

# THE MINERVA.

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## Congress.

HOUSE OF REPRESENTATIVES.

Wednesday, February 18.

DEBATE

On the resolution of Mr. Broom.

Mr. Elliot's Speech continued

It is obvious that most of the privileges granted to be secured by these articles to our citizens, have recently been denied to them, at the point of the bayonet, and under circumstances of peculiar violence. It may indeed be said that the privilege of the writ of habeas corpus was not denied in the first instance; that it could not be said to be suspended until the injured persons were placed in a situation which entitled them to demand it from the judicial power of the country. It is true that notwithstanding *inter arma silent leges*, although the laws were silent amid the clang of arms, and although a thousand terms hovered around those who dared to exercise their professional duties in support of the constitutional rights of the citizen, a writ of habeas corpus was claimed and obtained; and I had supposed that the very singular return which is said to have been made to the writ, was placed on our official files. On searching them, however, I do not discover it; but it has been published in a late newspaper, and a copy of it is now before me, which I will read.

The undersigned, commanding the army of the United States, takes on himself all responsibility for the arrest of Dr. Erick Bollman, on a charge of misprision of treason against the United States, and has adopted measures for his safe delivery to the executive of the United States. It was a series of consultations with the governor and two of the judges of this territory, that the undersigned has hazarded this step for the national safety menaced to its base by a lawless band of traitors associated under Aaron Burr, whose accomplices are extended from New-York to this city. No man can hold in higher reverence the civil institutions of his country than the undersigned, and it is to maintain and perpetuate the holy attributes of the constitution, against the polluted band of violence, that he has imposed the force of arms in a moment of extreme peril, to seize upon Bollman and to hold upon all others, without regard to standing or station, against whom satisfactory proofs may arise of a participation in the lawless combination.

JAMES WILKINSON.

Head Quarters,

Army of the United States,

New-Orleans, Dec. 17, 1806.

Here is a return, not of disobedience to the laws, and high reverence for civil institutions, but of disobedience and defiance. The constitution is violated in order to preserve it inviolate! Prostrated in the dust by military power, for the purpose of maintaining and perpetuating its holy attributes! And what great national object is accomplished by such extraordinary measures? What necessity could exist of raising one or two wandering conspirators, and transporting them fifteen hundred or two thousand miles from the constitutional scene of inquisition and trial, to place them particularly under the eye of the national government, when, if the opinion of the officer himself was correct, it would immediately become the duty of that government to suffer them to go at large? In regard to one of them, the general was uncertain whether he had committed a major or a minor crime; and the other he explicitly pronounced, as we learn from our official documents, guilty of misprision of treason, in all events a bailable offence. He says, "From the documents in my possession and the several communications, verbal as well as written, from the said Dr. Erick Bollman, on this subject, I feel no hesitation in declaring, under the solemn obligation of an oath, that he has committed misprision of treason against the U. States." Surely it is desirable to provide against the recurrence of scenes of this description.— Shall it be admitted that the whim, the caprice, the passion, or the ambition of a martial chief, may supersede at will the most important checks and safeguards of the constitution?

But on this occasion the tocsin of party is sounded, and around the banners of party we must rally, or subject ourselves to the denunciation. I am not the champion of democracy, of federalism, or of any set or set of men; but I am, what every member of this house is bound by oath to

be, the champion of the constitution of my country—a constitution unnecessarily assailed and rudely violated. While that proud edifice shall occupy its present situation, I will place myself before its walls, and face the foe, whether that foe shall be a Burr or any other military usurper: I will lean against its noble pillars, and, if it be destined to sink beneath the shock, perish, amid the sublime ruin! On a question like the present, the minor interests of party should sleep. At any rate it must be suspected that there is a snake in the grass—*latet anguis in herba*, a secret spirit of dissatisfaction with the administration of the national government, must be supposed to exist and to operate. Why so? has the government avowed its approbation of its military chief? For me, I acquit the administration. The general has taken upon himself the responsibility attached to his conduct, and upon his shoulders let it rest. It is time, however, to be explicit upon this subject. I concede to the administration, integrity and general ability, but do not agree to the ascription to it of that infallibility and perfection, the belief of which constitutes, at the present moment, the criterion of exclusive republicanism. In truth, I have heard so much of the virtue, the patriotism, and the perfect wisdom of the present administration that I am not anxious to hear much more upon the subject. As I surround myself with no equivocations, as I envelope myself with no disguises, I openly and frankly declare that I am becoming a little sceptical. It may be as dangerous to wander in the wilds of political as in those of religious scepticism, but I must take the course pointed out by duty, and risk the consequences.

