DEBATE IN THE HOUSE OF DELEGATES ON THE
FOREGOING RESOLUTIONS.

Thursday, December 13, 1798.

The House resolved itself into a committee of the whole House, on the state
of the commonwealth, Mr. Brackenridge in the chair; when the resolutions
presented to the House by Mr. John Taylor, and referred to the committee,
being taken up for its consideration --

Mr. JOHN TAYLOR began, by expressing great regret at the occasion which
brought him forward. He conceived it to be an awful one. That liberty was in
danger, and as that rested on the foundation of responsibility, every effort
should be made to repel attempts to subvert it. He could assure them, that
his feeble efforts should be used for that purpose. He said that two
subjects were contemplated by the resolutions before them, to which he
should chiefly confine his observations. He should consider the
constitutionality of the laws referred to in the resolutions, and their
correspondence with human rights, natural and civil. He compared the
executive of Great Britain with the Congress of the United States. The
prerogatives of the first were limited and defined by the constitution of
England, as were the powers of the latter by the Constitution of the United
States; and if the king at any time overleaped his boundaries, it was always
certainly opposed, and met with correction. He stated the case of ship-money
imposed by Charles I. What was the consequence of that measure? It was
opposed. He applied that case to the Congress of the United States. The
powers of Congress, by the Constitution, were defined, as clearly as were
those prerogatives. That, in Great Britain, where the prerogatives were
limited, wherever the executive overleaped their bounds, other organized bodies would always control and check it. So, if Congress overleaped their bounds, some organized "body should certainly oppose it. Concluding the general government to be limited in its powers, he proceeded to inquire if Congress, in passing the alien and sedition laws, had overleaped its bounds. He mentioned a law, which Congress had passed at the same session, respecting alien enemies, as it had been suggested that the one particularly called the alien law was justifiable on account of danger to be apprehended from foreigners. This alien enemy law passed by Congress, as well as a law of Virginia, upon that subject, were made in favour of aliens. They were necessary, and found to be the usage of all nations. A contrary usage would be cruel and inhuman. Such laws as these were attended with mutual advantages to the nations at war. They constituted a mutual assurance that the persons and property of its own citizens would be safe in the country of the other. This was not the object of the law in contemplation. The other laws were sufficient for every purpose. That aliens, when arrested and made prisoners, were not dangerous. He said he would ask the question whether alien friends possessed any rights. If so, they might be secured by the Constitution. Then, if they were infringed, the Constitution was broken. If Congress could infringe the rights of those people, they might infringe the rights of others. One usurpation begat another. We ourselves might as well be the victims as others. He said, that alien friends, by the common law, had the rights of life, liberty, and property; and that these common law rights were secured by the Constitution; to prove which, he quoted that clause of the Constitution by which those rights are secured, which Constitution literally reached aliens, by using in all places the term "persons," not "natives." He then put the case of our population being increased by a considerable emigration of foreigners to this country, who might be disposed to retain their foreign citizenship: we should then have amongst us a body of men, of whom the President would be the despot: they would be entirely in his power. He further observed that, suppose government
(never an enemy to power) should strengthen its hands by corruption, by patronage, by standing armies, by a system of fears, (he would not say that our government had done so, but in case a government should do so,) that ill such case, this body of emigrants, thus dependent upon government, would be a proper instrument in the hands of the executive, to effect its purposes: that executive power was the greatest enemy which republican principles had. He asked, if any one would then assert that to strengthen executive power in this way, wholly unforeseen by those who formed the Constitution, so as to extend beyond their intention, could be agreeable to the Constitution: that republican principles were the great end of the Constitution. Then, if he had proved this law inimical to those principles, he said that he had attained the great end at which he aimed.

He next observed, that the Constitution cautiously attempted to distribute its powers. It was nothing more than a deed of trust made by the people to the government. The government, then, had no right to outstrip its powers. Were they not defined? Had the Constitution given any power to deprive any person of trial by jury? That if once we were to permit executive power to overleap its limits, where was it to stop? And, if the executive branch exercised powers not bestowed, it overleaped the Constitution. He asked if we had arrived to that situation, that the powers which the people possessed were to be surrendered. Were we approaching the system of Divine right. He proceeded to construe the alien law, and said that the precedent established by it was dangerous, both as it affected individuals, and as it affected states. That a power inclined to usurpation, to the injury of aliens, would be inclined to usurp, in the construction of the Constitution, to the injury of states; and that the precedent in the one case, would soon ripen into a law, for justifying the other.

