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[*Continued from our last.*]

MR. STONE asked, what qualities were necessary for an appointment that were not requisite for dismissing? Information, impartiality and judgement, in the business to be conducted. Were not the same qualities necessary in order to dismiss? He was not able to subscribe to the principle, that the executive in its nature comprehended a necessary power of appointing or removing officers—Why did it imply it? The appointment of officers requiring qualities which are necessary to judge of the merits of men; so the dismissing them—to know what was necessary for an executive officer; what for a judge, &c.

This knowledge was acquired by experience, and might belong to one body of men as well as another. In the nature of things, therefore, there was no necessary connexion between the executive functions and the power of removal. That body which could best judge of the qualities necessary to transact business were the most proper dispossers of offices, and if it was contended that the executive magistrate was in the best situation, and under the best advantages to judge of these qualities, still this was a mere matter of fact, which might depend upon circumstances, and the nature of the office did not necessarily involve the capacity of judging, or imply the power of exercising that judgment.

Mr. Stone then took notice of the principles which had been contended for, in another view, as it applied to the situation of other nations where a hereditary monarch was established, who had a personal property in the government and administration, and who was considered as the natural fountain of honour and office.—It was supposed that he had necessarily the power of choosing and controling those who were to manage his property.—But this had no application to our country, where the chief magistrate had no species of property in the government, and was not the master, but the great servant of the people.

These circumstances concurred to prove that the president of the United States had no natural right to be the sole judge of the merits of officers; and as far as he could conclude from examining the constitution, it never intended to bestow it upon him.

It therefore struck his mind, that all control of officers independent of the agency of the senate, was confined to the case of such inferior officers, the appointment of which the constitution had enabled the legislature to vest solely in him. It struck him also, that as to the power of pardoning, the president should be precluded in the exercise of this power, in case where the senate had convicted an offender.—So that it appeared to him, that the senate were a body to whom the constitution had given great weight in the executive scale, and in the administration of government.

In determining whether it was proper on the score of expediency to give the power to the president, or to him with the senate—the degree of confidence which was to be placed in those bodies were to be considered --Was it more probable, he asked, that one man should do wrong, or that a number of men, chosen with equal care, and acting under the same obligations, should do wrong? Where were the greatest temptations? Where were the greatest obstacles? Who would have the greatest objects to attain?

He concluded with proposing, that the president should have the power of suspension, in order to remedy a difficulty which had been suggested in case of a recess of the senate when it became necessary to punish an officer by removal.

Mr. Madison.—I feel the importance of the question before us, as our decision will be a permanent exposition of the constitution in this point, and as on this decision will depend, in a great degree, the genius and character of our government. On the determination which will now take place, will depend, perhaps, the preservation of the government on that equal balance which the constitution designed. It is therefore of the utmost importance that we weigh the subject with the most cautious deliberation. I own, to you, I feel an anxiety on this subject. I feel anxious, because I am called on to give my voice on a question which may affect the fundamental principles of the government. But all that I can do, on an occasion of this kind, is, to weigh the arguments which have been advanced on both sides, with an honest desire to discover the truth, and to form my opinion under the influence of an attachment to that spirit of liberty which this constitution is happily calculated to preserve.

Several constructions have been put on the constitution, relative to the point in question. It has been contended, that the power of displacing from office is subject to a legislative discretion, which is to create and to modify.—At first sight, Sir, this doctrine appears considerably plausible. But when I consider that a prime object of the constitution was to maintain a marked institution between the legislative, executive, and judicial departments, and when I consider that the legislature, on this principle of discretion, may transfer, at their pleasure, powers from one department to another—that they may narrow the executive, confer new powers on the senate, and enlarge the general mass of their own authority; when I consider the consequences of this doctrine, and compare them with the true objects of the constitution, I own I cannot subscribe to it.

Another doctrine, which has a very respectable patronage, is, that when an officer is appointed, he can be removed only by impeachment, for some misdemeanor in office. This would give a permanency to the executive system, which would be more incompatible with the genius of republicanism than any principle that could be advocated. The danger of liberty, the danger of despotism has never been found to spring so much from the difficulty of procuring virtuous men to fill the offices of government, as the difficulty of displacing those who have been found unworthy of trust. If it be said that an officer, when once appointed, should not be removed without a crime and conviction, I would be glad to know what security there would be for the faithful administration of the government.—Every individual between the highest and lowest link in the long chain of executive magistracy, would find a security which would greatly relax his fidelity in the discharge of his duty.

A doctrine which stands most in opposition with the principle we have contended for is, that the power to make appointments implies in its own nature a power of removal as incidental to it. If nothing more was said in the constitution than that the president, with the senate, should appoint officers, there would be force in the observation, that the power of dismissing results from the power of appointing. But, Sir, there is another part of the constitution as explicit as that on which the gentlemen found their doctrine: It is that which declares, that the executive power shall be vested in the president of the United States. The association of the senate with the president in the exercise of one particular executive function, is an exception to this general principle; and exceptions to general rules are ever taken strictly. But there is still another part of the constitution which, in my judgment, clearly favours the construction I give. The president is required, Sir, to take care that the laws be faithfully executed. If the faithful execution of the laws be required at the hands of the executive magistrate, it should seem that in general the constitution must have intended that he should have that species of power in all its extent, which is necessary to accomplish the purposes of the department, and to enable him to answer for their accomplishment. Now if the officer, when once appointed, is not to depend for his official existence upon the president, but upon a distinct body, (for where there is a mutual negative, either alone can secure this dependence) I do not see how the former can provide for the execution of the laws. It is true, that by a circuitous mode he may obtain an impeachment, and gain the concurrence of the senate; but will not this deprive him of that control which is essential to a responsibility for the administration?

