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SPEECH OF HON. J. P. BENJAMIN, OF LOUISIANA, ON COERCION,

Delivered in the Senate of the United States, on Monday, December 31st, 1860, and in reply to Senators Wade of Ohio and Johnson of Tennessee.

MR. BENJAMIN said.

Mr. President, when I took the floor at our last adjournment I stated that I expected to address the Senate to-day in reference to the critical issue now before the country. I had supposed that by this time there would have been some official communication to the Senate in reference to the fact now known to all of the condition of affairs in South Carolina. I will assume, for the purposes of the remarks that I have to make, that those facts have been officially communicated, and address myself to them. And Mr. President, probably never has a deliberative assembly been called upon to determine a question calculated to awaken a more solemn sense of responsibility than those that now address themselves to our consideration. We are brought at last, as it were, directly forced, to meet promptly an issue produced by an irresistible course of events whose inevitable results some of us, at least, have foreseen for years. Nor, sir, have we failed in our duty of warning the Republicans that they were fast driving us to a point where the very instincts of self-preservation would impose upon us the certain necessity of separation. We repeated those warnings with a depth of conviction, with an earnestness of assertion that inspired the hope that we should succeed in imparting at least some faint assurance of our sincerity to those by whose aid alone could the crisis be averted. But, sir, our assertions were derided; our predictions were scoffed at; all our honest and patriotic efforts to save the Constitution and the Union sneered at and maligned, as dictated, not by love of country, but by base ambition for place and power.

Mr. President, it has been justly said that this is no time for criminations; and, sir, it is in no such spirit, but with the simple desire to free myself personally, as a public servant, from all responsibility for the present condition of affairs, that I desire to recall to the Senate some remarks made by me in debate more than four years ago, in which I predicted the precise state of public feeling now, and pointed out the two principal causes that were certain to produce that state. The first was the incessant attack of the Republicans, not simply on the interests, but on the feelings and sensibilities of a high spirited people by the most insulting language, and the most offensive epithets; the other was their fatal success in persuading their followers that these constant aggressions could be continued and kept up with no danger; that the South was too weak and too conscious of weakness to dare resistance. Sir, on the 2d of May 1856, after reviewing this subject at some length, I said:

"Now, Mr. President, when we see these two interests contrasted—the North struggling for the possession of a power to which she has no legitimate right under the Constitution, for the sole purpose of abusing that power—the South struggling for property, honor, safety—all that is dear to man—tell me the history of the world exhibits an example of a people occupying a more ennobling attitude than the people of the South? To vituperation they oppose calm reason. To menaces and threats of violence, and insulting assumptions of superiority, they disdain reply. To direct attacks on their rights or their honor, they appeal to the guarantees of the Constitution; and when those guarantees shall fail, and not till then, will the injured, outraged South throw her sword into the scale of her rights, and appeal to the God of battles to do her justice. I say her sword, because I am not one of those who believe in the possibility of a peaceful disruption of the Union. It cannot come until all possible means of conciliation have been exhausted. It cannot come until every angry passion shall have been roused; it cannot come until brotherly feelings shall have been converted into deadly hate; and then, sir, with feelings embittered by the consciousness of injustice, or passions high-wrought and inflamed, dreadful will be the internecine war that must ensue.

"Mr. President, among what I consider to be the most prominent dangers that now exist, is the fact that the leaders of the Republican party at the North have succeeded in persuading the masses of the North that there is no danger. They have finally so wrought upon the opinion of their own people at home by the constant iteration of the same false statements and the same false principles, that the people of the North cannot be made to believe that the South is in earnest, notwithstanding its calm and resolute determination which produces the quiet so ominous of evil if ever the clouds shall burst. The people of the North are taught to laugh at the danger of dissolution. One honorable Senator is reported to have said, with expressive nonchalance, that the South could not be kicked out of the Union. The honorable Senator from New York says:

'The slaveholders, in spite of all their threats, are bound to it by the same bonds, and they are bound to it also by a bond *peculiarly their own—that of dependence on it for their own safety. Three million slaves are a hostile force constantly in their presence, in their very midst.* The servile war is always the most fearful form of war. *The world without sympathises with the servile enemy.* Against that war the American Union is the only defense of the slaveholder—their *only* protection. If ever they shall, in a season of madness, recede from that Union, and provoke that war they will—soon come back again.'