He next read the sedition law, and proceeded to comment upon the words of
it, especially the words counsel or advise. He asked how he could counsel or advise another, without speaking to him; consequently these words extended to words spoken. He put the case of his counselling his neighbour to withstand the two laws of Congress before mentioned. That, by the construction of the last-mentioned law, words were reached, and duties prevented: so that, if he should advise his neighbour in regard to those laws, the latter one enacted a punishment. He then asked, what was the case of a representative in State Legislatures. He had taken an oath to oppose unconstitutional laws. What was he to do? On one hand was perjury, on the other a prison. Suppose a law were to infringe the guarantee made by the Constitution, of a republican form of government. What was a representative to do? Was he not to withstand it? If such law should tend to destroy that guarantee, were we to wait until the enemy's detachments closed us in on every side? This sedition law said yes. In the construction of this law we were placed in the hands of lawyers. The judge would construe the law. There were two kinds of construction, a strict construction, and a liberal construction. The judge might put upon it a liberal construction. He stated an historical fact. That sedition was forbidden by the common law. That the law of England respecting treason, went no farther in describing that offence, than our law does in describing sedition. He then cited the case of Algernon Sidney. That Algernon Sidney wrote a book in answer to Filmer, to prove "that the authority of kings was not of divine original (a thing in those days deemed necessary to be proved). He wished a necessity might never appear for a new edition of this book. For this he was prosecuted and tried, condemned and executed. And this was a liberal construction of the law. He thought that this case might well be applied in an argument on the subject of this law of ours. However, the law was said to be harmless. That to bring themselves within it, men must unlawfully combine, they must conspire, they must lie, for that they might still tell truth without danger. But this could never satisfy him that it was not dangerous, when he recollected that the best patriots had been sacrificed by sedition laws, with the help of
He then said that another distinction had been set up, that this law was not to restrain the freedom, but the licentiousness of speech. This, he observed, was an epithet which might be applied to any attempt to restrain usurpation. Men find no difficulty in pronouncing opinions to be both false and licentious, which diverge from their own. That this same distinction (if it was just) would empower Congress to regulate religion, the freedom of which is secured by the same article which secures the freedom of speech. They might in the end be induced to regulate the mode of petitioning, that it might be performed orderly, and not licentiously, as it is in some countries, by crawling on the belly towards a throne, and licking the dust. He then observed, that a power to restrain treason, was more necessary in a government, than to regulate sedition: that our Constitution had yet limited the power over treason to a few cases, which he stated. However, Congress might still regulate the punishment in case of treason; and it was possible, that they might establish in such case a punishment short of death; a punishment even inferior to that for sedition. What then would result? Treason was the genus; sedition a species. If the first were limited, and the second not, what security had we? He then read the third article of the amendments to the Constitution, concerning freedom of speech, &c., and asked in what sense this clause was understood at the time of adoption? Could it then have been contemplated by any one, that such a law as this would ever have been passed? The adoption of the Constitution by this state was accompanied by a condition containing a reservation of these very rights: so that they must have been understood in a very different sense then, than when these laws of Congress passed. He read the ratification of the Constitution by the convention of this state, and said that the same ought to be looked upon as a contemporaneous exposition of the part of the Constitution referred to. He then asked, if the sedition law did in no
respect cancel, restrain, or infringe the liberty of the press! And concluded his observations upon the first of the two subjects, to which he had before mentioned he should confine them, by saying that, if he had proved the laws spoken of to be unconstitutional, the objection to them on that ground was strong; and by asking further, could they then be justified upon the ground of necessity, or that they were harmless?

