fit of lunacy, and therefore a silent remedy should be applied. It is true such a case may happen, but it may also happen in cases where there is no power of removing. Suppose the President should be taken with a fit of lunacy, would it be possible by such arguments to remove him? I apprehend he must remain in office during his four years. Suppose the Senate should be seized with a fit of lunacy, and it was to extend to the House of Representatives; what could the people do but endure this mad Congress till the term of their election expired? We have seen a King of Great Britain in an absolute fit of lunacy, which produced an interregnum in the Government. The same thing may happen here with respect to our President; and although it is improbable that the majority of both Houses of Congress may be in that situation, yet it is not impossible. But gentlemen have brought forward another argument with respect to the judges. It is said they are to hold their offices during good behaviour; I agree that it ought to be the case. But is not the Judge liable to the act of God as well as any other officer of Government? However great his legal knowledge, his judgment, and integrity, it may be taken from him at a stroke, and he rendered the most unfit for all the parts of such an important office. Who can you remove him? Not for this cause, it is impossible; because madness is no treason, crime, or misdemeanor. If he does not choose to resign, like Lord Mansfield, he may continue in office for ninety or one hundred years, although seldom so long have any men retained their faculties.

But let me ask gentlemen, if it is possible to place their officers in such a situation as to deprive them of their independency and firmness; for I apprehend it is not intended to stop with the Secretary of Foreign Affairs. Let it be remembered, that the Constitution gives the President the command of the military. If you give him complete power over the man with the strong box, he will have the liberties of America under his thumb. It is easy to see the evil which may result. If he wants to establish an arbitrary authority, and finds the Secretary of Finance not inclined to second his endeavors, he has nothing more to do than to remove him, and get one appointed of principles more congenial with his own. Then, says he, I have got the army, let me have but the money, and I will establish my throne upon the ruins of your visionary republic. Let no gentleman say I am contemplating imaginary dangers, the mere chimera of a heated brain. Behold the baleful influence of the royal prerogative when officers hold their commission during the pleasure of the Crown!

At this moment, see the King of Sweden aiming at arbitrary power, shuffling up the doors of his Senate, and compelling, by force of arms, his shuddering counsellors to acquiesce in his despotic mandates. I agree that this is the hour in which we ought to establish our Government; but it is an hour in which we should be wary and cautious, especially in what respects the Executive Magistrate; with the present, I grant, every power may be safely lodged. Black indeed is the heart of that man who even suspects him to be capable of abusing them. But alas! he cannot be with us forever: he is liable to the vicissitudes of life; he is but mortal, and though I contemplate it with great regret, yet I know the period must come which will separate him from his country; and can we know the virtues or vices of his successor in a very few years? May not a man, with a Pandora's box in his breast, come into power, and give us sensible cause to lament our present confidence and want of foresight?

A gentleman has declared, that as the Constitution has given the power of appointment, it has consequently given the power of removal. I agree with him in all the Constitution expressly grants, but I must differ in the constructive reasoning. It was said by the advocates of this Constitution, that the powers not given up in that instrument were reserved to the people.
this impression, it has been proposed, as a favorite amendment to the Constitution, that it should be declared that all powers not expressly given should be retained. As to what gentlemen have said of its giving satisfaction to the people, I deny it; they never can be pleased that we should give new and extraordinary powers to the Executive; we should confine ourselves to the powers described in the Constitution, and the moment we pass it, we take an arbitrary stride towards a despotic Government.

The gentleman from New York (Mr. Lawrence) contends that the President appoints, and, therefore, he ought to remove. I shall agree to give him the same power in cases of removal that he has in appointing; but nothing more. Upon this principle, I would agree to give him the power of suspension during the recess of the Senate. This, in my opinion, would effectually provide against those inconveniences which have been apprehended, and not to expose the Government to those abuses we have to dread from the want of and uncontrolled authority of removing officers at pleasure. I am the friend of an energetic Government; but while we are giving vigor to the Executive arm, we ought to be careful not to lay the foundation of future tyranny. I think this power too great to be safely trusted in the hands of a single man, especially in the hands of a man who has so much Constitutional power. I believe if those powers had been more contracted, the system of Government would have been more generally agreeable to our constituents; that is, at present it would conform more to the popular opinion at least. For my part, though I came from a State where the energy of Government can be useful, and where it is at this moment wanting, I cannot agree to extend this power; because I conceive it may, at some future period, be exercised in such a way as to subvert the liberties of my country; and no consideration shall ever induce me to put them in jeopardy. It is under this impression that I shall vote decisively against the clause.

Mr. Clay.—If I were to give my vote merely on Constitutional ground, I should be totally indifferent whether the words were struck out or not; because I am clear that the Executive has the power of removal as incident to his department; and, if the Constitution had been silent with respect to the appointment, he would have had that power also. The reason, perhaps, why it was mentioned in the Constitution, was to give some further security against the introduction of improper men into office. But in cases of removal there is not such necessity for this check. What great danger would arise from the removal of a worthy man, when the Senate must be consulted in the appointment of his successor? Is it likely they will consent to advance an improper character? The presumption therefore is, that he would not abuse this power; or, if he did, only one good man would be changed for another.

If the President is divested of his power, his responsibility is destroyed; you prevent his efficiency, and disable him from affording that security to the people which the Constitution contemplates. What use will it be of to call the citizens of the Union together every four years to obtain a purified choice of a representative, if he is to be a mere cipher in the Government? The Executive must act by others; but you reduce him to a mere shadow, when you control both the power of appointment and removal; if you take away the latter power, he ought to resign the power of superintending and directing the Executive parts of Government into the hands of the Senate at once, and then we become a dangerous aristocracy, or shall be more destitute of energy than any Government on earth. These being my sentiments, I wish the clause to stand as a Legislative declaration, that the power of removal is constitutionally vested in the President.

Mr. Page.—After so much has been said, I should not presume to trouble the House with my sentiments, but that I seconded the motion. I do contend it must appear to every person who reads the Constitution, without hearing the ingenious explanations that have been made, that the use of the bill is unconstitutional. How is it to be reconciled to the clause which relates to impeachments, or the clause vesting the appointment in the President, by and with the advice and consent of the Senate? But, independent of these considerations, it must appear improper. I venture to assert, that this clause of the bill is in it the seeds of royal prerogative. If gentlemen lay such stress on the energy of the Government, I beg them to consider how far this doctrine may go. Every thing which has been said in favor of energy in the Executive, may go to the destruction of freedom, and establish despotism. This very energy, so much talked of, has led many patriots to the Bastille, to the block, and to the halter. If the Chief Magistrate can take a man away from the head of a department, without assigning any reason, he may as well be invested with power, on certain occasions, to take away his existence. But you will contend, that this idea is consonant with the principles of a free Government, where no man ought to be con-
demned unheard, nor till after a solemn conviction of guilt on a fair and impartial trial? It would, in my opinion, be better to suffer, for a time, the mischief arising from the conduct of a bad officer, than admit principles which would lead to the establishment of despotic prerogatives. Gentlemen may be, and no doubt are, actuated by honest motives in supporting this clause; but I lament them as laboring under a fatal error, which may ruin their country.

