Mecklenburg Jeffersonian.

JOSEPH W. HAMPTON,——"The powers granted under the Constitution, being derived from the People of the United States, may be resumed by them, whenever perverted to their injury or oppression."—*Madison.*——Editor and Publisher

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Weekly Almanac for July, 1842.

DAYS.	SUN RISE	SUN SET.	MOON'S PHASES.	D.	H.	M.
12 Tuesday,	4 52	7 8				
13 Wednesday,	4 52	7 8				
14 Thursday,	4 53	7 7	Last Quarter,	1	1	33 M.
15 Friday,	4 54	7 6	New Moon	8	4	54 M.
16 Saturday,	4 54	7 6	First Quarter,	15	11	31 M.
17 Sunday,	4 55	7 5	Full Moon,	22	4	2 M.
18 Monday.	4 55	7 5				

SPEECH OF

MR. CALHOUN.

OF SOUTH CAROLINA,

Delivered in the United States Senate, February 28, 1842. The proposition of Mr. CLAY, to abolish from the Constitution the Veto power, being under consideration,

Mr. CALHOUN said: The Senator from Kentucky in support of his amendment, maintained that the people of these States constitute a nation; that the nation has a will of its own; that the numerical majority of the whole was the appropriate organ of its voice: and that whatever derogated from it, to that extent departed from the genius of the Government, and set up the will of the minority against the majority. We have thus presented at the very threshold of the discussion, a question of the deepest import, not only as it regards the subject under consideration, but the nature and character of our Government; and that question is, are these propositions of the Senator true?* If they be, then he admitted the argument against the veto would be conclusive; not however, for the reason assigned by him, that it would make the voice of a single functionary of the Government, (the President,) equivalent to that of some six Senators and forty members of the other House; but for the far more decisive reason, according to his theory, that the President is not chosen by the voice of the numerical majority, and does not therefore, according to his principle, represent truly the will of the nation.

It is a great mistake to suppose that he is elected simply on the principle of numbers. They constitute, it is true, the principal element in his election; but not the exclusive. Each State is entitled to as many votes in his election, as it is to representatives in the other House, that is, to its Federal population; but to these, two others are added, having no regard to numbers of their representation in the Senate, which greatly increases the relative influence of the small States, compared to the large, in the Presidental election. What effect this latter element may have on the numbers necessary to elect a President, may be made apparent by a very short and simple calculation.

The population of the United States, in Federal numbers, by the last census, is 15,908,376. Assuming that sixty-eight thousand, the number reported by the committee of the other House, will be fixed on for the ratio of representation there, it will give, according to the calculation of the committee, two hundred and twenty-four members to the other House. Add fifty-two, the number of the Senators, and the electoral college will be found to consist of two hundred and seventy-six, of which one hundred and thirty-nine is a majority. If nineteen of the smaller States, excluding Maryland, be taken, beginning with Deloware and ending with Kentucky inclusive, they will be found to be entitled to one-hundred and forty votes, one more than a majority, with a Federal population of only 7,227,869; while the seven other States, with a population of 8,680,507, would be entitled to but one hundred and thirty-six votes, three less than a majority, with a population of almost a million and a half greater than the others. Of the one hundred and forty electoral votes of the smaller States, thirty-eight would be on account of the addition of two to each State for their representation in this body, while of the larger there would be but fourteen on that account; making a difference of twenty-four votes on that account, being two more than the electoral votes of Ohio, the third State in point of numbers in the Union.

The Senator from Kentucky, with these facts, but acts in strict conformity to his theory of the Government, in proposing the limitation he has on the veto power; but as much cannot be said in favor of the substitute he has offered. The argument is as conclusive against the one, or any other modification of the veto that could possibly be devised. It goes farther, and is conclusive against the Executive department itself, as elected; for there can be no good reason offered why the will of the nation, if there be one, should not be as fully and perfectly represented in that department as in the Legislative.

