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SPEECH OF MR. RIVES.

(CONCLUDED.)

To what a degree, sir, must the sagacious mind of the honorable Senator from Kentucky (Mr. Clay) have been inflamed by a gratuitous, however patriotic, indignation against the President, to have invoked, as applicable to this occasion, the solemn warning of Patrick Henry, in the Virginia Convention, against the union of the purse and the sword, which that gifted orator and patriot pronounced to be destructive of freedom. Glowing, sir, as was the imagination, and fervid as the oratory of that great man, he never could have seen in the simple ministerial operation of transferring the public moneys from one place of deposite to another, in pursuance of an authority given by law, that formidable assumption of the power of the purse which unite with that of the sword, he denounced as fatal to liberty. If the honorable Senator had read a few brief sentences immediately preceding the passage he quoted, he would have seen in what sense Mr. Henry spoke of the power of the purse and the sword. He would have seen that Mr. Henry, uncompromising adversary as he was of the new constitution, was arguing against the powers proposed to be vested in Congress of taxation, of raising armies, and of control over the militia.—What said the orator, sir? "Congress, by the power of taxation, by that of raising an army, and by their control over the militia, have the sword in one hand, and the purse in the other. Shall we be safe without either? Congress have an unlimited power over both—they are entirely given up by us." Then followed, in immediate juxta-position, the passage quoted by the honorable Senator.—"Let any one candidly tell me when and where did freedom exist, when the sword and the purse were given up from the people," &c.

It is obvious, then, Mr. President, that Patrick Henry spoke of the power of the purse in the sense in which I have already explained it, as the great power of taxation, and its incident, that of appropriation—and not the subordinate ministerial functions of collecting, receiving, keeping, depositing the public moneys under authority of law.—We see, also, in what sense he spoke of the power of the sword, as that of raising armies, and of general control over the military force of the country. It is in this sense, as we have seen, that the King of England is said to hold the power of the sword. But there is no color, not the slightest, for saying that the President of the U. States holds the power of the sword. He cannot raise armies, equip fleets, declare war, organize, arm, discipline and call forth militia. All these powers, which constitute the power of the sword, are expressly vested in Congress. He is, by the constitution, it is true, commander in-chief of the army when it is raised, and of the militia when they are called for by Congress; but this no more gives him the power of the sword, in the true political sense, than the function devolved upon executive agents of collecting and receiving the public taxes, after they have been imposed by Congress, gives him the power of the purse.—This ominous conjunction of the sword and the purse then, in the hands of the President, is a creation of the imagination, which, like other "raw heads and bloody bones" of the day, can frighten only while it is unapproached and unexamined.

[Here Mr. Clay rose and said, if the Senator will inspect the passage, the expression will satisfy him, that it has some pertinency. Patrick Henry was against the union of the purse and the sword in the hands of the General Government; it was the whole power, of the country; and under such a union, liberty was gone. My argument was, that if, when the purse and sword are in the hands of the entire Government, checked and balanced as it is, by means of its various departments, there is still danger, how much more immense when they are in the hands of one of them, when all did not furnish a competent security for liberty. Mr. C. also said, that in his remarks on the union of the purse and sword in the hands of the President, he did not allude solely to his seizure of the public money, but to the power which he had claimed and exercised, of saying to one Secretary, "You must get out of office, if you will not do as I bid you;" and to another officer, "I dismiss you, unless you consent to be governed and controlled by me."]

It still seems to me, continued Mr. Rives, that the honorable Senator has failed to show the applicability of his quotation from Patrick Henry to the power exercised in the removal of the deposites: The honorable Senator now recognises the broad and only true sense, in which Mr. Henry spoke of the powers of the purse and the sword, and argues if those powers, when possessed by the whole Government, were thus dangerous to liberty, how much more so must they be when united in the hands of a single branch of the Government. To make this reasoning just, then, and the quotation applicable, it must be shown that, in the same sense in which those powers are possessed by the whole Government, or rather by Congress, they have been exercised or attempted to be exercised by the President. But surely, sir, the honorable Senator will not contend that the President has exercised or attempted to exercise the power of taxation, which Mr. Henry spoke of as the power of the purse, or, on the other hand, that he has exercised, or attempted to exercise, the power of raising armies and calling forth the militia, which Mr. Henry considered the power of the sword.

