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Congress of the United States.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, FEB. 9, 1803.

DEBATE on Mr. Bacon's resolutions to recede the district of Columbia.

(CONTINUED.)

Mr. Randolph said that whatever reasons might be advanced on the ground of expediency against the adoption of the resolutions, he wished to say a few words on the constitutional objections which had been offered to them. The gentleman from Delaware (Mr. Bayard) told us on a very late occasion that the power to create involved the power to destroy, and although I may not be willing to adopt this maxim in all the latitude in which it was urged by that gentleman, I have no hesitation in averring my belief that congress possess the right, with the assent of these states, respectively, to cede the several portions of this territory to Maryland and Virginia. Nor, in my opinion, does this doctrine militate against that construction of the constitution, which regards that instrument in the light of a limited grant of power. In this construction I heartily concur with the gentleman from Delaware, or rather, if he will permit me to say so, I am glad to find he agrees with me, as I have retained my opinion, whilst he seems to have changed his. I readily admit that congress possess no power but that which is devolved on them by the constitution, explicitly, or which is evidently included in, or deducible from its plain provisions. The constitution no where gives congress the express power of repealing laws—but the repeal of laws is essentially connected with the power of passing them, as in this case, the right to recede is involved in the right to accept the cession. The parties to this compact are the United States, of the one part, and the states of Maryland and Virginia, of the other. We speak the voice of the United States, and among others of Maryland and Virginia, in the confederate capacity. The legislatures of those states answer for them in their individual capacity. If all these parties are agreed to revoke their act, I wish to know who is to dissent to it, or what obstacle can prevent its being rescinded.

Mr. R. said that he was of the number of those who voted against assuming the jurisdiction of this territory. He did it from a predilection for those principles in which the American revolution originated. From the firm belief that men ought not to be bound by laws in whose formation they had no influence. It was the violation of that principle, & not the extent to which it was carried, which laid the foundation of our independence. For, let it be remembered, that the demand of Great Britain went only to a pepper-corn; but that we disdained the admission of so odious a doctrine, and commenced a determined and succesful resistance. But it is denied that this territory is in a state of slavery, because, says the gentleman, it implies that we are tyrants. The term slavery, Sir, excites in the mind of man an odious idea. There are, however, various species of this wretched condition. Domestic slavery of all others the most oppressive; and political slavery which has been well defined to be that state in which any community is divested of the power of self-government, and regulated by laws to which its assent is not required and may not be given. Nor have I ever before understood that slavery, particularly of the last description, necessarily implied tyranny, although it too frequently is productive of it. But so far from being slaves the people within this territory are, it seems, our children, who are to experience every indulgence at our hands. Sir, the form of government, such as has been described, however mild and beneficent it may be in its administration, places those subjected to it in a state of political slavery, and they are as completely divested of self-control as the infant who is dandled on the knee of its parent. As to the existence then, of this species of slavery, it mattered not whether the people within the limits of this district were regarded as the favorite son and feasted on the fatted calf, or were exposed to the cruel rigour of a step-mother.

An idea had been held out from a very respectable quarter that this district might, in time, become a state. As to congress what difference will they find between being under the jurisdiction of the state of Columbia, or of the state of Maryland. But if this objection were removed, it is impossible that this territory can become a state. The other states can never be brought to consent that two senators and at least three electors of President, shall be chosen out of this small spot and by a handful of men.