There can be little occasion for the President to exercise this power, unless you suppose that the appointments will be made in a careless manner, which by no means is likely to be the case; if, then, you have a good officer, why should he be made dependent upon the will of a single man? Suppose a colonel in your army should disobey his orders, or cowardly flee before the enemy; what would the general do? Would he be at liberty to dismiss the officer? No; he would suspend him until a court martial was held to de-
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cide the degree of guilt. If gentlemen had been
content to say that the President might suspend,
I should second their motion, and afterwards the
officer might be removed by and with the advice
and consent of the Senate; but to make every
officer of the Government dependent on the will
and pleasure of one man, will be vesting such ar-
bitrary power in him, as to occasion every friend
to liberty to tremble for his country. I confess it
seems to me a matter of infinite concern, and I
should feel very unhappy if I supposed the clause
would remain in the bill.

Mr. Sherman.—I consider this as a very im-
portant subject in every point of view, and there-
fore worthy of full discussion. In my mind it
involves three questions: First, whether the Pre-
sident has, by the Constitution, the right to re-
move an officer appointed by and with the advice
and consent of the Senate? No gentleman con-
tends but that the advice and consent of the Sen-
ate are necessary to make the appointment in all
cases, unless in inferior offices where the con-
trary is established by law; but then they
allege that, although the consent of the Senate
be necessary to the appointment, the President
alone, by the nature of his office, has the power
of removal. Now, it appears to me, that this
opinion is ill-founded, because this provision was
intended for some useful purpose, and by that
construction would answer none at all. I think
the court of the Senate as necessary to ap-
point an officer as the nomination of the Presi-
dent; they are constituted as mutual checks,
each having a negative upon the other.

I consider it as an established principle, that the
power which appoints can also remove, unless
there are express exceptions made. Now the
power which appoints the judges cannot displace
them, because there is a Constitutional restric-
tion in their favor; otherwise the President, by
and with the advice and consent of the Senate, being
the power which appointed them, would be suf-
ficient to remove them. This is the construction
in England, where the King has the power of ap-
pointing judges; it was declared to be during
pleasure, and they might be removed when the
monarch thought proper. It is a general principle
in law, as well as reason, that there shall be the
same authority to remove as to establish. It is so
in legislation, where the several branches whose
concurrence is necessary to pass a law, must con-
cur in repealing it. Just so I take it to be in
cases of appointment; and the President alone
can remove when he alone appoints, as in the case
of inferior offices to be established by law.

Here another question arises, whether this offi-
cer comes within the description of inferior offi-
cers? Some gentlemen think not, because he is
the head of the Department of Foreign Affairs.
Others may perhaps think that, as he is employed
in the Executive department, in aid of the Presi-
dent, he is not such an officer as is understood by
the term Heads of Departments; because the
President is the head of the Executive depart-
ment, in which the Secretary of Foreign Affairs
serves. If this is the construction which gentle-
men put upon the business, they may vest the ap-
pointment in the President alone, and the removal
will be in him of consequence. But if this rea-
soning be not admitted, we can by no means vest
the appointment, or removal either, in the Chief
Magistrate alone. As the officer is the mere cre-
ture of the Legislature, we may form it under
such regulations as we please, with such powers
and duration, as we think good, and policy requires.
We may say he shall hold his office during good
behaviour, or that he shall be annually elected.
We may say he shall be displaced for neglect of
duty, and point out how he shall be convicted of
it; without calling upon the President or Sena-

e.

The third question is, if the Legislature has the
power to authorize the President alone to remove
this officer, whether it is expedient to invest him
with it? I do not believe it is absolutely neces-
sary that he should have such power, because the
power of suspending would answer all the pur-
poses which gentlemen have in view by giving
the power of removal. I do not think that the
officer is only to be removed by impeachment; as
is argued by the gentleman from South Carolina,
(Mr. Smith,) because he is the mere creature of
the law, and we can direct him to be removed on
conviction of mismanagement or inability, with-
out calling on the Senate for their concurrence.
But I believe, if we make no such provision, he
may constitutionally be, by and with the advice
and consent of the Senate; and I believe it would be
most expedient for us to say nothing in the clause
on this subject.

Mr. Stone.—I think it necessary, Mr. Chair-
man, to determine the question before us. I do
not think it would do to leave it to the determina-
tion of courts of law hereafter. It should be our
duty, in cases like the present, to give our opinion
on the construction of the Constitution.

When the question was brought forward I felt
unhappy, because my mind was in doubt; but since
then I have deliberately reflected upon it, and have
made up an opinion perfectly satisfactory to my-
self. I consider, that in general, every officer who
is appointed should be removed by the power that
appoints him. It is so in the nature of things.
The power of appointing an officer arises from the
power over the subject on which the officer is to
act. It arises from the principal who appoints
having an interest in and a right to conduct the
business, which he does by means of an agent.
Therefore, this officer appears to be nothing more
than an agent, appointed for the convenience of
 dispatch of business. This is my opinion on this
subject, and the principle will operate from a
Minister of State down to a tide-waiter. The
Constitution, it is admitted by every gentleman,
recognises the principle. Because it has not been
denied, whenever general appointments are made
under the Constitution, that they are to be at will
and pleasure; that when an appointment is made
during good behaviour, it is an exception to the
general rule. There you limit the exercise of the
power which appoints. It is thus in the case of
the judges.
Let us examine, then, whence originates the power of Congress with respect to the officer under consideration. I presume it is expressly contained in the Constitution, or clearly deducible from that instrument, that we have a right to erect the Department of Foreign Affairs. No gentlemen will consent to a reduction or relinquishment of that power. The Constitution has given us the power of laying and collecting taxes, duties, imposts, and excises; this includes the power of organizing a Revenue Board. It gives us power to regulate commerce; this includes the power of establishing a Board of Trade. To make war, and organize the militia; this enables us to establish a Minister at War, and generally to make all laws necessary to carry these powers into effect. Now it appears to me that the execution of this department is expressly within the Constitution. But there is a provision in the Constitution which takes away from us the power of appointing officers of a certain description. They are to be appointed by the President, by and with the advice and consent of the Senate. Then the Constitution limits the Legislature in appointing certain officers, which would otherwise be within their power.

