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From the National Intelligencer.

TO PATRICK HENRY.

Having now established, I may venture to say beyond the possibility of reasonable controversy, that the idea of an inherent right in the Vice President, independent of, and beyond, the will of the Senate, to control the freedom of debate, is neither sanctioned by the Constitution, nor justified by the relation between the body and its presiding officer, and that it is subversive of the right of free discussion, and consequently dangerous to liberty, I might here fairly rest the question. To you, at least, who treat with scorn the rules and usage of the Senate as the source of the power of the Vice President, all further inquiry is fairly closed. But, as many, who may agree with you in the conclusion, may treat with contempt your high strained conception of the origin of the power under investigation, I will not be improper to ascertain whether it has been conferred on the Vice President by any act of the Senate, express or implied, the only source whence the power can be fairly derived. In this view of the subject, the simple inquiry is, Has the Senate conferred the power? It has been fully established, that they alone possess it, and, consequently, from the Senate only can it be derived. We then affirm, that the Senate has not conferred the power. The assertion of the negative in such cases, is sufficient to throw the burden of proof on those who hold the affirmative. I call on you, then, or any of your associates, to point out the rule, or the usage of the Senate, by which the power has been conferred. None such has or can be designated. If a similar question be asked as to the power of the Speaker of the House of Representatives, how easy would be the reply. The 19th rule, which expressly gives the power to him, would be immediately quoted, and if that were supposed to be doubtful, the journals of the House would be held up as containing innumerable instances of the actual exercise of the power. No such answer can be given, when we turn to the power of the Vice President. The rules are mute, and the journals of the Senate silent. What means this striking difference, but that, on this point, there is a difference in fact between the power of the Speaker, and of the V. President?—A difference which has been always understood and acted on; and when to this we add that the rules of the two Houses in regard to the power are strikingly different; that while those of the Representatives expressly delegate the power to the Speaker, those of the Senate, by strong implication, withhold it from the Vice President, little room can be left for doubt. Compare, in this view, the 19th rule of the House, and the 7th of the Senate. The former says, "If any member, by speaking, or otherwise, transgress the rules of the House, the Speaker shall, or any member may, call to order; in which case the member so called to order, shall immediately sit down, unless permitted to explain; and the House shall, if appealed to, decide on the case without debate; if there be no appeal, the decision of the Chair shall be submitted to. If the decision be in favor of the member called to order, he shall be at liberty to proceed; if otherwise, he will not be permitted to proceed without leave of the House; and if the case require it, he shall be liable to the censure of the House." The rule of the Senate, on the contrary, provides, "If the member shall be called to order for words spoken, the exceptional words shall immediately be taken down in writing, that the President may be better enabled to judge of the matter." These are the corresponding rules of the two Houses, and can any impartial mind contend, that similar powers are intended to be conferred by them on the Speaker and Vice President? Or will it be insisted on that the difference in the phrasing is accidental, when it is known that they have often been revised on the reports of committees, who would not fail to compare the rules of the two Houses on corresponding subjects? Under such circumstances, it is impossible that it could be intended to confer the same power by such difference of phraseology; or that the withholding of the power in question from the Vice President was unintentional. This national construction is greatly strengthened, when we advert to the different relations which the two officers bear to their respective Houses. The Speaker is chosen by the House of Representatives, and is consequently directly responsible to the body; and his decision, by the rules, may be appealed from to the House. The Vice President, on the contrary, is placed in the chair by the Constitution, is not responsible to the Senate, and his decision is without appeal. Need we look further for the reason of so essential a variation in the rules conferring power on their respective presiding officers? It is a remarkable fact, that the same difference exists in the relation between the presiding officers of the two Houses of the British Parliament, and the bodies over which they respectively preside. In the Commons, the Speaker is chosen in our House of Representatives, and is, consequently, in like manner responsible, on the contrary, in the House of Lords, the Chancellor presides ex officio, in like manner as the Vice President in the Senate, and is, in like manner, irresponsible to the body. Now it is no less remarkable, that the Speaker possesses the power in question, while it is perfectly certain, that the Lord Chancellor does not. Like cause, like effect, dissimilar effect. You, sir, have, it is true, made a puny effort to draw a distinction between the mode in which the Vice President and the Lord Chancellor are appointed; and have also denied that the latter has not the