He began his observations upon the second subject, by asking if those laws were correspondent with human rights? Those rights, he said, were, freedom of speech, freedom of person, a right to justice, and to a fair trial. If an alien possessed those rights, he asked, could he avail himself of them under the present law? Could a citizen, under the sedition law, exercise the freedom of speech, or of religion, which last, a few days before, he had heard called a social right? It was not so. It was either a natural duty, or a natural right. Was it possible that at this day, religious worship could be restrained by law? The right of opinion, he said, should be held sacred. It ought never to be given up in any one instance. Religion was only a branch of opinion. With what propriety could that range of thought, bestowed by the Creator upon the human mind, be controlled by law. He deemed it a sacrilege for government to undertake to regulate the mind of man. It was a subject by no means within its powers. What would be the consequence of such a measure? Universal ignorance amongst the people. He then asked, if ignorance was a desirable thing? And were the free exercise of the faculties of the human mind, to be once restrained and shut up, he would ask them, then, what was man? He was therefore opposed to those laws, as being destructive of the most essential human rights. He again asked, if such laws were ever contemplated at the time of the adoption of the Constitution, and what would be the consequence of the destruction of those essential human rights, of which he had spoken? What would be the probable effects of those laws? They would establish executive influence, and executive influence would produce a revolution. There was great danger in throwing too great
weight in any one scale. He then proceeded to inquire whether those laws would increase executive influence, and concluded that they would. That they would by begetting fear. If public opinion were to be directed by government, by means of fines, penalties and punishments, on the one hand, and patronage on the other, public opinion itself would be made the stepping stone for usurpation. If Congress should undertake to regulate public opinion, they would be sure to regulate it so as to detach the people from the state governments, and attach them to the general government. But, he said, the most dangerous effect of those laws would be, the abolition of the right to examine public servants. He again referred to Sidney's case, and recited the doctrine of Filmer, to illustrate this subject. To bring about such a measure as this, he said, it would be necessary for Congress, in the first place, to establish the point, that they were the masters, and not the servants, of the people. He said, government might do wrong. Could a criminal be ever brought to justice, who had a power to regulate the mode of his own examination? And is it not criminal in a government to oppress a people? If its acts were wrong, they would produce discontent: discontent was the only road to redress. But redress could never be obtained, because the sedition law prohibited the only mode of obtaining it, by punishing that very matter of exciting discontent. He asked what was despotism? He defined it to be, a concentration of powers in one man, or in a body of men. The manner of concentrating them was unimportant: the end was the same. Individuals and states were equally affected by such concentration of power. The concentration of it in an individual, would enslave other individuals; a concentration of it in Congress, would operate to the destruction of the state governments; and that, if the balance of power which the state governments ought to hold against Congress, were once lost, we must be precipitated into a revolution. He adverted to the vast power concentrated in the Senate of the United States. This had been seriously viewed at the time of the adoption of the Constitution, and since. That, at the time of
framing the Constitution, mutual concessions were made between the states, which he believed to be the sole reason for admitting the small states to an equal share of power in that body, with the large, the real counterbalance of which concession, was the existence of state governments. Thence he concluded, that being thus situated, if the balance which the states ought to hold, should happen to be lost, the small Senate of the United States, might govern America. He further said, that although he had read in pamphlets and newspapers, and also had heard it reported, that such principles as he held, led to commotion, still he would assert that it was more likely to happen that a majority of small states might adopt measures which would oppress the rest, although they should contain the greatest number of citizens: and that the result of this would be a civil war. The many would not submit to the few, and all history would show, that a majority armed with power, would never yield it without a struggle. He said that oppression was the road to civil war. To prove which, he asked what produced the war between Britain and America? Oppression. What produced the revolution of France? Oppression. What produced the revolt of the United Provinces from Spain? Oppression. He said, the way to keep a nation quiet, was to make it happy: that oppression goaded it on to civil war. In justification of which opinion, he stated that the people of the United States were at this time under the pressure of certain grievances. The way then to stop civil war, would be to stop oppression. But, said gentlemen, we must not disunite. To this he would answer, remove oppression, and union would take place. He had observed it asserted in a pamphlet circulated at this place, that these late measures of the government might be justified on the ground of self-defence. Under such a pretence as that, he said, Congress might pass any law whatever. This never could have been the object of the Constitution. He said, that the old instrument of confederation contained the same language, but no such power as that contended for was ever claimed. Had it ever possessed it, its want of energy would not have suggested the present Constitution. (He then read the preamble of the articles of
By adopting a different construction from that made by himself, he said the propriety of no law which Congress should ever pass could be denied. He then concluded by saying, that our rights were the offspring of pangs and peril. Let them never then be wrested from us. It was the custom in some countries, for the prince to send for the first born child of every subject, to have him trained as a soldier for his army. In that case, could the distressed parent be assured that by surrendering his first-born, he would secure the rest? The first-born of American rights, was the free examination of public servants. Were we to surrender that, could we be certain that the rest would be secured? That these rights were the fruit of victory, and recompense of blood. We had defended them against the arms of Britain. Never then let us surrender them to the arts of sophistry and ambition.

Mr. George K. Taylor moved that the committee might rise, in order to give time to himself and the other members to consider well the subject before them. He said, it was an important one, as the object of inquiry seemed to be, to impeach with unconstitutionality, two laws passed by both Houses of Congress, and by them declared to be constitutional.

Mr. Foushee made a few remarks in opposition to those of Mr. George K. Taylor in regard to the probable constitutionality of the laws, by reason of their having passed both Houses of Congress.

Mr. Nicholas hoped that the gentleman from Prince George did not intend, by moving to rise, to preclude from speaking any person then disposed to speak.

Mr. George K. Taylor said that he did not; but (after waiting some time and
no member rising to speak) he renewed his motion for the committee's rising.

The committee rose accordingly, reported progress, and had leave to sit again.