It will then become a considerable question, as it has been in my mind, that as, in the nature of things, the power which appoints removes also, and as the power of appointment by the Constitution is placed in the President and Senate, whether the removal does not follow as incidental to that power? But I am averse to that construction, as the terms of the Constitution are sufficient to invest the Legislature with complete power for performing its duties. And as it has given the power of making treaties, and judging of them, to the Senate and President, I should be inclined to think that as they have an immediate concern in and control over this business, they therefore ought to have the power of removal. It may be said, with respect to some other officers, that, agreeably to this principle, the President alone ought to have the sole power of removal; because he is interested in it, and has the control over the business they manage. For example, take the Minister at War. The President is the commander-in-chief of the army and militia of the United States; but the ground is narrowed by the Senate being combined with him in making treaties; though even here again the ground is reduced, because of the power combined in the whole Legislature to declare war and grant supplies. If it is considered that Congress have a right to appoint these officers, or dictate the mode by which they shall be appointed, (and I calculate, in my own opinion, the manner of dismissal from the mode of appointment,) I should have no doubt but we might make such regulations as we may judge proper. If the Constitution had given no rule by which officers were to be appointed, I should search for one in my own mind; but as the Constitution has laid down the rule, I consider the mode of removal as clearly defined as by implication it can be. It ought to be the same as that of the appointment. What quality of the human mind is necessary for the one that is not necessary for the other? Information, impartiality, and judgment in the business to be conducted, are necessary to make a good appointment. Are not the same properties requisite for a dismissal? It appears so to me.

I cannot subscribe to the opinion delivered by some gentlemen, that the Executive, in its nature, implies the power to appoint the officers of Government. Why does it imply it? The appointment of officers depends upon the qualifications that are necessary for forming a judgment on the merits of men; and the placing of them, instead of including the idea of what is necessary for an Executive officer, includes the idea necessary for a Judicial one. Therefore it cannot exist, in the nature of things, that an Executive power is either to appoint or displace the officers of Government. Is it a political dogma? Is it founded in experience? If it is, I confess it has been very long wrapped up in mysterious darkness. As a political rule, it is not common in the world, except in monarchical where this principle is established, that the interest of the State is included in the interest of the Prince; that whatever injures the State is an injury to the Sovereign; because he has a property in the State and the Government, and he is to take care that nothing of that kind is to be injured or destroyed. He being so intimately connected with the well-being of the nation, it appears a point of justice only to suffer him to manage his own concerns. Our principles of Government are different; and the President, instead of being master of the people of America, is only their great servant. But if it arises from a political dogma, it must be subject to exceptions, which hold good as they are applied to Governments which give greater or less proportions of power to the Executive. I shall only remark, that the Constitution, in one part of it, so far as I can see, supposes that the President is the sole judge of the merits of an appointment. It is very forcible to my mind, that the Constitution has confined his sole appointment to the case of inferior officers. It also strikes me, from the clause that gives the President the power to grant reprieves and pardons for offences against the United States, except in cases of impeachment, that the Constitution reposes a confidence in the Senate which it has not done in this officer; and therefore there is no good reason for destroying that participation of power which the system of Government has given to them.

Whether it would be expedient to give the power of removal to the President alone, depends on this consideration: they are both bodies chosen with equal care and propriety; the people show as much confidence in the one as in the other. The best President and the best Senate will always be chosen, it is to be presumed, that they can get. Now I would ask, in all cases where the integrity and confidence is the same, whether it is more likely that one man should do right, and exercise his power with propriety, than a number of men with the aid of each other's deli-
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Is it more likely that a number of men should do wrong than one man? Let us examine, shortly, the temptations of one and the other. It would be more difficult for a majority to be obtained in a body composed of members of thirteen independent States, in favor of despotic measures, than might justly be expected from the caprice or want of judgment in a single individual. Is it likely the danger would be so great? I apprehend it is not. All the difficulties and embarrassments that have been mentioned, can be removed by giving to the President the power of suspension during the recess of the Senate; and I think that an attention to the Constitution will lead us to decide that this is the only proper power to be vested in the President of the United States.

Mr. Madison.—However various the opinions which exist upon the point now before us, it seems agreed on all sides, that it demands a careful investigation and full discussion. I feel the importance of the question, and know that our decision will involve the decision of all similar cases. The decision that is at this time made, will become the permanent exposition of the Constitution; and on a permanent exposition of the Constitution will depend the genius and character of the whole Government. It will depend, perhaps, on this decision, whether the Government shall retain that equilibrium which the Constitution intended, or fall into the inequality which is resulting from the continual changes of the Executive department, so far as it may be described by the heads of departments, which is more incompatible with the genius of republican Governments in general, and this Constitution in particular, than any doctrine which has yet been proposed. The danger to liberty, the danger of mal-administration, is very much increased by an executive of so much in the facility of introducing improper persons into office, as in the difficulty of displacing those who are unworthy of the public trust. If it is said that an officer once appointed shall not be displaced without the formality required by impeachment, I shall be glad to know what security we have for the faithful administration of the Government? Every individual, in the long chain which extends from the highest to the lowest link of the Executive Magistracy, would find a security in his situation which would relax his fidelity and promptitude in the discharge of his duty.

The doctrine, however, which seems to stand most in opposition to the principles I contend for, is, that the power to annul an appointment is, in the nature of things, incidental to the power which makes the appointment. I agree that if nothing more was said in the Constitution than that the President, by and with the advice and consent of the Senate, should appoint to office, there would be a great force in saying, that the power of removal resulted by a natural implication from the power of appointing. But there is another part of the Constitution, no less explicit than the one on which the gentleman's doctrine is founded; it is that part which declares that the Executive power shall be vested in a President of the United States. The association of the Senate with the President in exercising that particular function, is an exception to this general rule; and exceptions to general rules, I conceive, are ever to be taken strictly. But there is another part of the Constitution, which inclines, in my judgment, to favor the construction I put upon it; the President is required to take care that the laws be faithfully executed. If the department be lawfully executed by the President, the Executive Magistrate, it would seem that it is generally intended he should have that species of power which is necessary to accomplish that end. Now, if the officer when once appointed...
is not to depend upon the President for his official existence, but upon a distinct body, (for where there are two negatives required, either can prevent the removal,) I confess I do not see how the President can take care that the laws be faithfully executed. It is true, by a circuitous operation he may obtain an impeachment, and even without this it is possible he may obtain the concurrence of the Senate, for the purpose of displacing an officer; but would this give that species of control to the Executive Magistrate which seems to be required by the Constitution? I own, if my opinion was not contrary to that entertained by what I suppose to be the minority on this question, I should be doubtful of being mistaken, when I discovered how inconsistent that construction would make the Constitution with itself. I can hardly bring myself to imagine the wisdom of the convention who framed the Constitution contemplated such incongruity.