There is another maxim which ought to direct us in expounding the constitution. It is the opinion of all great civilians and political writers, that the great departments of government ought to be preserved separate and distinct. That in any case where they are blended together, it ought to be under special restrictions and guards. This is laid down as essential to liberty. When, therefore, we review the several parts of the constitution, which provide that the legislative powers shall be vested in two houses, and the executive in a president, with certain exceptions, we must conclude, that the intention of the constitution was, that these departments should be kept perfectly separate, where they were not expresly mixed, and that we ought to construe the instrument in such a manner as to confound them as little as possible.

Sir, every thing which relates 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. But when I consider the checks which will attend the president in the exercise of it, I confess I feel no apprehensions. If there are any dangers incident to that power, they must belong to it whenever it exists, whether you place it in one body or another. I will not repeat what has been said with respect to the mode of the president's election, and the extreme improbability that any citizen will be selected from the common mass, who is not distinguished by his virtue and worth. In this alone we have an unusual security for the faithful exercise of the power.—But leaving that out of the question, let us consider the obligations and restraints he will feel when placed in that exalted responsible station. Perhaps, as has been observed, the great danger arises from the continuance of unworthy men in office; but so is the system contrived, that though the president may be vested by law with a power of removal, he is restrained and prevented from continuing a corrupt officer. For if an unworthy man be not displaced by the supreme executive, the house of representatives may at any time impeach him, and he may be removed in spite of the president. But it is contended that the danger consists in this, that the president may remove from office a man whose merit requires that he should be continued in it. Let us consider what motives he can have for such an abuse of power, and what will be the checks on him. In the first place, he himself will be impeachable for the wanton removal of a meritorious officer, and will himself be removed from his high trust. Again, what can be his motive for displacing a worthy man? It must be with the expectation of filling the vacancy with some unworthy favourite. Can he accomplish this himself? Must he not consult the senate? They may reject the person he nominates. Sir, he can have no security for success in his projects. The senate will judge of them by the merits and character of the person removed; and having been guilty of one obnoxious measure, he will himself thereby furnish a check to his own design: but let us consider the consequence. The injured man will be supported by the public opinion. The community at large will take side against the president--and combinations will be produced which may effectually prevent his re-election. To displace a man of high merit, and one who, from his station, may be supposed a man of extensive influence, will excite jealousies, and create an interested opposition in the system, and in the people. He will have his friends, his dependents, and the public sympathy on his side, and if it should not give birth to an impeachment in the legislature, it would probably produce a fatal impeachment before the community at large. But suppose the persecuted individual should not be able to accomplish the object of his resentment in this way, there are other modes in which he can be very troublesome to the president. If he has not influence enough to direct the vengeance of the whole community, in all probability he will be able to obtain appointments in one or the other branch of the legislature, and possessing weight and talents, he will be able at least to give him considerable disturbance. We have seen, in the history of other nations, examples that justify the remark I now make. Though the prerogative of the British king is great, and his resources of influence extensive and commanding, there have been examples of his ministers being opposed, and removed by the decision of one branch of the legislature.——If this be the case with a hereditary monarch, possessed of such high prerogatives, and furnished with such means of influence, can we suppose that a president of the United States, elected for four years only, dependent on the popular voice, impeachable by the legislature, and not perhaps distinguished in point of wealth or personal talents from the head of the department himself, can we suppose, I say, that, in defiance of all these considerations, he will presume wantonly to dismiss a meritorious and virtuous officer from his service? I own it is an abuse of power which exceeds my imagination, and of which I can form no rational conception. But let us not contemplate the dangers only on one side. Vest this power in the senate, jointly with the president, and in my opinion you destroy that great principle of responsibility, which was intended for the security of liberty itself. Vest the power in the president, the chain of dependence is this—The officer of the lowest grade, the officer of the middle and higher grades, will be dependent on the president, and he again on the people—The chain of security, therefore, terminates in the general community, who will possess, in aid of their great original power, the decisive engine of impeachment. Take the other supposition, that the power should be vested in the senate, upon the principle that the power to displace is necessarily connected with the power to appoint. Subordinate appointments may depend upon the heads of departments—and they must therefore remove. I see here a very different prospect present itself. Where shall we find the responsibility? Where does it terminate? If you begin with an inferior officer, he is dependent on his superior, and he again on his superior, and so on till you come to the senate, a permanent body; a body, by the singular mode of their election, existing in reality for ever; a body that possesses that portion of aristocratic power which the constitution has wisely established. Shall we trust the senate rather than the whole community? For though the senators will not hold their offices for life, yet the fact is, that they will not possess any responsibility whatever, which can make it safe to trust them with such a power.

But, Sir, what an aspect will it give to the executive department? Instead of keeping it distinct from the legislative, you transfer its best powers to a body in which the constitution never vested it; you render the executive merely subservient to the other branch, you