In regard to the other portion of the honorable Senator's observations touching the abuses which the President *might* commit in saying first to one, and then to another Secretary, that if you will not do so and so, I will turn you out of office, I can only say that the argument comes just forty-five years too late. In the very first Congress which met under the Constitution, it was decided, upon the fullest consideration, that the President, according to the true principles of that instrument, possessed the power of removal from office, and that power was expressly recognised in the acts constituting the Executive Departments. The very argument which the honorable Senator now uses, and every other which he has so earnestly pressed on this branch of the subject, derived from possible abuses, was then repeatedly and strongly urged against the power of removal in the President. But they were all over-ruled on the ground that the Constitution, in "vesting the executive power in the President," had made him *responsible* for the conduct of the executive officers employed under him, whom, therefore, he ought to have the power to control, and that this *responsibility* of the President thus established was, in fact, to use the language of Mr. Madison, the highest security "for liberty and the public good."

But, sir, this matter deserves a fuller examination, and brings under review some opinions expressed by the honorable Senator a few days ago, which, as they involve the fundamental theory of the constitution in regard to the Executive branch of the Government, I will proceed to consider more in detail. The honorable Senator took especial exception to the principle asserted by the President in the paper read by him to his Cabinet—"that the *constitution* has devolved upon him the duty of *superintending* the operation of the Executive Departments."—He contended that the *constitution* had given him no such power—that by *law* those departments may, and in certain cases have been, placed under the supreintendence and direction of the President—that so far, and no farther, he has, *by law*, the superintendence of their operations; but that the *constitution* has devolved upon the President no right of superintendence over the Executive Departments.

Now, sir, on this assertion, I must respectfully join issue with the honorable Senator; and I call to witness the fathers of the constitution, and those who have had the largest and most enlightened experience in the administration of its highest trusts. The fundamental theory of the constitution in regard to the Executive power, is, 1st. Its unity—2dly. Its responsibility; to secure which last, in an undivided and the most efficient manner, was the great argument in favor of the first. In governments of the monarchial kind, the Executive head is exempt from all responsibility.—But in our republican constitution, the chief Executive Magistrate is under a triple responsibility, through the medium of election, of impeachment, and of prosecution in the common course of law. He is not only responsible for his personal acts, but the "Executive power being vested in him," he is responsible for the whole Executive Department; and this responsibility of the President was considered the great security for the proper and safe administration of that Department. Mr. Madison, in the debates which took place in '89 on the President's power of removal, said, "It is evidently the intention of the *constitution* that the First Magistrate should be responsible for the Executive Department." Again, in the course of the same debate, he said, "The principle of unity and responsibility in the Executive Department is intended for the security of liberty and the public good."

The President being thus responsible by the *constitution* for the conduct of the Executive officers, he has, from the *constitution* also, as a necessary consequence, the right to inspect, *superintend*, and control their proceedings. And this right of superintendence is expressly and repeatedly recognised, on *constitutional* grounds, in the great debate in the first Congress, to which I have already referred. I will give a few only, of many similar extracts, in which it will be seen that this right of superintendence, as a *constitutional* right, is distinctly and unequivocally asserted. Mr. Madison said, "Is there no danger that an officer, when he is appointed by the concurrence of the Senate, and has friends in that body, may choose to risk his establishment on the favor of that branch, rather than rest it upon the discharge of his duties to the satisfaction of the Executive branch, which is *constitutionally* authorized to *inspect* and *control* his conduct?"

Mr. Lawrance—"In the *constitution*, the heads of Departments are considered as the mere assistants of the President in the performance of his executive duties. He has the *superintendence*, the *control*, and the *inspection* of their conduct," &c. &c.

Mr. Ames—"The Executive powers are delegated," (of course, by the *constitution*) "to the President, with a view to have a responsible officer to *superintend*, *control*, *inspect*, and *check*, the officers necessarily employed in administering the laws."