"The honorable Senator from Massachusetts [Mr. Wilson] indulges in the repetition of a figure of rhetoric that seems peculiarly to please his ear and tickle his fancy. He represents the Southern mother as clasping her infant with convulsive and closer embrace, because the black avenger, with uplifted dagger, would be at the door, and he tells us that is a bond of Union which we dare not violate."

Mr. President, no man can deny that the words uttered four years and a half ago form a faithful picture of the state of things that we see around us now. Would to God, sir, that I could believe that the apprehensions of civil war, then plainly expressed, were but the vain imaginations of a timorous spirit. Alas, sir, the feelings and sentiments expressed since the commencement of this session, on the opposite side of this floor, almost force the belief that a civil war is their desire; and that the day is full near when American citizens are to meet each other in hostile array; and when the hands of brothers will be reddened with the blood of brothers.

Mr. President, the State of South Carolina, with a unanimity scarcely with parallel in history, has dissolved the union which connects her with the other States of the confederacy, and declared herself independent. We, the representatives of those remaining States, stand here to-day, bound either to recognize that independence, or to overthrow it; either to permit her peaceful secession from the confederacy, or to put her down by force of arms. That is the issue. That is the sole issue. No artifice can conceal it. No attempts by men to disguise it from their own consciences, and from an excited or alarmed public, can suffice to conceal it. Those attempts are equally futile and disingenuous. As for the attempted distinction between coercing a State, and forcing all the people of the State, by arms, to yield obedience to an authority repudiated by the sovereign will of the State, expressed in its most authentic form, it is as unsound in principle as it is impossible of practical application. Upon that point, however, I shall have something to say a little further on.

If we elevate ourselves, Mr. President, to the height from which we are bound to look in order to embrace all the vast consequences that must result from our decision, we are not permitted to ignore the fact that our determination does not involve the State of South Carolina alone. Next week, Mississippi, Alabama, and Florida, will have declared themselves independent; the week after, Georgia; and a little later, Louisiana: soon, very soon, to be followed by Texas and Arkansas. I confine myself purposely to these eight States, because I wish to speak only of those whose action we know with positive certainty, and which no man can for a moment pretend to controvert. I designedly exclude others, about whose action I feel equally confident, although others may raise a cavil.

Now, sir, shall we recognize the fact that South Carolina has become an independent State, or shall we wage war against her? And first as to her right. I do not agree with those who think it idle to discuss that right. In a great crisis like this, when the right asserted by a sovereign State is questioned, a decent respect for the opinions of mankind at least requires that those who maintain that right, and mean to act upon it, should state the reasons upon which they maintain it. If in the discussion of this question, I shall refer to familiar principles, it is not that I deem it at all necessary to call the attention of members here to them; but because they naturally fall within the scope of my argument, which might otherwise prove unintelligible.

From the time that this people declared its independence of Great Britain, the right of the people to self-government in its fullest and broadest extent has been a cardinal principle of American liberty. None deny it. And in that right, to use the language of the Declaration itself, is included the right whenever a form of government becomes destructive of their interests or their safety, "to alter or to abolish it, and to institute a new government, laying its foundation on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness." I admit that there is a principle that modifies this power, to which I shall presently advert; but leaving that principle for a moment out of view, I say that there is no other modification which, consistently with our liberty, we can admit, and that the right of the people of one generation, in convention duly assembled, to alter the institutions bequeathed by their fathers is inherent, inalienable, not susceptible of restriction; that by the same power under which one Legislature can repeal the act of a former Legislature, so can one convention of the people duly assembled; repeal the acts of a former convention of the people duly assembled and that it is in strict and logical deduction from this fundamental principle of American liberty, that South Carolina has adopted the form in which she has declared her independence. She has in convention duly assembled in 1860, repealed an ordinance passed by her people in convention duly assembled in 1788. If no interests of third parties were concerned, if no question of compact intervened, all must admit the inherent power—the same inherent power which authorizes a Legislature to repeal a law, subject to the same modifying principle, that where the rights of others than the people who passed the law are concerned, those rights must be respected and cannot be infringed by those who descend from the first Legislature or who succeed them. If a law be passed by a Legislature impairing a contract, that law is void, not because the Legislature under ordinary circumstances would not have the power to repeal a law of its predecessor but because by repealing a law of its predecessors involving a contract, it exercises rights in which third persons are interested, and over which they are entitled to have an equal control. So in the case of a convention of the people assuming to act in repeal of an ordinance which showed their adherence to the Constitution of the United States, the power is inherently in them, subject only to this modification: that they are bound to exercise it with due regard to the obligations imposed upon them by the compact with others.

