

criminal jurisdiction. It is sometimes used in contradistinction to *military* or *ecclesiastical*, to *natural* or *foreign*. Thus, we speak of a civil station, as opposed to a military or ecclesiastical station; a civil death, as opposed to a natural death; a civil war, as opposed to a foreign war. The sense, in which the term is used in the constitution, seems to be in contradistinction to *military*, to indicate the rights and duties relating to citizens generally, in contradistinction to those of persons engaged in the land or naval service of the government. It is in this sense, that Blackstone speaks of the laity in England, as divided into three distinct states; the civil, the military, and the maritime; the two latter embracing the land and naval forces of the government.¹ And in the same sense the expenses of the civil list of officers are spoken of, in contradistinction to those of the army and navy.²

§ 790. All officers of the United States, therefore, who hold their appointments under the national government, whether their duties are executive or judicial, in the highest or in the lowest departments of the government, with the exception of officers in the army and navy, are properly civil officers within the meaning of the constitution, and liable to impeachment.³ The reason for excepting military and naval officers is, that they are subject to trial and punishment according to a peculiar military code, the laws, rules, and usages of war. The very nature and efficiency of military duties and discipline require this summary and exclusive jurisdiction; and the promptitude of its operations are not only better suited to the notions of military men;

¹ 1 Black. Comm. 396, 408, 417; De Lolme, B. 2, ch. 17, p. 446.

² 1 Black. Comm. 332.

³ Rawle on the Constitution, ch. 22, p. 213.

but they deem their honour and their reputation more safe in the hands of their brother officers, than in any merely civil tribunal. Indeed, in military and naval affairs it is quite clear, that the senate could scarcely possess competent knowledge or experience to decide upon the acts of military men ; so much are these acts to be governed by mere usage, and custom, by military discipline, and military discretion, that the constitution has wisely committed the whole trust to the decision of courts-martial.

§ 791. A question arose upon an impeachment before the senate in 1799, whether a senator was a civil officer of the United States, within the purview of the constitution ; and it was decided by the senate, that he was not ;¹ and the like principle must apply to the members of the house of representatives. This decision, upon which the senate itself was greatly divided, seems not to have been quite satisfactory (as it may be gathered) to the minds of some learned commentators.² The reasoning, by which it was sustained in the senate, does not appear, their deliberations having been private. But it was probably held, that "civil officers of the United States" meant such, as derived their appointment from, and under the national government, and not those persons, who, though members of the government, derived their appointment from the states, or the people of the states. In this view, the enumeration of the president and vice president, as impeachable officers, was indispensable ; for they derive, or may derive, their

¹ The decision was made by a vote of 14 against 11. See Senate Journal, 10 January, 1799 ; 4 Tuck. Black. Comm. App. 57, 58 ; Rawle on Const. ch. 22, p. 213, 214.

² 4 Tuck. Black. Comm. App. 57, 58 ; Rawle on the Const. ch. 22, p. 213, 214, 218, 219.

office from a source paramount to the national government. And the clause of the constitution, now under consideration, does not even affect to consider them officers of the United States. It says, "the president, vice-president, and *all civil officers* (not all *other* civil officers) shall be removed," &c. The language of the clause, therefore, would rather lead to the conclusion, that they were enumerated, as contradistinguished from, rather than as included in the description of, civil officers of the United States. Other clauses of the constitution would seem to favour the same result; particularly the clause, respecting appointment of officers of the United States by the executive, who is to "commission all the officers of the United States;" and the 6th section of the first article, which declares, that "no person, *holding any office under the United States*, shall be a member of either house during *his continuance in office*;" and the first section of the second article, which declares, that "no senator or representative, or *person holding an office of trust or profit* under the United States, shall be appointed an elector."¹ It is far from being certain, that the convention itself ever contemplated, that senators or representatives should be subjected to impeachment;² and it is very far from being clear, that such a subjection would have been either politic or desirable.

§ 792. The reasoning of the Federalist on this subject, in answer to some objections to vesting the trial of impeachments in the senate, does not lead to the conclusion, that the learned author thought the senators liable to impeachment. Some parts of it would rather

¹ See Blount's Trial, p. 34, 35; Id. 49, 50, 51, 52.

² But see South-Carolina Debates on the Constitution, January, 1788, (printed in Charleston, 1831,) p. 11, 12, 13.