power of calling to order. Both of these efforts show the desperation of your cause. What does it signify by whom an ex officio officer is appointed, if not by the body? These can be but one material point, and that without reference to the mode of appointment, is he, or is he not, responsible to the House? If the former, there is good cause for the delegation of the power, for substantially exercised by responsible agents is the power of him by whom it is exercised. Nor is your effort to show that the Chancellor has the power, less unhappy. You have cited but one instance, and that really renders you ridiculous. The Lord Chancellor, as is well known, has the right of speaking, and you most absurdly cite the commencement of a speech of one of the chancellors in which he states, that he would call back the attention of the Lords to the question at issue, as an instance of exercising the power of calling to order, as presiding officer, for departure from the question! Though you have signally failed to prove your position, you have not less completely established the fact, that your integrity is not above a resort to trick, where argument fails. Nor is this the only instance of subterfuge. You made a similar effort to do away the authority of the venerable Jefferson. He has left on record that he considered his power as presiding officer of the Senate, as the power by which he was called to order, and that he attempted to afix one to it, which it never bears. You say, that its usual meaning is synonymous with "office," "authority," or "the act of determining," and that it is only in its technical sense, that it conveys the idea of an appellate power. Can it be unknown to you, that no word in the language more invariably has attached to it the idea of decision by appeal, and that there is not an instance of its being used by any respectable authority in the sense which you state to be its usual meaning? It only remains to consider the cases that you have cited from the Manual, to prove that the Speaker of the House of Commons possesses the power in question; by which you would infer that it belongs also to the Vice President. A very strange deduction by one who believes that the power originates in the Constitution, and that it neither can be given or taken away by the authority of the Senate itself. After asserting that it has "deeper and halier foundations than the rules and usages of the Senate," there is something more than ridiculous, that you at last seek for the power in the rules and usages of the House of Commons! But let such inconsistency pass. You have indeed established the fact, that the Speaker has the power; but you have overlooked the material circumstance, as I have shown from your own cases, that he possesses it by positive rules of the House. You might as well have shown, that the Speaker of the House of Representatives possesses it, and then inferred that the Vice President does also; for he, too, holds the power by positive rules of the body, which makes the analogy as strong in the one case as the other. But you would have it understood, that the rules of Parliament have been adopted by the Senate. No such thing. I challenge you to cite a single rule or act of the Senate that gives countenance to it. Finally, you tell us, that Mr. Jefferson has cited these rules as being part of the rules and usages of the Senate. Admitting for a moment that Mr. Jefferson had cited them as such, still, a very important question would arise, how came they to be the rules of the Senate? The Constitution provides, that the Senate shall determine the rules of its proceedings; now, if that body has not by any rule, adopted the rules of the British Parliament, by what process of reason could they be construed to be the rules of the Senate? That the Senate has not adopted the rules of Parliament is certain; and I confess I am not a little curious to see the process of reasoning by which they are made the rules of the Senate, without adoption. Is there not a striking analogy between this and the question, whether the common law is not a part of the laws of the Union? We know that they have been decided by the highest judicial authority not to be; and it seems to me, the arguments, which would be applicable to the one, would be equally so to the other question. That the rules and usages of Parliament may be referred to, to illustrate the rules of either House of Congress is quite admitted. Arguments may be drawn from any source calculated to illustrate, but that is wholly different from giving to the rules of another body a binding force on the Senate, without ever having been recognized as its rules. This is a subject of deep and grave importance; but, as it is not necessary to my purpose, I decline entering on it. It is sufficient, at present, to deny that Mr. Jefferson has cited the rules of the Parliament referred to by you as those of the Senate. On the contrary, they are expressly cited as the rules of the British House of Commons, without stating them to be obligatory on the Senate. He has notoriously cited many of the rules of that body, which are wholly dissimilar from the usages of the Senate. But you cite Mr. Jefferson's opinion, in which he says, "The Senate have accordingly formed some rules for its government;" (they have been much enlarged since,) "but these going only to a few cases, they have referred to the decision of the President without debate or appeal all questions of order arising under their own rules; or where there is none. This places under the discretion of the President a very extensive field of decision." If your object in quoting the above passage was to show that, where the Senate has adopted no rule of its own, the rules of Parliament are those of the Senate, it completely fails. Not the slightest countenance is given to such an idea. Mr. Jefferson, on the contrary, says, that in cases of omission, the source of authority of the President is the rule; and such has