There is another maxim which ought to direct us in expounding the Constitution, and is of great importance. It is laid down, in most of the Constitutions or bills of rights in the colonies of America; it is to be found in the political writings of the most celebrated civilians, and is every where held as essential to the preservation of liberty, that the three great departments of Government be kept separate and distinct; and if in any case they are blended, it is in order to admit a partial qualification, in order more effectually to guard against an entire consolidation. I think, therefore, when we review the several parts of this Constitution, when it says that the Legislative powers shall be vested in a Congress of the United States, under certain exceptions, and the Executive power vested in the President with certain exceptions, we must suppose they were intended to be kept separate in all cases in which they are not required, and ought, consequently, to be exposed the Constitution so as to blend them as little as possible.

Every thing relative to the merits of the question as distinguished from a Constitutional question, seems to turn on the danger of such a power vested in the President alone. But when I consider the checks under which he lies in the exercise of this power, I own to you I feel no apprehensions but what arise from the dangers incidental to the power itself; for dangers will be accidental to it, vest it where you please. I will not reiterate what was said before with respect to the mode of election, and the extreme improbability that any citizen will be selected from the mass of citizens who is not highly distinguished by his abilities and worth; in this alone we have no small security for the faithful exercise of this power. But, throwing that out of the question, let us consider the restraints he will feel after he is placed in that elevated station. It is to be remarked, that the power in this case will not consist so much in continuing a bad man in office, as in the danger of displacing a good one. Perhaps the great danger, as has been observed, of abuse in the Executive power, lies in the improper continuance of bad men in office. But the power we contend for will not enable him to do this; for if an unworthy man be continued in office by an unworthy President, the House of Representatives can at any time impeach him, and the Senate can remove him, whether the President chooses or not. The danger then consists merely in this: the President can displace from office a man whose merits require that he should be continued in it. What will be the motives which the President can feel for such abuse of his power, and the restraints that operate to prevent it? In the first place, he will be impeachable by this House, before the Senate for such an act of mal-administration; for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high trust.

But what can be his motives for displacing a worthy man? It must be that he may fill the place with an unworthy creature of his own. Can he accomplish this end? No; he can place no man in the vacancy whom the Senate shall not approve; and if he could fill the vacancy with the man he might choose, I am sure he would have little inducement to make an improper removal. Let us consider the consequences. The injured man will be supported by the popular opinion; the community will take side with him against the President; it will facilitate those combinations, and give success to those exertions which will be pursued to prevent his re-election. To displace a man of high merit, and who from his station may be supposed a man of extensive influence, are considerations in the mind of any man who may fill the Presidential chair. The friends of those individuals and the public sympathy will be against him. If this should not produce his impeachment before the Senate, it will amount to an impeachment before the community, who will have the power of punishment, by refusing to re-elect him. But suppose this persecuted individual cannot obtain revenge in this mode; there are other modes in which he could make the situation of the President very inconvenient, if you suppose him resolutely bent on executing the dictates of resentment. If he had not influence enough to direct the vengeance of the whole community, he may probably be able to obtain an appointment in one or the other branch of the Legislature; and being a man of weight, talents, and influence, in either case he may prove to the President troublesome indeed. We have seen examples in the history of other nations, which justifies the remark I now have made. Though the prerogatives of the British King are great as his rank, and it is universally known that he has a positive influence over both branches of the legislative body, yet there have been examples in which the appointment and removal of ministers have been found to be dictated by one or other of those branches. Now if this be the case with an hereditary Monarch, possessed of those high prerogatives and furnished with so many means of influence; can we suppose a President, elected for four years only, dependent upon the popular voice, impeachable by the Legislature, little, if at all, distinguished for wealth, personal talents, or influence from
the head of the department himself; I say, will he bid defiance to all these considerations, and wantonly dismiss a meritorious and virtuous officer? Such abuse of power exceeds my conception. If any thing takes place in the ordinary course of business of this kind, my imagination can only extend to it beyond rational principle. But let us not consider the question on one side only; there are dangers to be contemplated on the other. Vest this power in the Senate jointly with the President, and you abolish at once that great principle of unity and responsibility in the Executive department, which was intended for the security of liberty and the public good. If the President should possess alone the power of removal from office, those who are employed in the execution of the law will be in their proper situation, and the chain of dependence be preserved; the lowest officers, the middle grade, and the highest, will depend, as they ought, on the President, and the President on the community. The chain of dependence therefore terminates in the superintendent body, namely, in the people, who will possess, besides, in aid of their original power, the decisive engine of impeachment. Take the other supposition; that the power should be vested in the Senate, on the principle that the power to displace is necessarily connected with the power to appoint. It is declared by the Constitution, that we may by law vest the appointment of inferior officers in the heads of departments; the power of removal being incidental, as stated by some gentlemen. Where does this terminate? If you begin with the subordinate officers, they are dependent on their superior, he on the next superior, and he on—whom? On the Senate, a permanent body; a body by its particular mode of election, in reality existing forever; a body possessing that proportion of aristocratic power which the Constitution no doubt thought wise to be established in the system, but which some have strongly excepted against. And let me ask gentlemen, is there equal security in this case as in the other? Shall we trust the Senate, responsible to individual Legislatures, rather than the person who is responsible to the whole community? It is true, the Senate do not hold their offices for life, like aristocracies recorded in the historic page; yet the fact is, they will not possess that responsibility for the exercise of Executive powers which would render it safe for us to vest such powers in them. But what an aspect will this give to the Executive? Instead of keeping it distinct, you make an Executive out of one branch of the Legislature; you make the Executive a two-headed monster, to use the expression of the gentleman from New Hampshire, (Mr. Livermore,) you destroy the great principle of responsibility, and perhaps have the creature divided in its will, defying the purposes for which a unity in the Executive was instituted. These objections do not lie against such an arrangement as the bill establishes. I conceive that the President is sufficiently accountable to the community; and if this power is vested in him, it will be vested where its nature requires it should be vested; if any thing in its nature is executive, it must be that power which is employed in superintending and seeing that the laws are faithfully executed. The laws cannot be executed but by officers appointed for that purpose; therefore, those who are over such officers naturally possess the Executive power. If any other doctrine be admitted, what is the consequence? You may set the Senate at the head of the Executive department, or you may require that the officers hold their places during the pleasure of this branch of the Legislature, if you cannot go so far as to say we shall appoint them; and by this means, you link together two branches of the Government which the preservation of liberty requires to be constantly separated.

Another species of argument has been urged against this clause. It is said, that it is improper, or at least unnecessary, to come to any decision on this subject. It has been said by one gentleman, that it would be officious in this branch of the Legislature to expend the Constitution as far as it relates to the division of power between the President and Senate; it is incontrovertibly of as much importance to this branch of the Government as to any other, that the Constitution should be preserved entire. It is our duty, so far as it depends upon us, to take care that the powers of the Constitution be preserved entire to every department of Government; and that no Constitution in one point, will facilitate the breach in another; a breach in this point may destroy that equilibrium by which the House retains its consequence and share of power; therefore we are not chargeable with an officious interference. Besides, the bill, before it can have effect, must be submitted to both those branches who are particularly interested in it; the Senate may negative, or the President may object, if he thinks it unconstitutional.