The constitution seems to have intended, by its provision on this subject, to guard the general government against the undue influence of any particular states wherein it might sit. An insurrection in Philadelphia is mentioned by some gentlemen as having given rise to this clause in the constitution. The constitution, no doubt, had a wise end in view, but it has failed in the means of attaining it. No man has a higher respect than myself for the talents of the framers of that instrument. But let it be remembered, that they were making a great experiment, and to have failed in but a single object, is the highest proof of their wisdom. The physical force of this small district would prove but a poor defence against the aggression of large and powerful states. Happily our security is more amply provided for; it results from the command which has been given us over the sword and the purse of the union. Our protection is not in a mathematical line—which would oppose but a feeble resistance to an invading foe. But let gentlemen ask themselves why the inhabitants of this district should be less formidable if disposed to insurrection, because under our own jurisdiction? Look at Paris! was the insurrection of the 14 of July, which humbled into the dust the antient monarchy of France, the effect of a want of jurisdiction—of a want of power in the government over the lives and fortunes of the people? Did the city afford the government a defence? no, it was in insurrection. Did the military lend its aid?—on the contrary, it joined the insurgents. What was the fact at Philadelphia? That Congress was insulted by its own troops. Would the civil jurisdiction of the town have repelled the bayonet? No, it was not in parchment to afford this defence. It has left us an awful lesson against standing armies—and if we shall ever be so infatuated as to multiply armies about us, we may rely in vain on the lines of circumvallation which the limits of our exclusive jurisdiction form. The constitution therefore has failed in its endeavour to give to Congress any other security than that which public opinion and the command of the national resources afford.

But whilst I have no doubt on the subject of our constitutional right, I am opposed to the resolution on the ground of expediency. It appears to have disseminated a great alarm among the people of our immediate neighborhood—At a proper time, when greater unanimity can be obtained, it may be carried into effect. If now passed it is irrevocable, and I have no indisposition to give the question the most mature deliberation, and to give it a fair operation on the public mind. I could wish indeed to see the people within this district restored to their rights. Men in such a situation are, as it has been wisely and eloquently said, fit instruments to enslave their fellow men. This species of government is an experiment how far freemen can be reconciled to live without rights. An experiment dangerous to the liberties of these states. But inasmuch as it has been already made, inasmuch as I was not accessary to it, and as, at some future time, its deleterious effects may be arrested, I am disposed to vote against the resolutions. I view them as a fatal present to this house, although I respect the motives in which I believe them to have originated: as tending to disunite those who ought ever to act in concert—and I have no hesitation on a question of expediency to declare my disposition to concede something to the wishes and fears of those around me. In their present shape at least, I shall therefore vote against the resolutions.

Mr. Eustis was opposed to the resolutions for the reasons which had been stated and for other reasons not mentioned, though they might have occurred to the minds of gentlemen. He thought it right to express a difference of opinion with the gentleman from Virginia (Mr. Randolph) on an important question, the exclusive jurisdiction of Congress to the ten miles square. He was not prepared to pronounce the provision of the constitution on this subject deficient or unwise. It rather appeared to him to be founded in the nature of the government. A government on parchment and without force was no government at all. It had been stated that this provision grew out of a transaction at Philadelphia, and asked what dependance was to be placed on a military force when that force was itself the aggressor? But that transaction suggested a different result. Had the militia been well equipped and ready for service, and under the immediate control of congress, would the military force have been suffered to overawe them? This very case furnished an argument for investing Congress with the complete command of the militia force of the territory, to screen them from insult and to protect them from the application of force that might destroy deliberation. They had already taken a course calculated to prove the soundness of this mode of protection. Their laws had recognised the militia of the territory; and some measures had been taken to organise them. The militia was the physical force Congress must rely on. Suppose that militia were under the command of Maryland, and Congress was about to pass a law obnoxious to that state. Suppose the militia of Maryland to be mutinous, and to surround these walls. Must you resort to Maryland for protection and wait on her measures? No, the situation of the territory and your immediate power over the militia must furnish you with the means of protection. He, therefore, thought it one of the best provisions of the Constitution to submit the physical force near the government to its direction. The same reasons that give a command over the militia to the states apply to the federal government more strongly and dictate the propriety of the measure by a more imperious necessity. What has happened may happen again. Congress may chance to pass laws obnoxious to the states or the territory. He would ask if to day, they were about to pass such an obnoxious law, and there was no organised militia, where would be their protection? He hoped the government would give support to the system for organising the militia of the district, so that they may be an efficient and respectable protection: The principle on which the militia was founded was, as far as practicable, a sound one; it was a democratic principle, which put arms into the hands of every citizen, and placed him under the command of the federal government.