Authorities, on points like this, are perfectly idle; but I fear that I may not have expressed the ideas which I entertain so well as I find them expressed by Mr. Webster in his celebrated argument in the Rhode Island case. He says:

"First and chief, no man makes a question that the people are the source of all political power. Government is instituted for their good, and its members are their agents and servants. He who would argue against this, must argue without an adversary. And who thinks there is any peculiar merit in asserting a doctrine like this in the midst of twenty million people, when nineteen million nine hundred and ninety-nine thousand nine hundred and ninety-nine of them hold it, as well as himself? There is no other doctrine of government here; and no man imputes to another, and no man should claim for himself, any particular merit for asserting what everybody knows to be true, and nobody denies."—*Works of Daniel Webster,* vol. six, p. 221."

But he says in this particular case an attempt is made to establish the validity of the action of the people, organized in convention, without their having been called into convention by the exercise of any constituted authority of the State; and against the exercise of such a right of the people as that he protests. He says:

"It is not obvious enough that men cannot get together and count themselves, and say they are so many hundreds and so many thousands, and judge of their own qualifications, and call themselves the people, and set up a government? Why, another set of men forty miles off, on the same day, with the same propriety, with as good qualifications, and in as large numbers, may meet and set up another government; one may meet at Newport and another at Chepachet, and both may call themselves the people.—*Ibid.,* p. 226.

Therefore, he says it is not a mere assemblage of the people, gathered together *sua sponte*, that forms that meeting of the people authorized to act in behalf of the people: but he says that—

"Another American principle growing out of this, and just as important and well settled as is the truth that the people are the source of power, is, that when in the course of events it becomes necessary to ask certain the will of the people on a new exigency, of a new state of things or of opinion, the legislative power provides for that ascertainment by an ordinary act of legislation." o o o o o o o

"All that is necessary here is, that the will of the people should be ascertained by some regular rule of proceeding prescribed by previous law. But when ascertained, that will is as sovereign as the will of a despotic prince, or the Czar of Muscovy, or the Emperor of Austria himself, though not quite so easily made known. A ukase or an edict signifies at once the will of a despotic prince; but that will of the people, which is here as sovereign as the will of such a prince, is not so quickly ascertained or known: and hence arises the necessity for suffrage, which is the mode whereby each man's power is made to tell upon the Constitution of the Government, and in the enactment of laws."

He concludes—

"We see, therefore, from the commencement of the Government under which we live, down to this late act of the State of New York."—

To which he had just referred—

"one uniform current of law, of precedent, and of practice, all going to establish the point that changes in government are to be brought about by the will of the people, assembled under such legislative provisions as may be necessary to ascertain that will truly and authentically."—*Ibid.* pp. 227, 229.

We have then, sir, in the case of South Carolina, so far as the duly organized convention is concerned, the only body that could speak the will of this generation in repeal of the ordinance passed by their fathers in 1788; and I say again, if no third interests intervened by a compact binding upon their faith, their power to do so is inherent and complete. But, sir, there is a compact, and no man pretends that the generation of to-day is not bound by the compacts of the fathers; but, to use the language of Mr. Webster, a bargain broken on one side is a bargain broken on all; and the compact is binding upon the generation of to-day only if the other parties to the compact have kept their faith.