We see, then, Mr. President, that throughout these debates, which, as a contemporaneous exposition, as well as from the distinguished ability of the men who participated in them, must be regarded as an authority of the highest order that the right of the President to superintend the Executive Departments was treated as a right flowing from the fountain of the constitution itself, and existing anterior to, and independent of legislative provision.—Sir, that this is the true character of the right, nothing could more strikingly show than the form in which the question of the Presidential power of removal was finally settled by the Congress whose debates are here referred to. In the original shape of the bills for the organization of the Executive Departments, it was provided that such and such Secretaries should be appointed, "to be removable by the President." It was suggested, however, that a clause of this sort might be considered as implying that the power of removal was granted by the law. To preclude such an inference, it was proposed to substitute a mere incidental recognition of the power, serving to show that the power was considered a pre-existing one, derived from the Constitution and not from the law; and this was done in the section providing for cases of vacancy in the head of the Department, by a simple declaration that "whenever the principal officer shall be removed from office by the President of the United States, or in any other case of vacancy," the chief clerk shall, during such vacancy, have the charge and custody of the records, &c. &c. of the Department. The original clause was stricken out, and this incidental recognition of the power substituted, as will be seen by reference to the acts constituting the Executive Departments; and this was done expressly on the ground, which the language sufficiently imports, that the power of removal from office by the President, was a pre-existing power, flowing from the constitution, and not derived from the law. The power of superintendence, involved in that of removal, stands, as we have seen, on the same ground.

Sir, I beg leave now to call the attention of the Senate to an authority which, asthat of one of the earliest and most uncompromising foes of tyranny, and the great champion of popular rights, as he is the acknowledged founder of the democratic party in this country, cannot fail, I trust, to command the respect of those who, like the honorable Senator from Kentucky, profess to be fighting the battles of liberty on this floor. I allude, of course, to Mr. Jefferson. While no one more steadily oppossed the undue accumulation of power in the hands of the chief Executive Magistrate, it will be seen that no one more unequivocally maintained the constitutional right of the President to superintend and control the action of the Executive Departments. I will read, sir, an extract from a letter addressed by him to M. de Tracy, the author of an able and enlightened commentary on the great work of Montesquieu. He is expressing his difference of opinion from M. de Tracy on the question of a plural or single Executive, declares a decided preference for the latter, and after appealing to the history of the French Directory to shew the evils and disadvantages of the former, he proceeds to notice the organization of one single Executive thus:

"The failure of the French Directory, and from the same cause, seems to have authorized a belief that the form of a plurality, however promising in theory, is impracticable, with men constituted with the ordinary passions. While the tranquil and steady tenor of our single Executive, during a course of twenty-two years of the most tempestuous times the history of the world has ever presented, gives a rational hope that this important problem is at length solved. Aided by the counsels of a cabinet of heads of Departments, originally four, but now five, with whom the President consults, either singly or all together, he has the benefit of their wisdom and information, brings their views to one centre, and produces an unity of action and direction in all the branches of the Government. The excellence of this construction of the Executive power has already manifested itself here under very opposite circumstances. During the administration of our first President, his Cabinet of four members was equally divided, by as marked an opposition of principle as monarchism and republicanism could bring into conflict. Had that Cabinet been a Directory, like positive and negative quantities in algebra, the opposing wills would have balanced each other, and produced a state of absolute inaction. But the President heard with calmness the opinions and reasons of each, decided the course to be pursued, and kept the Government steadily in it, unaffected by the agitation. The public knew well the dissensions in the Cabinet, but never had an uneasy thought on their account; because they knew also they had provided a regulating power, which would keep the machine in steady movement."

This passage, sir, requires no comment. It is evident that Mr. Jefferson considered the power of the President to control, and "decide the course to be pursued by each" of the Departments, as the fundamental principle of our Executive organization—that it only can secure the necessary "unity of action and direction in all the branches" of the Executive administration—and that, in short, it is the "regulating power which keeps the whole machine in steady movement." In a subsequent part of the same letter, he speaks of "this power of decision in the President, as that which alike excludes internal dissensions, and repels external intrigues."

[Mr Clay here inquired of Mr. Rives, if this letter was written before or after Mr. Jefferson was president.]