But the great objection drawn from the source to which the last arguments would lead us is, that the Legislature itself has no right to expound the Constitution; that wherever its meaning is doubtful, you must leave it to its course, until the Judiciary is called upon to declare its meaning. I acknowledge, in the ordinary course of Government, that the exposition of the laws and Constitution devolves upon the Judiciary. But I beg to know, upon what principle it can be contended, that any one department draws from the Constitution greater powers than another, in marking out the limits of the powers of the several departments? The Constitution is the charter of the people to the Government; it specifies certain great powers as absolutely granted, and marks out the departments to exercise them. If the Constitutional boundary of either be brought into question, I do not see that any one of these independent departments has more right than another to declare their sentiments on that point.

Perhaps this is an omitted case. There is not one Government on the face of the earth, so far as I recollect, there is not one in the United States, in which provision is made for a particular authority to determine the limits of the Constitu-
tional division of power between the branches of the Government. In all systems there are points which must be adjusted by the departments themselves, to which no one of them is competent. If it cannot be determined in this way, there is no resource left but the will of the community, to be collected in some mode to be provided by the Constitution, or be dictated by the necessity of the case. It is therefore a fair question, whether this great point may not as well be decided, at least by the whole Legislature as by a part, by us as well as by the Executive or Judiciary? As I think it will be equally Constitutional, I cannot imagine it will be less safe, that the exposition should issue from the Legislative authority than any other; and the more so, because it involves in the decision the opinions of both those departments, whose powers are supposed to be affected by it. Besides, I do not see in what way this question could come before the judges, to obtain a fair and solemn decision; but even if it were the case that it could, I should suppose, at least while the Government is not led by passion, disturbed by faction, or deceived by any discolored medium of sight, but while there is a desire in all to see and be guided by the benignant ray of truth, that the decision may be made with the most advantage by the Legislature itself.

My conclusion from these reflections is, that it will be Constitutional to retain the clause; that it expresses the meaning of the Constitution as must be established by fair construction, and a construction which, upon the whole, not only consists with liberty, but is more favorable to it than any one of the interpretations that have been proposed.

Mr. Gany.—I am clearly of opinion with the gentleman last up, that it is of importance to decide this question on its true principles; and am free to declare, that I shall be as ready to oppose every innovation or encroachment on the rights of the Executive as upon those of the Legislature. I conceive myself bound to do this, not only by oath, but by an obligation equally strong—I mean the obligation of honor.

I wish, sir, to consider this question so far, as to ascertain whether it is, or is not, unconstitutional. I have listened with attention to the arguments which have been urged on both sides; and it does appear to me, that the clause is as inconsistent with the Constitution as any set of words which could possibly be inserted in the bill.

There are two questions relative to this clause: The first, whether the sovereignty of the Union has delegated to the Government the power of removal? And the second, to whom? That they have delegated such power has been clearly proved by the gentlemen who advocate the cause; who justly say, if the power is not delegated, the clause in the Constitution declaring the appointment of judges to be during good behaviour would be nugatory, unless some branch of Government could otherwise have removed them from office. As to the second question, it depends upon the first; if the power is delegated, it must vest in some part of the Government. The gentlemen will agree, that this House has not the power of removal; they will also agree that it does not vest in the Judiciary; then it must vest in the President, or the President by and with the advice and consent of the Senate; in either of these cases, the clause is altogether useless and nugatory. It is useless if the power vests in the President, because, when the question comes before him, he will decide upon the provision made in the Constitution, and not on what is contained in this clause. If the power vests in the President and the Senate, the Senate will not consent to pass the bill with this clause in it; therefore the attempt is nugatory. But if the Senate will assent to the exercise of the power of removal by the President alone, whenever he thinks proper to use it so, then in that case the clause is, as I said before, both useless and nugatory.

The second question which I proposed to examine is, to whom the power of removal is committed. The gentlemen in favor of this clause have not shown that, if the construction that the power vests in the President and Senate, is admitted, it will be an improper construction. I call on gentlemen to point out the impropriety, if they discover any. To me, it appears to preserve the unity of the several clauses of the Constitution; while their construction produces a clashing of powers, and renders of none effect some powers the Senate by express grants possess. What becomes of their power of appointing, when the President can remove at discretion? Their power of judging is rendered vain by the President's dismissal; for the power of judging implies the power of dismissing, which will be totally insignificant in its operation, if the President can immediately dismiss an officer whom they have judged and declared innocent.

It is said, that the President will be subject to an impeachment for dismissing a good man. This in my mind involves an absurdity. How can the House impeach the President for doing an act which the Legislature has submitted to his discretion?

But what consequence may result from giving the President the absolute control over all officers? Among the rest, I presume he is to have an unlimited control over the officers of the Treasury. I think if this is the case, you may as well give him at once the appropriation of the revenue; for of what use is it to make laws on this head, when the President, by looking at the officer, can make it his interest to break him? We may expect to see institutions arising under the control of the revenue, and not of the law.

Little then will it answer to say we can impeach the President, when he can easily cover all his crimes by an application of the revenue; and his being punished. This application would certainly be made in case of a corrupt President; and it is against corruption in him that we must endeavor to guard; not that we fear any thing from the virtuous character who now fills the Executive chair; he is perhaps to be safer trusted with such a power than any man on earth; but it
is to secure us against those who may hereafter obtrude themselves into power.

But, if we give the President the power to remove, (though I contend if the Constitution has not given it him, there is no power on earth that can except the people, by an alteration of the Constitution, though I will suppose it for argument’s sake,) you virtually give him a considerable power over the appointment, independent of the Senate; for if the Senate should reject his first nomination, which will probably be his favorite, he must continue to nominate until the Senate concur; then immediately after the recess of the Senate he may remove the officer, and introduce his own creature, as he has this power expressly by the Constitution. The influence created by this circumstance, would prevent his removal from an office which he held by a temporary appointment from his patron.

This has been supposed by some gentlemen to be an omitted case, and that Congress have the power of supplying the defect. Let gentlemen consider the ground on which they tread. If it is an omitted case, an attempt in the Legislature to supply the defect, will be in fact an attempt to amend the Constitution. But this can only be done in the way pointed out by the fifth article of that instrument, and an attempt to amend it in any other way may be a high crime of sedition, or treason, or perhaps unpardonable. From this view of our situation, gentleman may perhaps be led to consent to strike out the clause.

In Great Britain there are three estates, King, Lords, and Commons; neither of these can be represented by the other, but they conjointly can form constructions upon the rights of the people which can be obtained and held in hand from the Crown. These, with the legislative acts, form the British Constitution; and if there is an omitted case, Parliament has a right to make provision for it. But this is not the case in America, consisting of a single estate. The people have expressly granted certain powers to Congress, and they alone had the right to form the Constitution; in doing so, they directed a particular mode of making amendments, which we are not at liberty to depart from.