This is no new theory, nor is practice upon it without precedent. I say that it was precisely upon this principle that this Constitution was formed. I say that the old Articles of Confederacy provided in express terms that they should be perpetual; that they should never be amended or altered without the consent of all the States. I say that the delegates of States unwilling that that Confederation should be altered or amended, appealed to that provision in the convention which formed the Constitution, and said: "If you do not satisfy us by the new provisions, we will prevent your forming your new government, because your faith is plighted, because you have agreed that there shall be no change in it unless with the consent of all." This was the argument of Luther Martin, it was the argument of Paterson, of New Jersey, and of large numbers of other distinguished members of the convention. Mr Madison answered it. Mr. Madison said, in reply to that:

"It has been alleged that the Confederation having been formed by unanimous consent, could be dissolved by unanimous consent only. Does this doctrine result from the nature of compacts? Does it arise from any particular stipulation in the Articles of Confederation? If we consider the Federal Union as analogous to the fundamental compact by which individuals compose one society, and which must, in its theoretic origin at least, have been the unanimous act of the component members, it cannot be said that no dissolution of the compact can be effected without unanimous consent. A breach of the fundamental principles of the compact, by a part of the society, would certainly absolve the other part from their obligations to it."

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"If we consider the Federal Union as analogous, not to the social compacts among individual men, but to the conventions among individual States, what is the doctrine resulting from these conventions? Clearly, according to the expositors of the law of nations, that a breach of any one article, by any one party, leaves all the other parties at liberty to consider the whole convention as dissolved, unless they choose rather to compel the delinquent party to repair the breach. In some treaties, indeed, it is expressly stipulated that a violation of particular articles shall not have this consequence, and even that particular articles shall remain in force during war, which is, in general, understood to dissolve all subsisting treaties. But are there any exceptions of this sort to the Articles of Confederation? So far from it, that there is not even an express stipulation that force shall be used to compel an offending member of the Union to discharge its duty."—*Madison Papers of Debates in the Federal Convention,* vol. 5, pp. 206, 207.

I need scarcely ask, Mr. President, if anybody has found in the Constitution of the United States any article providing, by express stipulation, that force shall be used to compel an offending member of the Union to discharge its duty. Acting on that principle, nine States of the Confederation seceded from the Confederation, and formed a new Government. They formed it upon the express ground that some of the States had violated their compact. Immediately after, two other States seceded and joined them. They left two alone, Rhode Island and North Carolina; and here is my answer to the Senator from Wisconsin, [Mr Doolittle,] who asked me the other day, if thirty-three States could expel one, inasmuch as one had the right to leave thirty-three: I point him to the history of our country, to the acts of the fathers, as a full answer upon that subject. After this Government had been organized, after every department had been in full operation for some time; after you had framed your navigation laws, and provided what should be considered as ships and vessels of the United States, North Carolina and Rhode Island were still foreign nations, and so treated by you, so treated by you in your laws; and in September, 1789, Congress passed an act authorizing the citizens of the States of North Carolina and Rhode Island to enjoy all the benefits attached to owners of ships and vessels of the United States up to the 1st of the following January—gave them that much more time to come into the new Union, if they thought proper; if not they were to remain as foreign nations. Here is the history of the formation of this Constitution, so far as it involves the power of the States to secede from a Confederation, and to form new confederacies to suit themselves.

Now, Mr. President, there is a difficulty in this matter, which was not overlooked by the framers of the Constitution. One State may allege that the compact has been broken, and others may deny it: who is to judge? When pecuniary interests are involved, so that a case can be brought up before courts of justice, the Constitution has provided a remedy within itself. It has declared that no act of a State, either in convention or by Legislature, or in any other manner, shall violate the Constitution of the United States, and it has provided for a supreme judiciary to determine cases arising in law or equity which may involve the construction of the Constitution or the construction of such laws.