He acknowledged the difficulties of legislating for the territory. But it was a duty which they could not forego; until the government of the people was provided for in some other way, and that he thought should be by an internal legislature. As to the recession of the territory, it was impolite in point of time. He hoped that Congress would, before they rose, by some act shew that they were impressed with an obligation to make this the permanent seat of government. After this question was disposed of, he would lay some such resolution on the table.

Mr. Thatcher said he was not prepared to go fully into the subject, but he wished to add a few ideas to those which had been already expressed. He considered these resolutions as having a tendency to distract and obstruct the operations of business in the territory. Congress had experienced considerable inconveniences in this place; but they had been calculated upon when the government was removed; and he believed if similar questions had not been so frequently agitated, the accommodations of Congress would before this time have been much better. He hoped this would be the last time such resolutions would be offered. His colleague (Mr. Bacon) had suggested the expence and trouble of legislating for the district. As to expence he did not see any; and as to the trouble, the business was not managed in the best way. He understood that it was contemplated to give the citizens a local legislature to manage their own concerns.

But gentlemen say the people of the territory are now deprived of their rights. But this remark was extraordinary from a gentleman who had offered a resolution for transferring them like so many Polish or Russian serfs, without their consent.

Mr. Thatcher went at some length into the discusion, and coincided in opinion with the gentlemen who had preceded him in their opposition to the resolutions; and concluded with saying, that he was clearly of opinion that Congress ought not to recede the territory. He felt as greater personal inconvenience as well as his constituents from the distance of their residence, as any member on the floor, or his constituents could feel, But he pledged himself and his constituents, that however great those inconveniences, they would submit to them, in order that they might have a common capitol, and afford security to the government.

Mr. Claiborne spoke in favor of the resolutions.

Mr. Southard rose only to make one observation, which had been touched on but lightly in the course of the debate. It appeared to him that when Congress assumed the exclusive jurisdiction of the ten miles square they had in the first instance entered into a contract with the legislatures of Virginia and Maryland. He had no doubt that if the contract had ended here, they might with their consent make a recession. The second step, however, taken was a contract between the agents of government and the proprietors, in order to obtain the soil. This contract appeared to him to be solemn and binding. In entering into the contract, the proprietors gave the general government scites for the public buildings and half the residue of the land within the city plot. He conceived that this was a contract founded on express stipulations that Congress should exercise exclusive jurisdiction. The proprietors had no idea at the time they made the contract that their property would be receded; and the government had since received more than one million's worth of real property which they now enjoyed. He would ask whether a recession, under such circumstances, would not have a retrospective effect and impair those obligations which the United States were bound to observe. For this reason he thought a recession improper, as it would be a violation of contract with the people of the territory. It appeared to him that while they were satisfied the general government ought to be satisfied.

Various inconveniences had been stated to which the government was exposed; and the people of the territory had been represented as in a state of slavery. But he looked forward to the time, as not distant, when they would have the right of governing themselves through a territorial legislature; in which event there would be no time lost to the councils of the union.

The gentleman from Massachusetts (Mr. Bacon) has compared the proposed transfer to that of a little piece of soil for a turnpike road. But the cases were not parallel; as in the last instance there were no individuals to be transferred.

Mr. Southard had but one more observation to make. Such resolutions tended to destroy the confidence of the people in the government. When their proceedings fluctuated and became unstable, the government became unhinged, and the liberties of the nation ceased to be secure. From the tendency of these resoutions he did expect that before this time another resolution would have been brought forward, to remove the government. But he hoped these resolutions would be rejected by so decided a majority as to prevent the proposition of any similar ones.

Mr. Varnum called for the reading of the document alluded to, as he had never seen it.

Mr. Southard said he did not know that there was any such official document; but he had seen such a statement of the authenticity of which he entertained no doubt, and he presumed the gentleman was as well possessed of the facts as himself.