The system, it cannot be denied, is in many parts obscure; if Congress are to explain and declare what it shall be, they certainly will have it in their power to make it what they please. It has been a strong objection to the Constitution, that it was remarkably obscure; nay, some have gone so far as to assert that it was studiously obscure, that it might be applied to every purpose by Congress. By this very act the House are assuming a power to alter the Constitution. The people of America can never be safe, if Congress have power to give to Congress the power of giving constructions to the Constitution different from the original instrument. Such a power would render the most important clause in the Constitution nugatory, and one without which, I will be bold to say, this system of Government would never have been ratified. If the people were to find that Congress meant to alter it in this way they would revolt at the idea; it would be repugnant to the principles of the Revolution, and to the feelings of every freeman in the United States.

It is said, that the power to advise the President in appointing officers, is an exception to a general rule. To what general rule? That the President, being an office of the Executive, has the right of appointing. From whence is this general rule drawn? Not from the Constitution, nor from custom, because the State Governments are generally against it. Before the gentleman had reasoned from this general rule, he ought to have demonstrated that it was one; he ought to have shown that the President, ex officio, had the power to appoint and remove from office; that it was necessarily vested in the Executive branch of the Government.

It is said to be the duty of the President to see the laws faithfully executed, and he could not discharge this trust without the power of removal. I ask the gentleman, if the power of suspension, which we are willing to give him, is not sufficient for that purpose? In case the Senate shall not be sitting, the officer could be suspended, and at their next session the causes which require his removal might be inquired into.

It is said to be incumbent on us to keep the departments distinct. I agree to this; but then, I ask, what department or the Senate of Congress, if it exercises its power of appointment or removal? If legislative, it shows that the power of appointment is not an executive power; but if it exercises the power as an executive branch of Government, there is no mixing of the departments; and therefore the gentleman's objections fall to the ground.

The dangers which lie against investing this power jointly in the Senate and President, have been pointed out; but I think them more than counterbalanced by the dangers arising from investing it in the President alone. It was said, that the community would take part with the injured officer against the President, and prevent his re-election. I admit that the injured officer may be a man of influence and talents, yet it is fifty to one against him, when he is opposed by such a powerful antagonist. It is said, that if the Senate should have this power, the Government would contain a two-headed monster; but it appears to me, that if it consists in blending the power of making treaties and appointing officers, as executive powers, with their legislative powers, the Senate is already a two-headed monster; if it is a two-headed monster, let us preserve it a consistent one; for surely it will be a very inconsistent monster, while it has the power of appointing, if you deprive it of the power of removing. It was said, that the judges could not have the power of deciding on a law, because the Constitution is silent; but I ask, if the judges are not ex officio judges of the law; and whether they would not be bound to declare the law a nullity, if this clause is continued in it, and is inconsistent with the Constitution? There is a clause in this system of Government that makes it their duty. I allude to that which authorizes the Pre-
sident to obtain the opinions of the heads of departments in writing; so the President and Senate may require the opinion of judges respecting this power, if they have any doubts concerning it.

View the matter in any point of light, and it is utterly impossible to admit this clause. It is both useless and unnecessary; it is inconsistent with the Constitution, and is a step toward an obvious interference of the House in a business which does not properly come before them. We expose ourselves to most dangerous innovations by future Legislatures, which may finally overturn the Constitution itself.

Mr. Benson.—The question has been stated as respecting a construction of the Constitution; and it has been asked, how this meaning is to be determined? I suppose a legislative construction is to be admitted, as I conceive there must be given, generally, to the Government, the power of removal at pleasure; because it cannot be rationally intended that all offices should be held during good behaviour, because the Constitution has declared one office to be held by this tenure. If, then, the Constitution intends that all offices shall be held during will and pleasure, the question will be, during whose will and pleasure? If we declare in the bill that the officer shall be removable by the President, it has the appearance of conferring the power upon him. Now, I think this would be a proper and just construction; and, by admitting the House to be possessed of an authority which would destroy those checks and balances which are cautiously introduced into the Constitution, to prevent an amalgamation of the legislative and executive powers. For this reason, I shall take the liberty of submitting an alteration, or change in the manner of expression, so that the law may be nothing more than a declaration of our sentiments upon the meaning of a Constitutional grant of power to the President. Can the gentleman be serious who tells us, that this is a case to be proposed as an amendment to the Constitution? Does he suppose, whenever a doubt arises in this House, (and it will be a doubt, if an individual doubts,) with respect to the meaning of any part of the Constitution, we must take that mode? Or does he really suppose that we are never to take any part of the Constitution by construction? This I conceive to be altogether inadmissible; for it is not in the compass of human wisdom to frame a system of Government so minutely, but that a construction will, in some cases, be necessary. This is such a case; and we ought most assuredly to declare our sentiments on the occasion.

I will not repeat what has been said, to prove that the true construction is, that the President alone has the power of removal; but will state a case to show the embarrassment which might arise by a combination of the Senatorial and Legislative authority in this particular. I will instance the officer to which the bill relates. To him will necessarily be committed negotiations with the Ministers of foreign Courts. This is a very delicate trust. The supreme Executive officer, in superintending this department, may be entangled with suspicions of a very delicate nature, relative to the transactions of the officer, and such as from circumstances would be injurious to name; indeed, he may be so situated that he will not, cannot, give the evidence of his suspicion. Now, this circumstance, suppose he should propose to the Senate to remove the Secretary of Foreign Affairs; are we to expect the Senate will, without any reason being assigned, implicitly submit to his proposition? They will not. Suppose he should say, he suspected the man's fidelity; they would say we must proceed further, and know the reason for this suspicion; they would insist on a full communication. Is it to be supposed that this man will not have a single friend in the Senate who will contend for a fair trial and a full hearing? The President then becomes the plaintiff, and the Secretary the defendant. The Senate are sitting in judgment between the Chief Magistrate of the United States and a subordinate officer. Now, I submit to the candor of the gentlemen, whether this looks like good government? Yet in every instance when the President thinks proper to have an officer removed, this absurd scene must be displayed. How much better, even on principles of expediency, will it be, that the President alone have the power of removal.

It has been warmly contended, that the power of removal is incidental to the power of appointment. It may be true, but it will not be admissible that the House of representatives shall be possessed of an authority which would destroy those checks and balances which are cautiously introduced into the Constitution, to prevent an amalgamation of the legislative and executive powers. For this reason, I shall take the liberty of submitting an alteration, or change in the manner of expression, so that the law may be nothing more than a declaration of our sentiments upon the meaning of a Constitutional grant of power to the President. Can the gentleman be serious who tells us, that this is a case to be proposed as an amendment to the Constitution? Does he suppose, whenever a doubt arises in this House, (and it will be a doubt, if an individual doubts,) with respect to the meaning of any part of the Constitution, we must take that mode? Or does he really suppose that we are never to take any part of the Constitution by construction? This I conceive to be altogether inadmissible; for it is not in the compass of human wisdom to frame a system of Government so minutely, but that a construction will, in some cases, be necessary. This is such a case; and we ought most assuredly to declare our sentiments on the occasion.