been the practice; and from which it has followed, that usages of the Senate are very different from the Parliament, which could not be, if the latter were adopted, where there were no positive rules by the Senate. If this view of the subject be correct, which is certainly Mr. Jefferson's, the Vice President had the right to make the rule by exercising a sound discretion; and the only question that could arise in this view is, whether he has acted on correct principles in referring the power to the House, instead of exercising it by the Chair. So long as doubtful and irresponsible power, or if not to be assumed, so long as the freedom of debate is essential to liberty, and so long as it is an axiom in politics, that no power can be safe but what is in the final control and custody of the body over which it is exercised, so long the rule (to view it in that light) adopted by the Vice President, will be considered in conformity to sound, general, political principles. But, suppose it to be conceived that the rules of Parliament are those of the Senate, when not overruled by its own positive acts, still two questions would remain first, whether the 7th rule of the Senate, by a sound construction, does not restrain the Vice President from exercising the power, by limiting it to the members of the Senate? And, secondly, whether the practice of the House of Lords, or that of the Commons, ought, in this particular, to prevail? Both of those points have already been incidentally considered, and a single remark will now suffice. Whether we regard the nature of the power, or the principles of our system of government, there can be no doubt that the decision ought to be against the practice of the House of Commons, and in favor of that of the House of Lords. It may not be improper to notice an opinion, which, if I mistake not, has, in no small degree, contributed to the error which exists as to the decision of the Vice President. There are many who are far from agreeing with your absurd and dangerous positions, as to the inherent powers of the Vice President over the freedom of debate, but who have, I think, a vague conception that he has the right in dispute, as presiding officer, but a right subordinate to, and dependent on, the Senate. They concede to the Senate the right of determining their rules, and that this right comprehends that of determining what is or what is not disorderly conduct, and how the same shall be noticed, or inhibited; but they have an idea that the ex officio duty of the Vice President to regulate the proceedings of the Senate according to their own rules, extends to cases of the freedom of debate. The amount of the argument, as far as I can understand it, is, that, where there is a rule of the Senate, the Vice President has, ex officio, the power of regulating the proceedings of the Senate by it, without any express authority in the rule to that effect. All this may be fairly conceded, but it decides nothing. It brings back the question to the inquiry, is there, or is there not such a rule which has been fully considered, and I trust, satisfactorily determined in the negative. I will not again repeat the arguments on this point. I do not deem it necessary. It is sufficient to remark, if there be a rule, let it be shown, and the question is at an end. There is none. As connected with this part of the subject, I do not think it necessary to meet the ridiculous charge of inconsistency which you make against the Vice President in the exercise of his power, and which you endeavor to support by reference to the stale and false accounts of his conduct in the case of Mr. Dickerson. It is sufficient that Mr. D. has repelled the charge of injustice, and you exhibit but a sorry and factious appearance in defending a Senator from oppression, who is not conscious of any injustice having been inflicted. Having demonstrated that the powers which you claim for the Vice President do not belong to him as presiding officer of the Senate, and that they are not conferred on him by the rules or usages of the Senate, or those of Parliament, I may safely affirm that it does not exist, and that, so far from censure, Mr. Calhoun deserves praise for declining to exercise it. He has acted in the spirit that ought to actuate every virtuous public functionary: not to assume doubtful powers—a spirit, under our systems of delegated authority, essential to the preservation of liberty, and for being guided by which, he will receive the thanks of the country when the excitement of the day has passed away. I have now completed what may be considered the investigation of the subject; but there are still several of your remarks that require notice. You have not only attacked the decision of Mr. Calhoun, but you have impugned his motives with licentious severity. The corrupt are the most disposed to attribute