We must at least be suspected of being envious of the fame, or hostile to the character of general Wilkinson. To that officer I have once stood in the relation in which a soldier stands to his general; in that situation I was his friend, and even his partisan? and I have always considered him as possessing considerable military merit. I will admit, also, that in the present instance he has acted without corruption, and was only been more rash and arbitrary in his conduct, than a man of more prudence and reflection would have been. But I think I have heard a hint that it may turn out he is entitled to a statue of gold. Let me warn gentlemen not to commit themselves in favor of such a proposition. Let them wait the course of events, and prepare themselves for disclosures, which, if I am not mistaken, will convince every one that such a measure would at least be extremely improper. Whatever rumors may have reached us this morning from the western world, I should have held a very decided language upon this subject yesterday. If there is to be a golden statue in the case, I should prefer giving it to the gentleman from Delaware, who has drawn our attention to the present subject of discussion; as the agitator, however, of a subject, the agitation of which was extremely desirable, and, in my apprehension, indispensably necessary, he is undoubtedly sufficiently rewarded by the conspicuousness of having performed what he deemed his duty. Again and again I warn gentlemen to abandon the idea of a statue of gold. From the same quarter we are told that the *salus populi* may have required and may justify the *lex suprema* of military despotism.— This doctrine is unknown to the constitution. That sacred record of our rights proclaims itself and itself alone (and the people, when they adopted it, ratified the decree) the *lex suprema*, the "supreme law of the land." It acknowledges no superior. It contemplates no case in which the law of arms can erect a throne upon its ruins.

Again, we must be prepared for the insinuation that we countenance treason, and sympathize with traitors. It is surely wrong at this time to make our walls echo and re-echo, and the winds around us sing the charge of treason. *Sub judice lis est*. Let the courts decide. I have not seen "one jot or tittle" of evidence to prove the unfortunate persons now in confinement guilty of treason. Probably they may have been guilty of a misprision, or mere knowledge of a meditated treason; and at all events their conduct has been such as to require years of sincere repentance, to restore them to the confidence of society and their country. But upon general principles, without reference to any particular case, I hope that the resolution, which only contemplates the appointment of a committee, for the purpose of inquiry, will not, by any side way

operation, be defeated and destroyed.

Mr. Sloan. Like the gentleman from Vermont who has just sat down, I had a great desire yesterday to express a few words on the motion before the house, but I was not able to get a chance to address the house at that time. I must now beg leave to detain the house some time longer than would have been necessary then, in consequence of the lengthy speech we have heard from the gentleman from Vermont. That gentleman has said he will not only protect the constitution, but if it must die, he is willing to perish in its ruins. That gentleman I expect alluded to ancient times, as he often does in his learned way; when he made that figure, he alluded, I expect, to the case of Sampson, who after the loss of his sight also perished in the ruins of the destruction which he had made.

I beg leave to ask whether this gentleman's sight does not also begin to be dimmed as Sampson's was. He says he begins to doubt the wisdom of our present administration, and the wise measures they pursue. I expect the sight of that gentleman is not only dim, but I'm afraid he will be soon perfectly blind.

Some time ago, the gentleman from Vermont exhibited a scene of *prolificancy* which was never before paralleled in this house. He brought forth nine resolutions at once, and preaced them by a long speech like that we have heard to day, in which he attempted to excite to this house the danger in which we stood with foreign powers.

Those resolutions brought up to my mind, the recollection of a fable which I once read when I was young. It was in a book which I beg leave to recommend to the gentleman from Vermont, if he has never read it. The book I mean is *Aesop's Fables*.—There is the story of a conversation between a fox and a lioness. The fox boasted of her great *prolificancy*, and reproached the lioness for bringing only one at a time. The lioness replied, that she indeed bore but one at a time, but that one was a lion.

After making these observations Mr. S. begged leave to consider the merits of the question. I consider it, said he, as highly improper at this time. Whether it would be proper at any future time I don't pretend to say. It is likely that prosecutions will be commenced against general Wilkinson. And will not this house show as much candour as the editors of newspapers who say nothing on criminals left for trial lest there should be a bias made on the public mind. No person can candidly say that general Wilkinson ought not to have deprived these men of liberty to prevent their treason and the destruction they meant against these United States.