But, sir, suppose infringements on the Constitution in political matters, which from their very nature cannot be brought before the court? That was a difficulty not unforeseen; it was debated upon propositions that were made to meet it. Attempts were made to give power to this Federal Government in all its departments, one after the other, to meet that precise case, and the convention sternly refused to admit any. It was proposed to enable the Federal Government, through the action of Congress, to use force. That was refused. It was proposed to give to the President of the United States the nomination of State Governors, and to give them a veto on State laws, so as to preserve the supremacy of the Federal Government. That was refused. It was proposed to make the Senate the judge of difficulties that might arise between States and the General Government. That was refused. It was finally proposed to give Congress a negative on State lagislation interfering with the powers of the Federal Government. That was refused. At last, at the very last moment, it was proposed to give that power to Congress by a vote of two thirds of each branch; and that, too, was denied.

Now, sir, I wish to show, with some little detail—as briefly as I possibly can and do justice to the subject—what was said by the leading members of the convention on these propositions to subject the States, in their political action, to any power of the General Government, whether of Congress, of the judiciary, or of the Executive—and by any majorities whatever. The first proposition was made by Mr. Randolph, on the 29th of May, 1787; and it was, that power should be given to Congress—

"To negative all laws passed by the several States contravening, in the opinion of the National Legislature, the articles of Union, or any treaty subsisting under the authority of the Union; and to call forth the force of the Union against any member of the Union failing to fulfill its duty under the articles thereof."

To negative all laws violative of the articles of Union, and to employ force to constrain a State to perform its duty. Mr. Pinckney's proposition on the same day was:

"And to render these probitions effectual, the Legislature of the United States shall have the power to revise the laws of the several States that may be supposed to infringe the powers exclusively delegated by this Constitution to Congress, and to negative and annul such as do."

The proposition giving a power to negative the laws of the States, passed at first hurriedly, without consideration; but upon further examination, full justice was done to it. Upon the subject of force, Mr. Madison said, moving to postpone the proposition to authorize force:

"Mr. Madison observed, that the more he reflected on the use of force, the more he doubted the practicability, the justice, and the efficacy of it, when applied to people collectively, and not individually. A union of the States containing such an ingredient, seemed to provide for its own destruction. The use of force against a State would look more like a declaration of war than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound. He hoped that such a system would be framed as might render this resource as unnecessary, and moved that the clause be postponed."—*Madison Papers—Debates in the Federal Convention,* vol. 5, page 140.

Mr. Mason, the ancestor of our own distinguished colleague from Virginia, said:

"The most jarring elements of nature, fire and water, themselves, are not more incompatible than such a mixture of civil liberty and military execution. Will the milita march from one State into another in order to collect the arrears of taxes from the delinquent members of the Republic? Will they maintain an army for this purpose? Will not the citizens of the invaded State assist one another, till they rise as one man, and shake off the Union altogether? Rebellion is the only case in which the military force of the State can be properly exerted against its citizens. In one point of view, he was struck with horror at the prospect of recurring to this expedient. To punish the non-payment of taxes with death was a severity not yet adopted by despotims itself; yet this unexampled cruelty would be mercy compared to a military collection of revenue, in which the bayonet could make no discrimination between the innocent and the guilty. He took this occasion to repeat, that, notwithstanding his solicitude to establish a national Government, he never would agree to abolish the State governments, or render them absolutely insignificant. They were as necessary as the general Government, and he would be equally careful to preserve them"—*Madison Papers—Debates in the Federal Convention,* vol. 5, p. 217.

Mr. Ellsworth, upon the same subject, said:

"Hence we see how necessary for the Union is a coercive principle. No man pretends the contrary: we all see and feel this necessity. The only question is, shall it be a coercion of law, or a coercion of arms? There is no other possible alternative. Where will those who oppose a coercion of law come out? Where will they end? A necessary consequence of their principles is a war of the States one against the other. I am for coercion by law—that coercion which acts only upon delinquent individuals. This Constitution does not attempt to coerce sovereign bodies, States, in their political capacity. No coercion is applicable to such bodies; but that of an armed force. If we should attempt to execute the laws of the Union by sending an armed force against a delinquent State, it would involve the good and bad, the innocent and guilty, in the same calamity."—*Elliot's Debates,* vol 2, p. 197.