corruption, and your unprovoked and unjustifiable attack on Mr. C's motives speak as little in favor of your heart as your arguments do of your head. Fortunately for the Vice President, his general character for virtue and patriotism shield him from the imputation of such gross abuse of power, from such impure motives, as you attribute to him. He could not decide differently from what he did, without being at war with the principles which have ever governed him. It is well known to all acquainted with him, publicly or privately, that the maxim which he holds in the highest veneration, and which he regards as the foundation of our whole system of government, is, that power should be controlled by the body over which it is exercised, and that, without such responsibility, all delegated power would speedily become corrupt. Whether he is wrong in giving too high an estimate to this favorite maxim, is immaterial. It is, and long has been, his; and could not fail in having great influence in the decision, which you have so seriously assailed. Had his principles been like yours, as illustrated in your Essay, it is possible he might have taken a different view of the subject; but, as he had differed in conformity to principles long fixed in his mind, there is something malignant in the extreme, to attribute his decision to motives of personal en-

ity. You scarcely attack Mr. C's motives for this decision, but also his motive for the constitution of the Committee of Foreign Relations.—You think it a crime in him, that the venerable and patriotic Mason should be placed at the head of the Committee. I will neither defend him nor the other members of the Committee. They need no defence, but I cannot but remark, that the election of Mr. Mason President pro tem, of the Senate, is a singular comment on your malignant attack on the Vice President. It would have been impossible that you should steer clear of the cast of your party, and we accordingly have a profusion of vague charges about Mr. Calhoun's ambition. The lowest and most mercenary hiring can easily coin such charges, and while they deal in the general, without a single specification, it is utterly impossible to meet or refute them; but, fortunately, they go for nothing on the part of those who make them, they evince an envious, morbid mind, which, having no real ground of attack, indulges in vague unmeaning abuse. It is highly honorable to Mr. C. that, in the midst of so much political enmity, his personal and public character stands free from all but one specific charge; which is that he has inclined, in his present station, too much against his own power, and too much in favor of the inalienable rights of the freedom of debate. That he has been indefatigable in the discharge of his duty, that he has been courteous to the members, and prompt and intelligent, all acknowledge. Not a moment was he absent from his post during a long and laborious session, and often remained in the chair, without leaving it, from 8 to 12 hours. He has, however, committed one unpardonable sin, which blots out all. He did not stop Mr. Randolph. This is the head and front of his offending. And who is Mr. Randolph? Is he, or his manners, a stranger in our national councils? For more than a quarter of a century he has been a member of Congress, and during the whole time, his character has remained unchanged. Highly talented, eloquent, severe, and eccentric; always wandering from the question, but often uttering wisdom worthy of a Bacon, and wit that would not discredit a Sheridan, every Speaker had freely indulged him in his peculiar manner, and that without responsibility or censure; and none more freely than the present Sec. of State, while he presided in the House of Representatives. He is elected, with a knowledge of all this, by the ancient and renowned Commonwealth of Virginia, and takes his seat in the Senate. An immediate outcry is made against the Vice President for permitting him, who had been so long permitted, by so many Speakers, to exercise his usual freedom of discussion; though in no respects were his attacks on the Administration freer than what they had been on those of Mr. Jefferson, Mr. Madison, and Mr. Monroe. Who can doubt, if Mr. Calhoun had yielded to this clamor, that the whole current would have turned, and that he would then have been more severely denounced for what would have been called his tyranny and usurpation, than he has been for refusing to interfere with the freedom of debate? His authority would have been denied, and properly denied; the fact, that Mr. R. had been permitted by all other presiding officers, for so long a time, to speak without restraint, would have been dwelt on; and the injustice done to the State, and the insult offered to the State that sent him, would have been painted in the most lively colors. These considerations, we are satisfied, had no weight with the Vice President. Those who know him, know that no man is more regardless of consequences in the discharge of his duty; but that the attack on him is personal, in order to shake his political standing, and prostrate his character; is clearly evinced by every circumstance; and, with this object, that he would have been assaulted, act as he might, is most certain. It is for the American People to determine, whether this conspiracy against a public servant, whose only fault is, that he has chosen the side of liberty, rather than of power, and whose highest crime consists in a reverential regard for the freedom of debate, shall succeed.