Mr. Varnum doubted the reality of the observation of the gentleman from New-Jersey. He suspected there was no such contract in existence. It was not the interest of the government of the United States to do any thing that would injure this district. He, therefore, supposed that every gentleman who voted on this occasion would act for the interest of his country. If he thought it possible for Congress to legislate for the territory, he should have no objection to retaining the jurisdiction. But when he considered that congress were appointed to legislate on great objects, and not on the minuted of local concerns, he did not think them competent to legislate for the persons situated in the territory of Columbia. He did not know whether, if the jurisdiction was retained, it would not be proper to indulge the citizens with a territorial legislature. But to this the people themselves object. Virginia objects to an union with Maryland. There were manifestly hostile interests which could not easily be united. And if there shall be a territorial legislature still congress has a right over their acts. Whether this was the fit time to recede the territory he did not know—but he believed the time would come when the citizens of the territory will be in favor of it.

It appeared to him that the ideas of his colleague (Mr. Eustis) respecting the militia ought to be repelled. He has said that, unprotected by physical force, Maryland or Virginia may bring a force against the government, and overawe it. Every man, however, knows that the whole militia of the United States are under the controul of the United States, and the President has now as full a command over the militia of Maryland and Virginia, as over the militia of Columbia. There was no difference between them, unless the militia of Columbia were to be used by the executive in cases where there was neither invasion or insurrection. How far they would be a proper instrument to carry particular plans of the executive into effect, gentlemen must determine for themselves.

Mr. Varnum did not know how true it was that the United States had received one, two, or three millions of dollars. But if it were so, it was so applied as not to render any use to the government. It was certain there were great piles of buildings erected; but every gentleman who looked through them will be of opinion that they would be more valuable if the materials of which they were composed were thrown down, than to remain as they now do. It was true that these buildings were in great part erected with money derived from the sale of lots; but it was also true that large sums had been granted from the treasury.

Look at the situation of the territory. There were three incorporate bodies.—But what was the situation of the other parts of the territory? Are they under any government at all? Do we not see too that the citizens of the incorporations are directly opposed to each other from their peculiar situation. From these inconveniences Mr. Varnum said he wished to relieve them; and he perceived no way so effectual as by a recession. He had no doubt of the constitutional power of Congress. But, still as the people are not willing to enjoy the benefits, in his opinion, to be derived from a recession, he was willing to wait until they were prepared for it.

Mr. *Bayard* and Mr. *Randolph* spoke a second time against the resolutions.

Mr. Smilie stated the circumstances of the case at Philadelphia which had been so often alluded to by gentlemen. At the close of the late war there had been a mutiny among the troops who had surrounded Congress. Not a drop of blood had however been spilt. This was the mighty incident of which so liberal a use had been made. He would ask whether in countries over which the government had complete jurisdiction, worse things had not happened. He would ask whether this menace of Congress were to be compared with the mob of Lord Gordon in a country over which the government had an entire jurisdiction.

The question was then taken on the first resolution, for receding to Virginia the territory originally attached to that state—and lost—Ayes 22.

When the question was taken on the 2nd resolution, and lost without a division.

The committee rose and reported their disagreement to the resolutions.

The House immediately took up their report.

Mr. Nicholson called for the yeas and nays.

Mr. Claiborne spoke in favor of the resolutions.

It was proposed to take the question upon both the resolutions together.

Mr. Dawson moved to divide the question. He said he should vote for the 1st resolution that receded to Virginia that portion of territory originally attached to her; and for the second, with the exception of the City of Washington, which he thought ought to be reserved.

Mr. Elmendorf observed that of the constitutional power of Congress to recede the territory he entertained no doubt. He, therefore, viewed the present question as a question of expediency; and, in this view he could not conceive how a single gentleman could conceive it expedient to continue to legislate for a people who were not represented.

Mr. Randolph said, as he believed the house incompetent to legislate for the people of Columbia; as he believed the interests of the several parts of the territory were as hostile as any in the union, as it was manifest there was an Alexandria, a George Town, and a City interest; and even within the city, a Capitol hill interest, and a President's house interest—which were irreconcila-