Alexander Hamilton said:

"It has been observed, to coerce the States is one of the maddest projects that was ever devised. A failure of compliance will never be confined to a single State. This being the case, can we suppose it wise to hazard a civil war? Suppose Massachusetts, or any large State, should refuse, and Congress should attempt to compel them, would they not have influence to procure assistance, especially from those States which are in the same situation as themselves? What picture does this idea present to our view? A complying State at war with a non-complying State; Congress marching the troops of one State into the bosom of another; this State collecting auxiliaries, and forming, perhaps, a majority against its Federal head. Here is a nation at war with itself. Can any reasonable man be well disposed toward a Government which makes war and carnage the only means of supporting itself—a Government that can exist only by the sword? Every such war must involve the innocent with the guilty. This single consideration should be sufficient to dispose every peaceable citizen against such a Government." *Elliot's Debates,* vol. 2, p. 233.

But, sir, strong as these gentlemen were against giving the power to exert armed force against the States, some of the best and ablest members of the convention were in favor of giving Congress control over State action by a negative. Mr. Madison himself was strongly in favor of that; and if that power had been granted, the first of the personal liberty bills that were passed would have been the last, for Congress would at once have annulled it, and the other States would have taken warning by that example. Mr. Pinckney's proposition was brought up, that "the national Legislature should have authority to negative all laws which they should judge to be improper." He urged it strongly. Mr Madison said:

"A negative was the mildest expedient that could be devised for preventing these mischiefs. The existence of such a check would prevent attempts to commit them. Should no such precaution be engrafted, the only remedy would be in an appeal to coercion. Was such a remedy eligible? Was it practicable? Could the national resources, if exerted to the utmost, enforce a national decree against Massachusetts, abetted, perhaps, by several of her neighbors? It would not be possible. A small proportion of the community, in a conipact situation, acting on the defensive, and at one of its extremities, might at any time bid defiance to the national authority. Any government for the United States, formed on the supposed practicability of using force against the unconstitutional proceedings of the States, would prove as visionary and fallacious as the government of Congress.—*Debates of Convention, Madison Papers,* vol. 5, p. 171.

That is, of the Congress of the Confederation. Well, sir, Mr. Butler said to that, he was "vehement against the negative in the proposed extent as cutting off all hope of equal justice to the distant States. The people there would not, he was sure, give it a hearing;" and on the vote, Mr. Madison, aided by Mr. Pinckney, got but three States for it, and of these three States one was Virginia, and he got Virginia only by a vote of three to two, General Washington in the chair not voting. The proposition, therefore, was directly put down, but it was not killed forever. On the 17th of July it was renewed, and Mr. Madison again urged the convention to give some power to the Federal Government over State action:

"Mr. Madison considered the negative on the laws of the States as essential to the efficacy and security of the General Government. The necessity of a General Government proceeds from the propensity of the States to pursue their particular interests, in opposition to the general interest. The propensity will continue to disturb the system unless effectually controlled. Nothing short of a negative on their laws will control it. They will pass laws which will accomplish their injurious objects before they can be repealed by the General Legislature, or set aside by the national tribunals." o o o o o "A power of negativing the improper laws of the States is at once the most mild and certain means of preserving the harmony of the system. Its utility is sufficiently displayed in the British system," &c.

This was again negatived in July by the same vote. Finally, on the 23rd of August, for the last time, an attempt was made to give the negative with a check upon it; and it was in these words:

"Mr. Charles Pinckney moved to add, as an additional power to be vested in the Legislature of the United States:

"To negative all laws passed by the several States, interfering, in the opinion of the Legislature, with the general interests and harmony of the Union, provided that two-thirds of the members of each House assent to the same."

Mr Madison wanted it committed. Mr. Rutledge said:

"If nothing else, this alone would damn, and ought to damn, the Constitution. Will any State ever agree to be bound hand and foot in this manner? It is worse than making mere corporations of them, whose by-laws would not be subject to this shackle."

And thereupon Mr. Pinckney withdrew his proposition, and all control was abandoned. There was then to be no control on the part of the General Government over State legislation, otherwise than in the action of the Federal judiciary upon such pecuniary controversies as might be properly brought before them.