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is suspended, does the place become vacant? May the President proceed to fill it up? Or must the public business be likewise suspended? When we say an officer is suspended, it implies that the place is not vacant; but the parties may be heard, and, after the officer is freed from the objections that have been taken to his conduct, he may proceed to execute the duties attached to him. What would be the consequence of this? If the Senate, upon its meeting, were to accept the officer, and replace him in his station, the President would then have a man forced on him whom he considered as unfaithful; and could not, consistent with his duty, and a proper regard to the general welfare, go so far as to entrust him with full communications relative to the business of his department. Without a confidence in the Executive department, its operations would be subject to perpetual discord, and the administration of the Government become impracticable.

But, suppose the Senate to be joined with the President in the exercise of the power of removal, what mode will they proceed in? Shall the President always propose the removal, or shall he propose to undertake this part of the business? If so, how are they to act? There is no part of the Constitution which obliges the President to meet them, to state his reasons for any measure he may recommend. Are they to wait upon the President? In short, it appears to me, that introducing this clashing of the powers which the Senate possesses, is given to the Executive, will be destructive of the great end of Government. So far will restraining the powers of that department be from producing security to the liberties of the people, that they would inevitably be swallowed up by an aristocratic body.

The amendment which I propose will be to this effect: (it will have to come in some other place.)-When the said officer shall be removed by the President, and strike out the words "to be removable by the President."

Mr. SMARR, of South Carolina.—The gentlemen, by their arguments in favor of this clause, show us what ought to be, rather than what is, in the Constitution; but I do not think this the ground on which this question should be contested. I think, if the power be not found in the Constitution, we ought not to grant it.

I am sorry to take up the time of this committee, at this late hour of the day, but I cannot deny myself the privilege of replying to some of the arguments which have been urged in opposition to those I have advanced. I mean to do this in as summary a manner as I possibly can. It has been inferred from the clause in the Constitution, declaring the judges to hold their offices during good behaviour, that there are no other officers who hold their offices by tenure. Now, I apprehend, that this clause was inserted to distinguish them from other officers who hold their offices for a limited period: for example, House of Representatives for two years, the Senate for six, the President and Vice President for four; and, in order to prevent the Legislature from declaring that they should be elected during a limited period, it was seen to be proper to have them independent; and that could only be secured by such a declaration in the Constitution. It was seen to be improper that they should depend on this House for the degree of permanency which is essential to secure the integrity of judges. With respect to the other officers to be established by law, there is nothing to prevent us from limited their appointment to two or three years. Let us then limit the duration of Secretary of Foreign Affairs for as short a period as is thought to be salutary. Here we are not restricted. But I conceive, as the Constitution now stands, they cannot be removed in any other way but by impeachment.

Another gentleman, in his arguments, has declared, as his opinion, that, in fact, the President has the power of appointment; and inferred from that, upon the general principle that those who appoint may remove, that the President has the power of removal also. But it appears extraordinary, that the gentlemen who have urged the great security arising from an appointment from the President and Senate, should now contend that the President alone has the power; if this be true, where is that boasted security?

It has been said also, that the same reason which applies against giving this power to the President, applies against vesting it in the Senate; but I do not think they apply with equal force. On this point, I need only refer gentlemen to the authority I quoted before. It clearly shows the superior advantage of having the President and Senate combined in the exercise of this power.

It is contended that the Legislature have the power of supplying the defect, if this is an omitted case. I cannot be of that opinion. But it is unnecessary to extend this argument, after what has been urged by the gentlemen. (Mr. Gunn.) If the Legislature can supply defects, they may virtually repeal the Constitution.

Gentlemen say we ought not to suppose such an abuse of power in the President. But the Constitution wisely guards against his caprice in the appointment; and why should we abate the security in cases of removal? The Constitution contemplates infirmity in the Chief Magistrate; makes him removable by impeachment, and provides the Vice President to exercise the office, upon such a contingency taking place. But it is supposed that the President may be impeached for an abuse of this power. How can that event take place? He will tell you he thought it incumbent on him to displace the officer, because he apprehended the public tranquillity was in danger; and if he erred, it was the error of the head, not of the heart. And will any House of Representatives ever be found to impeach the Chief Magistrate of the United States for an error in opinion?

It was obtruded, that it would be inconvenient, as the Senate were not always in session. The same objection lies against associating the Senate with the President in making treaties. If this is an inconvenience, it is imposed upon us by the
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Constitution, and must be submitted to. If he finds the advice of the Senate necessary in either case, he must convene them to obtain their assistance; they are the only of them likely to happen frequently; the inferior officers may be regulated by law, leaving the heads of departments only subject to the operation of this power.

The gentleman from Connecticut, (Mr. Sherman,) seemed to think this officer might be considered as an inferior officer, and therefore subject to Legislative directions respecting his appointment and removal; because the President is the Executive head of the department, and this officer is only to aid the President. Some gentlemen have spoken of a two-headed monster in the Government; but I think, in this view, we shall find the Executive a three-headed monster, a real Cerberus. The resolution upon which this bill is founded comprises three heads of departments; if these are appendages to the Executive, what kind of a monster do you form? And yet your Constitution admits these officers to be heads of departments.

It has been said, that the Legislature may give their opinion on the Constitution. I agree with gentlemen if they obtrude that, as an individual, we may give our single opinion; but I never can admit it to be right in our Legislative capacity to influence the judges, and throw our weight into either scale to warp their decision. I think it highly criminal to attempt to bias their judgment in any way.

I was told, that there was more danger in continuing a bad man in office than in displacing a good one; and that the Constitution seemed to suppose this, by giving the House of Representatives the power of removal. I grant there is more danger in one case than in the other; but I am afraid the President will have it in his power to continue a bad man in office, and this part of the argument I believe has not been touched upon yet. I shall, however, be concise in my observations. It is declared in the Constitution, that judgments, in cases of impeachment, may extend to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States. Suppose it in contemplation to remove some creature of the President’s by means of impeachment, in order to dismiss him from all his employments, and to prevent his ever thereafter disseminating poison through the councils of his country. If the impeachment is permitted to succeed, the poison is removed, and the nation is rid of him. But suppose the President snatches him from his fate, by interposing his authority, saying, you complain of the man, I will save you the trouble of proceeding by that circuitous route of impeachment; I will remove him without delay. By this collusion, the wretch’s fame is in some measure preserved; and when the President has waited until the storm of obloquy has ceased to blow, and the public mind has returned to a tranquil state, he obstructs the man again into office, when, in fact, he ought ever to be disqualified from participating in any thing honorable or profitable which the Government has to bestow.