Mr. Rives answered, that it was written in January, 1811, in the philosophical retirement of Monticello, when he had withdrawn from all the disturbing scenes of public life, and as a patriot and sage, employed his leisure in meditating the lessons of his long experience, and recording them for the instruction of posterity. But lest the honorable Senator may suppose, (as his question seems to imply,) that the possession of power had given an undue bias to the mind of Mr. Jefferson, (than whom there never lived a man more thoroughly imbued with an innate love of liberty,) he shall speak for himself. In the letter from which I have already quoted, he uses the following language:

"I am not conscious that my participations in Executive authority have produced any bias in favor of a single Executive; because the parts I have acted have been in the subordinate, as well as superior stations, and because, if I know myself, what I have felt and what I have wished, I know I have never been so well pleased as when I could shift power from my own on the shoulders of others; nor have I ever been able to conceive how any rational being could propose happiness to himself from the exercise of power over others."

In the letter from which I have read, we have seen Mr. Jefferson's *theory* of the constitution with regard to the Executive, and the practice of Washington. Let us now see, sir, the principles upon which he conducted his own administration of this high office. In a few months after his accession to the Presidency, in November, 1801, he addressed a circular to the Heads of Departments, the members of his Cabinet, for the purpose of laying down the rules which were to govern the official relations between him and those Departments. He begins with repeating what was the practice, in this respect, of General Washington's administration, of which he had himself been a member—that the several Heads of Departments regularly transmitted to the President the communications addressed to them in relation to the concerns of their respective offices, with the answers proposed by them to be made, and received from him in return, the signification of his approbation, or else the suggestion of such alterations as he might think necessary—and then proceeds—"By this means, he was always in accurate possession of all facts and proceedings in every part of the Union, and to whatsoever Department they related; he formed a central point for the different branches; preserved an unity" (this despotic unity again, sir,) "of object and action among them; exercised that participation in the question of affairs which his office made incumbent on him; and met himself the due responsibility." (General Washington and Mr. Jefferson too, it seems, were so reckless and daring as to meet the responsibility of their offices,) "for whatever was done. During Mr. Adams' administration, his long and habitual absences from the seat of Government rendered this kind of communication impracticable, removed him from any share in the transaction of affairs, and parcelled out the Government, in fact, among four independent heads drawing sometimes in opposite directions." He then expresses his intention to adhere to the system, in this respect, of Washington, and adds—"my sole motives are those before expressed, as governing the first administration in chalking out the rules of their proceedings; adding to them only a sense of the obligation imposed on me by the public will to meet personally the duties to which they have appointed me."

Here, sir, we have the interpretation of Washington and Jefferson in the most authentic of all forms, (their own practice,) of the duties and powers of the Presidential office, creating in the Chief Magistrate himself a responsibility "for whatever is done" in any of the Executive Departments and giving him, by consequence, a power to superintend, control, and shape the action of those Departments. To these high constitutional models, realizing the well-ordered unity and responsibility of a single Executive, the present Chief Magistrate has sought to conform his administration, rather than by indolence, neglect or shrinking from responsibility, to parcel out the Government among five or six independent Heads of Departments, thus converting it into a discordant and practically irresponsible directory.

The honorable Senator from Kentucky has also taken exception to the President's reference to the clause of the Constitution which declares "the President shall take care that the laws be faithfully executed;" the President having referred to it as giving him the power to superintend and direct the conduct and operations of the Executive Departments. The honorable Senator contends that the true and sole operation of this clause is to empower the President, when the laws are forcibly resisted, to overcome that resistance by force. He says that he has made, and caused to be made, numerous researches into the contemporaneous constructions of the Constitution, and that he can find nowhere any color for the President's interpretation. Now, sir, I must be permitted to say that the honorable Senator's interpretation of this clause is far more latitudinarian than that of the President, and ascribes to it an operation infinitely more dangerous and extensive. The President, sir, has no power of himself, under the Constitution, to execute the laws by force. This depends upon Congress, to whom the power is expressly given to "call forth the militia to execute the laws," &c. It is true the President, by the Constitution, is Commander in-chief of the army and navy, and of the militia, when called into actual service; but, as such, he is a mere instrument in the hands of Congress, by whom the objects and purposes for which he is to employ the forces under his command must first be designated.