Notwithstanding all this jealousy, when this Constitution came to be discussed in the conventions of the States, it met formidable opposition, upon the ground that the States were not sufficiently secure. Its advocates by every possible means endeavored to quiet the alarms of the friends of State rights. Mr. Madison, in Virginia, against Patrick Henry; Mr. Hamilton and Chief Justice Jay, in New York, against the opponents there; in all the States, eminent men used every exertion in their power to induce the adoption of the Constitution. They failed, until they proposed to accompany their ratifications with amendments that should prevent its meaning from being perverted, and prevent it from being falsely construed; and in two of the States especially—the States of Virginia and New York—the ratification was preceded by a statement of what their opinion of its true meaning was, and a statement that, on that construction, and under that impression, they ratified it. Some of the members of the Convention were for asking for these amendments in advance of ratification; but they were told it was unnecessary. In the Virginia convention, Mr. Randolph, who was General Washington's Attorney General, and Judge Nicholas, both expressed the opinion that it was not necessary, and that the ratification would be conditional upon that construction. Mr. Randolph said:

"If it be not considered too early, as ratification has not yet been spoken of, I beg to speak of it. If I did believe, with the honorable gentleman, that all power not expressly retained was given up by the people, I would detest this Government.

"But I never thought so; nor do I now. If, in the ratification, we put words to this purpose, "And that all authority not given is retained by the people, and may be resumed when perverted to their oppression; and that no right can be cancelled, abridged or restrained, by the Congress, or any officer of the United States,'—I say if we do this, I conceive that, as this style of ratification would manifest the principles on which Virginia adopted it, we should be at liberty to consider as a violation of the Constitution every exercise of a power not expressly delegated therein. I see no objection to this.

And Mr. Nicholas said the same thing:

"Mr. Nicholas contended that the language of the proposed ratification would secure everything which gentlemen desired, as it declared that all powers vested in the Constitution were derived from the people, and might be resumed by them whensoever they should be perverted to their injury and oppression; and that every power not granted thereby remained at their will. No danger whatever could arise; for [says he] these expressions will become a part of the contract. The Constitution cannot be binding on Virginia but with these conditions. If thirteen individuals are about to make a contract, and one agrees to it, but at the same time declares that he understands its meaning, signification, and intent to be (what the words of the contract plainly and obviously denote) that it is not to be construed so as to impose any supplementary condition on him, and that he is to be exonerated from it whensoever any such imposition shall be attempted, I ask whether, in this case, these conditions on which he has assented to it would not be binding on the other twelve? In like manner these conditions will be binding on Congress. They can exercise no power that is not expressly granted them."

So, sir, we find that not alone in these two conventions, but by the common action of the States, there was an important addition made to the Constitution by which it was expressly provided that it should not be construed to be a General Government over all the people, but that it was a Government of States, which delegated powers to the General Government. The language of the ninth and tenth amendments to the Constitution is susceptible of no other construction:

"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

"The powers not delegated to the United States."

Gentlemen are fond of using the words "surrendered," abandoned, given up. That is the constant language on the other side. The language of the amendment intended to fix the meaning of the Constitution says that these powers were not abandoned by the State, not surrendered, not given up, but "delegated," and therefore subject to resumption:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Now, Mr. President, if we admit, as we must, that there are certain political rights guarantied to the States of this Union by the terms of the Constitution itself—rights political in their character, and not susceptible of judicial decision—if any State is deprived of any of those rights, what is the remedy? for it is idle to talk to us at this day in a language which shall tell us we have rights and no remedies. For the purpose of illustrating the argument upon this subject, let us suppose a clear, palpable case of violation of the Constitution. Let us suppose that the State of South-Carolina having sent two Senators to sit upon this floor, had been met by a resolution of the majority here that, according to her just weight in the Confederacy, one was enough, and that we had directed our Secretary to swear in but one, and to call but one name on our roll as the yeas and nays are called for voting. The Constitution says that each State shall be entitled to two Senators, and each Senator shall have one vote. What power is there to force the dominant majority to repair that wrong? Any court? Any tribunal? Has the Constitution provided any recourse whatever? Has it not remained designedly silent on the subject of that recourse? And yet, what man will stand up in this Senate and pretend that if, under these circumstances, the State of South-Carolina had declared, "I entered into a Confederacy or a compact by which I was to have my rights guarantied by the constant presence of two Senators upon your floor; you allow me but one; you refuse to repair the injustice; I withdraw;" what man would dare say that that was a violation of the Constitution on the part of South-Carolina? Who would say that that was a revolutionary remedy? Who would deny the plain and palpable proposition that it was the exercise of a right inherent in her under the very principles of the Constitution, and necessarily so inherent for self-defence?