Why such sympathy for these persons? In what circumstances were they taken? Were they taken from their homes and their firesides and denied the *habeas corpus* for some months as has been in former cases, which, compared to this, were only as a drop to the bucket. These men were taken in the act of treason or misprision of treason, against these United States. We ought to wait till we know further into the matter before we decide.

Is any member so lost to humanity in this house as to reprobate the conduct of the executive or of general Wilkinson in this matter? The former insurrections compared to this, was more properly oppositions to government, oppositions to obnoxious and unjust laws, which have been since repealed, and are now justly consigned to eternal infamy.

The matter rests solely on two plain questions. The first is, was the confinement of these persons necessary? And second, was the civil authority adequate to their safe keeping? It is plain their confinement was necessary, and as to the second question, it appears from the affidavit of general Wilkinson, that Ogden, one of the conspirators, was released by *habeas corpus* after being confined.

If a force of 6000 men had come against New-Orleans as the general expected, and he had not arrested and sent these persons away, and they had been released by Burr after capturing the city, these persons whom we see on this floor to have so much sympathy, would be the first to charge general Wilkinson with a neglect of duty. I have no doubt but this would be the case.

I consider the conduct of general Wilkinson not only justifiable but highly commendable, and I am astonished that any should withhold the tribute so justly due. I would say: Well done thou good and

faithful servant, thou hast deserved well of thy country.

Mr. S. made sundry observations relative to the faculties of man compared with those of the deity in going from parts to the whole from the whole to parts, and quoted some lines from Pope's Essay on Man which he read from a bit of paper in his hand. Mr. Sloan then concluded by politely observing that he hoped the gentleman from Delaware had had a good rest and comfortable sleep the last night after his long speech of yesterday.

Mr. J. Randolph introduced his speech in favor of the resolution by observing that he understood the question before the house to be, whether they would refer to a committee of the whole a motion proposing an inquiry whether further legal provision be not necessary to prevent violations of the writ of habeas corpus.

How long it had been the fashion to debate the merits of a subject on a simple motion to commit, it was not material to inquire. He believed it had commenced the present session.

Mr. R. supposed the object of the mover of the resolution in referring it to a committee of the whole was to obtain discussion. As that had already been had abundantly, and as the session would soon close, he suggested the propriety of varying the motion and referring the resolution in the first instance to a select committee, who might immediately consider the subject and report a bill. Were the resolution to go to a committee of the whole he feared it would never get through.

Mr. R. then observed that he would proceed to answer some objections which had been yesterday offered against the resolution, and state the reasons which induced him to support it, come from whom it may. The first objection which he heard was the quarter whence the resolution came. Permit me, said Mr. R. to remind the house that if those who have been called into public life on account of their professed attachment to correct principles, ever quit the ground of trial by jury, the liberty of the press, and the subordination of the military to the civil authority, they must expect that their enemies will perceive the desertion and avail themselves of the advantage. Can they who thus desert their old principles, blame others for assuming the popular ground which they have abandoned? Whoever stands forward in defence of the constitution, and the rights of the people, shall have my support *quoad hoc*.

An objection was taken by the gentleman from Georgia [Mr. Early] on the ground of time. It was said that this is an improper time to consider the subject contemplated by the resolution. Sir, this is no new discovery. The question of parliamentary reform has been 30 years agitated in England and the right time has never arrived to consider the subject, and probably never will arrive.

I also understood him to say—[Here Mr. Early interrupted Mr. Randolph and begged leave to explain. Mr. R. said he was confident that he understood the gentleman right. However he at length sat down, and Mr. E. stated that his objection was that the house had not sufficient time this session to finish an investigation into the subject and that therefore it had better not be attempted.] Mr. R. proceeded. I understood the gentleman perfectly before, and he would have found it so if he had had patience to hear me out. He urged two objections on the ground of time: 1st. that we had not sufficient time this session to consider the subject fully; and 2dly. that the present time was improper because the subject of habeas corpus was under consideration in the court below. [Mr. R. here either was or affected to be a little confused.] He was sorry for the interruption. To prevent it in future, he would mention no gentleman by name, and he hoped he should not be again interrupted. A gentleman has said that the house have no official information before them relative to any violation of the privilege of the writ of habeas corpus. I will not refer to that gentleman by name, but the gentleman from Georgia [Mr. Early] will enable me to tell who is referred to.

We have now on our tables official information from the President of the United States, that the privilege of the writ of habeas corpus has been denied and the constitution violated. And will you attend to reports from your committees of claims, of commerce and manufactures, of ways