The construction of the honorable Senator, then, is one of far more dangerous latitude than that of the president. The clause in question, sir, can have no reference to the execution of the laws by force, which is a matter exclusively under the control of Congress. It must refer to the faithful execution of the laws by other means—by the intervention of officers appointed for the purpose, whose fidelity in the discharge of their duties may be secured by the supeintendence of the chief Executive officer. The honorable Senator has said, that in the various researches he has made, and caused to be made, he has found no trace of this construction. If he had taken the trouble to turn to the most obvious source of information on the subject—the proceedings and debates of the first Congress on the organization of the Executive Departments—he could not have failed to see that this clause was appealed to in the same sense and for the purpose which the President has done. I will not fatigue the Senate by multiplying citations from a portion of our legislative and constitutional history, which is, doubtless, familiar to the minds of all, but will content myself with one or two brief extracts from a speech of Mr. Madison on that occasion, an authority for which I know the honorable Senator from Kentucky entertains, as all must, the highest respect. While discussing the question of the President's power of removal from office, he says: "But there is another part of the Constitution which inclines, in my judgment, to favor the construction I put upon it; the President is required to take care that the laws be faithfully executed. If the duty to see the laws faithfully executed be required at the hands of the Executive Magistrate, it would seem that it was generally intended he should have that species of power which is necessary to accomplish that end. Now, if the officer, when once appointed, is not to depend upon the President for his official existence, but upon a distinct body; I confess I do not see how the President can take care that the laws be faithfully executed."

Again in the same speech, he says—"I conceive that the President is sufficiently accountable to the community; and if this power is vested in him, it will be vested where its nature requires it should be vested; if any thing in its nature is executive, it must be that power which is employed in superintending, and seeing that the laws are faithfully executed; the laws cannot be executed but by officers appointed for that purpose; therefore, those who are over such officers naturally possess the executive power." It is obvious then that Mr. Madison viewed that clause in the light in which it has been referred to by the President; that the faithful execution of the laws committed to him was to be effected by "officers appointed for that purpose," and that fidelity in the discharge of their duties was to be secured by a power of superintendence and control over them on the part of the Chief Magistrate, who was made responsible for their conduct, and specially charged with the duty of seeing the laws faithfully executed.

I will now, Mr. President, advert to an argument of the Honorable Senator from Kentucky, which, I confess, struck me with particular surprise.—In order to sustain his position that the Constitution had not given the President a power of superintendence and control over the Executive Departments, he contended that in certain cases, the Heads of those Departments were responsible to, and compellable to act by, the Courts of Justice; and in support of this principle, he relied on the decision of the Supreme Court in the case of Marbury and Madison, an extract of which he read to the Senate. I was the more surprised, sir, at the doctrine and the authority coming from the honorable Senator of Kentucky, because he professes an adhesion to the creed of the republican party of that day; and yet it may be confidently affirmed that there never was a decision of that tribunal which gave more dissatisfaction to the republican party than that did, and especially to the great chief and leader of the party, who has recorded in various parts of his writings the most earnest & energetic condemnation of it. With all the deference I entertain for that exalted tribunal, I must say that the doctrines of Marbury and Madison appear to me utterly unsustainable, and such I believe, would be the judgment of all parties at the present day. The Senate, sir, doubtless recollect the circumstances of the case. Mr. Adams, on the eve of quitting the Presidency, had appointed, with the concurrence of the Senate, numerous officers, and among others, certain Justices of the Peace for this district. Their commissions had been signed by him, and the Seal of State, perhaps, affixed to them; but they had not been delivered to the parties, when Mr. Jefferson came into office. Mr. Jefferson finding them still in the Department of State, when he succeeded to the Presidency, and considering the appointments either as improper in themselves, or improperly made, and that commissions, like deeds, were incomplete and revocable till delivery, determined to withhold them. The parties applied to the Supreme Court for a mandamus, directed to Mr. Madison, then Secretary of State, to compel the delivery of the commissions. The Court decided that, though they had no jurisdiction to grant a mandamus in the case, (it not being embraced among those cases of original jurisdiction committed to them) yet that the parties had acquired, by the signing and sealing of the commissions, without delivery, an absolute and legal right to the offices in question, which might be enforced against an independent Department of the Government by a judicial tribunal.

I must leave it to Mr. Jefferson, in his own strong language and with a reasoning which appears to me irresistible, to show the fundamental and dangerous errors of this decision, now relied on by the Honorable Senator from Kentucky. In a letter addressed to Mr. Hay, Attorney of the United