Why, sir, the North if it has not a majority here to-day will have it very soon. Suppose these gentlemen from the North with the majority think that it is no more than fair, inasmuch as we represent here States in which there are large numbers of slaves, that the northern States should have each three Senators. what are we to do? They swear them in. No court has the power of prohibition, of *mandamus* over this body in the exercise of its political powers. It is the exclusive judge of the elections, the qualifications, and the returns of its own members, a judge without appeal. Shall the whole fifteen southern States submit to that, and be told that they are guilty of revolutionary excess if they say we will not remain with you on these terms; we never agreed to it? Is that revolution, or is it the exercise of clear constitutional rights?

Suppose this violation occurs under circumstances where it does not appear so plain to you, but where it does appear equally plain to South Carolina; then you are again brought back to the irrevocable point who is to decide? South Carolina says, you forced me to the expenditure of my treasure, you forced me to the shedding of the blood of my people, by a majority vote, and with my aid you acquired territory; now I have a constitutional right to go into that territory with my property, and to be there secured by your laws against its loss. You say, no, she has not. Now there is this to be said; that right is not to be put down in the Constitution in quite so clear terms as the right to have two Senators; but it is a right which she asserts with the concurrent opinion of the entire South. It is a right which she asserts with the concurrent opinion of one third or two fifths of your own people interested in refusing it. It is a right that she asserts, at all events, if not in accordance with the decision—as you may say no decision was rendered—in accordance with the opinion expressed by the Supreme Court of the United States; but yet there is no tribunal for the assertion of that political right. Is she without a remedy under the Constitution? If not, then what tribunal? If none is provided, then natural law and the law of nations tells you that she and she alone, from the very necessity of the case, must be the judge of the infraction and of the mode and measure of redress.

This is no novel doctrine; but it is as old as the law of nations, coeval in our system with the foundation of the Constitution; clearly announced over and over again in our political history. A very valued friend from New York did me the favor to send me an extract, which he has written out, from an address delivered by John Quincy Adams before the New York Historical Society in 1839, at the jubilee of the Constitution. His language is this:

"Nations acknowledge no judge between them upon earth, and their Governments, from necessity, must, in their intercourse with each other, decide when the failure of one party to a contract to perform its obligations absolves the other from the reciprocal fulfillment of his own. But this last of earthly powers is not necessary to the freedom or independence of States, connected together by the immediate action of the people, of whom they consist. To the people alone is there reserved, as well the dissolving as the constituent power, and that power can be exercised by them only under the tie of conscience, binding them to the retributive justice of heaven.

"With these qualifications, we may admit the same right as vested in the people of every State in the Union, with reference to the General Government, which was exercised by the people of the United Colonies with reference to the supreme head of the British Empire, of which they formed a part; and, under these limitations, have the people of each State in the Union a right to secede from the confederated Union itself?

"Thus stands the RIGHT. But the indissoluble link of union between the people of the several States of this confederated nation is, after all, not in the *right*, but in the *heart*. If the day should ever come (may Heaven avert it) when the affections of the people of these States shall be alienated from each other; when the fraternal spirit shall give way to cold indifference, or collisions of interest shall fester into hatred, the bands of political association will not long hold together parties no longer attracted by the magnetism of conciliated interests and kindly sympathies; and far better will it be for the people of the *disunited* States to part in friendship from each other, than to be held together by constraint. Then will be the time for reverting to the precedent, which occurred at the formation and adoption of the Constitution, to form again a more perfect Union, by dissolving that which could no longer bind, and to leave the separated parts to be reunited by the law of political gravitation, to the center."

(CONCLUDED ON FOURTH PAGE.)