Thus, then, may be accomplished the evil which is most to be dreaded, and which the honorable gentleman from Virginia (Mr. Madison) says the Constitution means to prevent; by giving the House of Representatives the power of trying impeachments.

An honorable gentleman has said, he did not see how this case could be brought before a court of justice in order to obtain their decision. That gentleman is no stranger to a just and venerable law maxim. Wherever a man has a right, he has a remedy; if he suffers a wrong, he can have a redress; he would be entitled to damages for being deprived of his property in his office.

One of the greatest arguments brought forward on this occasion is, that this authority is implied in the grant of Executive authority which is made in the Constitution; the Executive power shall be vested in the President. This I apprehend proves too much, and therefore proves nothing; because it implies that powers which are expressly given by the Constitution, would have been in the President without the express grant.

I ask the gentleman, if the Constitution had been silent with respect to his exercising the power of granting reprieves and pardons, who would say that the President would have that authority? I apprehend it is in some degree an Executive power. It is exercised by some of the Executives even in the United States; but there have been great doubts about the exercise of it in others. It has been said, in some of them, that as this Constitution did not give it, the Governor has an right to it and this they prove by the Constitutions of other States, in which an express grant is made. For instance, the Constitution of Massachusetts declares that the Governor shall have the power to grant reprieves, &c.; but if it had not been given him, he would not have had it. If the convention who framed the Constitution meant that he should have the power of reprieve, then the doing of inserting it must have occurred to them, where it is said he should have power to see the laws faithfully executed, and he should commission all officers; there are other places in which it would well come in. As it must have occurred to them, and they have omitted it, I take it for granted they never intended to give it to him.

I apprehend, if he saw an officer misbehaving, he would transmit the necessary information to us, and leave us to determine whether the person should be impeached or not; and the business could, in my judgment, be satisfactorily accomplished in this way. From all these reasons, there will be no doubt but the Constitution does not give the power; that the Legislature ought not to supply its defects; and that even if it were a matter of doubt, we ought by no means to interfere in adjusting or determining it. Therefore, in whatever point of view you consider it, the clause ought not to stand as part of the bill.

Mr. Voss.—I am extremely solicitous, Mr. Chairman, that this clause should stand as part of the bill, and therefore must beg to add a few words more in its support. I take this power to be necessary, sir, to the execution of your Gov-
Government. In vain do we contemplate the wisdom of a Legislative branch; in vain do we expect the energy of the Executive arm, and in vain will be the integrity and independence of the Judiciary, if one department after another is to be stripped of its budding powers. The branches will not expand their unbridged and salutary verdure, shelter ourselves from the tempest of calamity, nor delight them with the fair fruits of good government, for which they are in anxious expectation. I have listened, sir, with some degree of avidity to the arguments offered on this subject. I find the point of expediency and responsibility is acceded to, and the question now turns upon the constitutionality of the measure. Here, sir, I agree with gentlemen, it does turn on the construction of the Constitution; and to my mind the construction which we give is irresistibly true. Does the Constitution say such a construction shall be given? I ask gentlemen, does the Constitution, does reason, does experience, does any one principle upon which good government depends, deny our construction? I believe not one of them.

What kind of a monster this will be, I do not pretend to say; whether it will have two heads, three heads, or four heads, as gentlemen contend; but I will be bold to say, it is a monster of a peculiar enormity; for gentlemen are putting the heads where the tails should be, or rather making it without any head at all. If we do not permit the President to exercise this power, surely this will be the most unreasonable thing in nature.

The argument of convenience is strong in favor of the President; for this man is an arm or an eye to him; he sees and writes his secret despatches, he is an instrument over which the President ought to have complete command. I hope gentlemen, who request us not to be dazzled with the splendor of the President, will not themselves be misled by the brightness of Senatorial dignity, and suffer officers to skulk out of the President's enfeebled reach within the effulgence of their lustre, which is most likely to lay the foundation of universal empire over the liberties of the people. If the President removes a valuable officer, which seems to be the great danger, the gentleman from South Carolina (Mr. Sumter) apprehends, it would be an act of tyranny which the good sense of the nation would never forget; but if the Senate turns out a good man, they might be re-elected by the Legislatures. But the Senate may remove a good officer without feeling any injury; they are not feelingly sensible of the advantages arising from his labors, because they do not act in concert with him; while the President, by such a removal, deprives himself of a valuable and necessary aid. When a good officer is obtained, the President has every motive of justice, self-interest, and public good, to retain him in his situation. None of these motives operate, or but faintly operate, upon the Senate.

Does the Constitution anywhere say the President shall not have the power? It does not. But the principles of the Constitution declare that the Legislative and Executive Departments shall be kept distinct. An express declaration of this kind is sought for as an amendment to the Constitution; and would gentlemen be so weak as to confound them in the first operation of the Government?

It has been asked, if the same properties are not requisite in removing a man from office as to appoint him? I apprehend a difference in the degree of information necessary. A man's ability may be known to many persons; they may entertain even a good opinion of his integrity; but no man, without a superintending power, can bring this fidelity to the test. The President will have every opportunity to discover the real talents and honesty of the officer; the Senate will have none but from common fame. How then are their properties equal?

The Departments of Foreign Affairs and War are peculiarly within the powers of the President, and he must be responsible for them; but take away his controlling power, and upon what principle do you require his responsibility?

The gentlemen say the President must depend. They were asked if the Constitution gave him this power any more than it gave him the power of removing. Do they contend the one to be a more inherent power than the other? If they do not, why shall it be objected to us that we are making a Legislative construction of the Constitution, when they are contending for the same thing?

I look upon it as begging the question, to say the power that appoints must likewise remove. The position ought to be proved. For my part, I think where the responsibility is, and where the power of overseeing and controlling resides, that also must be the power of removal.

If the Constitution does not prohibit the exercise of this power, I conceive it to be granted, either as incidental to the Executive Department, or under that clause which gives to Congress all powers necessary and proper to carry the Constitution into effect. This being the case, we are at liberty to construe, from the principles and expressions of the Constitution, where this power resides. This, I trust, is what we are about to do; and after the full discussion which the subject has had, I flatter myself we shall do it with a degree of unanimity which I most ardently wish.

On motion, the committee then rose, and the Speaker resumed the Chair.

Thursday, June 18.

The petition of Robert Frazier, late a soldier in the Continental army, was presented, praying that compensation may be made him for military services rendered during the late war.

Ordered to lie on the table.

A message from the Senate informed the House that they had passed the bill imposing duties on tonnage, with several amendments, to which they desired the concurrence of this House.

DEPARTMENT OF FOREIGN AFFAIRS.

The House then again went into a Committee.