ON SLOW. The following observations comprise the Decision of the Vice President on the subject which gave rise to the preceding Essays, delivered at the conclusion of the Debate. The Vice President rose, and said he trusted that the Senate would indulge him in making a few observations before he resumed his seat, as the debate on the subject just decided had relation necessarily to the duties of the Chair. No one, more than myself, said the Vice President, can be more deeply impressed with the great truth, that the preservation of rights depends, mainly, on their exercise. That nation deserved to conquer the world, which called its army exercitus; and so will the nation deserve that its liberty shall be immortal, which lays the foundation of its system of Government on the great principles, that no power ought to be delegated which can be fairly exercised by the constituent body, and that none ought ever to be delegated but to responsible agents. These have been my maxims through the whole of my political life, and I should be inconsistent with myself if I did not give my entire assent to the principles on which the rules in question have been rescinded. I trust, said he, that it never will be the ambition of him, whose lot it is now to occupy this Chair, to enlarge its powers. My ambition, I hope, pursues a different direction—not to enlarge powers, but to discharge, with industry, fidelity, and firmness, the duties which may be imposed on me. Thus feeling, I shall witness, with pleasure, the resumption of all the powers which can be properly exercised by the Senate, as they will be then placed, where alone they can be with perfect safety. From the direction which the rules in some degree, took, as well as from what has been said without these walls, it becomes, on this occasion, proper that I should state, for the information of this body, the construction that the chair has put on the 6th and 7th rules of the Senate. They are in the following words: "When a member shall be called to order, he shall sit down, until the President shall have determined whether he is in order or not; and every question of order shall be decided by the President, without debate; but if there be a doubt in his mind, he may call for the sense of the Senate." You see, you see, until the President shall have determined whether he is in order or not; and every question of order shall be decided by the President, without debate; but if there be a doubt in his mind, he may call for the sense of the Senate. If the member be called to order for words spoken, the exceptional words shall immediately be taken down in writing, that the President may be better enabled to judge of the matter." The Chair, said the Vice President, has bestowed its most deliberate and anxious attention, by night and by day, on the question of the extent of its powers, under a correct construction of these rules, and has settled in the conviction, that the right to call to order, on questions touching the latitude or freedom of debate, belongs exclusively to the members of this body, and not to the Chair. The power of the Presiding officer, on these great points, is an appellate power only, and consequently, the duties of the Chair commence when a Senator is called to order by a Senator. Whenever such a call shall be made, the Chair will not be found unprepared to discharge its only functions in such a case—that of deciding on the point of order submitted. What the opinion of the presiding officer is in relation to the freedom of debate, in this body, it will be time to declare, when a question may be presented; but, such as it is, it will be firmly, and, I trust, I may add, fearlessly maintained. But, I reiterate that the rules of the Senate, on a point so important, give to the Chair no original power, and that it can exercise no control till called on by the Senate itself. It was right in itself, he said, in strict conformity to the principles which had guided the Senate in the vote just taken—that as high a power should be placed only in the custody of the body. The Vice President said he prided himself on his connection with the Senate; but it was impossible that he should forget that that connection was created by the operation of the Constitution. In discharging his duty in this seat, it would be unpardonable in him not to recollect, that he was placed in the Chair, not by the voice of the Senate, but by that of the People; and that to them, and not to this body, he was ultimately responsible. Standing in the relation he did to the Senate, he had laid it down as an invariable rule, to assume no power in the least degree doubtful, and to confine himself to a just but firm exercise of the powers clearly delegated. In conclusion he tendered to the Senate his sincere acknowledgments, that in rescinding the rule, such delicate regard had been paid to his feelings in the debate. Ample justice had been done to the industry and fidelity with which he had honestly attempted to discharge his arduous duties.—Deeming himself called on by the debate that had taken place, to say thus much in explanation, he begged the indulgence of the Senate for having done so; and resumed his seat. NOTE.—The numbers of "PATRICK HENRY" will be found in the National Journal of the 1st of May, and the 7th of June, 1826.

THE MILITIA. OFFICIAL.—CIRCULAR.

WAR DEPARTMENT, July 11th, 1826. Sir: Among the political maxims which the experience of the People of the United States has adopted as unquestionable, there is no one more universally subscribed to, than that a well organized and a well disciplined Militia is the natural defence of a free People. Uniting most sincerely in common with my fellow citizens in this opinion, I am anxious to see a system adopted by the National Legislature, which will realize the hopes of us all, in reference to this great arm of national defence. By a resolution of Congress, at their last session, I am enjoined to cause to be prepared a complete system of cavalry tactics; and, also, a system of exercise and instruction of field artillery, including manœuvres for light or horse artillery, for the use of the Militia of the United States; to be reported for consideration or adoption by Congress at its next session. The wisdom of this measure is made manifest by the objects, which are twofold; first, the establishment of the best system; and, secondly, that it shall be uniform. The importance of the last is scarcely inferior to the first; for who can well appreciate the inconveniences resulting from different systems in the same Army? The Militia differing among themselves, as also with the regular Army, with which they may be called to act; and yet it is, I believe, too true, that but little uniformity prevails; if practicable, this defect must be removed. I am duly sensible how difficult it is to establish a uniform system. The difference of condition, physical and moral, in the different States, and the preferences which each has for that which from time they have been accustomed to, present serious obstacles to a homogeneous system throughout all the States, yet I would fain hope not insurmountable. All our national institutions, and much of our legislation, are founded in that mutual spirit of deference and forbearance which have so signally distinguished the People of these States, and therefore one may indulge the hope that, in an object of such vital importance as a well regulated Militia, minor objections will be sacrificed to the attainment of so great a good.