But it does not stop there. It would be still more conclusive, if possible, against this branch of the Government. In constituting the Senate, numbers are totally disregarded. The smallest State stands on a perfect equality with the largest; Delaware, with her seventy-seven thousand, with New York with her two millions and a half. Here a majority of States control, without regard to population; and fourteen of the smallest States, with a federal population of but 4,064,457, little less than a fourth of the whole, can, if they unite, overrule the twelve others, with a population of 11,844,919. Nay, more; they could virtually destroy the Government, and put a veto on the whole system, by refusing to elect Senators; and yet this equality among States, without regard to numbers, including the branch where it prevails, would seem to be the favorite with the Constitution. It is its provision that cannot be altered without the consent of every State, and this branch of the Government where it prevails, is the only one that participates in the powers of all the others. As a part of the Legislative Department, it has full participation with the other, in all matters of legislation, except originating money bills, while it participates with the Executive in two of its highest functions, that of appointing to office and making treaties, and in that the Judiciary, in being the high court before which all impeachments are tried.

But we have not yet got to the end of the consequences. The argument would be as conclusive against the Judiciary as against the Senate, or the Executive and his veto. The judges receive their appointments from the Executive and the Senate; the one nominating, and the other consenting to and advising the appointment; neither of which departments, as has been shown, is chosen by the numerical majority. In addition, they hold their office during good behavior, and can only be turned out by impeachment, and yet they have the power, in all cases in law and equity brought before them, in which an act of Congress is involved, to decide on its constitutionality—that is in effect, to pronounce an absolute veto.

If, then, the Senator's theory be correct, its clear and certain result, if carried out in practice, would be to sweep away, not only the Executive, the Senate, and the Judiciary, as now constituted, and to leave nothing standing in the midst of the ruins but the House of Representatives, where only, in the whole range of the Government, numbers exclusively prevail. But as desolating as would be its sweep, in passing over the Government, it would be far more destructive in its whirl over the Constitution. There it would not leave a fragment standing amidst the ruin in its rear.

In approaching this topic, let me premise, what all will readily admit, that if the voice of the people may be sought for any where with confidence, it may be in the Constitution, which is conceded by all to be the fundamental and paramount law of the land. If, then, the people of these States do really constitute a nation, as the Senator supposes; if the nation has a will of its own, and if the numerical majority of the whole is the only appropriate and true organ of that will, we may fairly expect to find that will, pronounced through the absolute majority, pervading every part of that instrument, and stamping its authority on the whole. Is such the fact? The very reverse. Throughout the whole from first to last—from beginning to the end—in its formation, adoption, and amendment, there is not the slightest evidence, trace, or vestige of the existence of the facts on which the Senator's theory rests; neither of the nation, nor its will, nor of the numerical majority of the whole, as its organ, as I shall next proceed to show.

The convention which formed it was called by a portion of the States; its members were all appointed by the States; received their authority from their separate States; voted by States in forming the Constitution; agreed to it, when formed, by States; transmitted it to Congress to be submitted to the States for their ratification; it was ratified by the people of each State in convention, each ratifying by itself, for itself, and bound exclusively by its own ratification, and by express provision it was not to go into operation, unless nine out of the twelve States should ratify, and then to be binding only between the States ratifying. It was thus put in the power of any four States, large or small, without regard to numbers, to defeat its adoption, which might have been done by a very small proportion of the whole, as will appear by reference to the first census. That census was taken very shortly after the adoption of the Constitution, at which time the Federal population of the then twelve States was 3,462,279, of which the four smallest, Delaware, Rhode Island, Georgia, and New Hampshire, with a population of only 241,490, something more than the fourteenth part of the whole, could have defeated the ratification. Such was the total disregard of population in the adoption and formation of the Constitution.

It may, however, be said, it is true, that the Constitution is the work of the States, and that there was no nation prior to its adoption; but that its adoption fused the people of the States into one, so as to make a nation of what before constituted separate and independent sovereignties. Such an assertion would be directly in the teeth of the Constitution, which says that, when ratified, "it should be binding, (not *over* the States ratifying, for that would imply that it was imposed by some higher authority, nor between the individuals composing the States, for that would imply that they were all merged in one, but) *between* the States ratifying the same;" and thus by the strongest implication, recognising them as the parties to the instrument, and as maintaining their separate and independent existence as States, after its adoption. But let that pass. I need it not to rebut the Senator's theory to test the truth of the assertion, that the Constitution has formed a nation of the people of these States. I go back to the grounds already taken, that if such be the fact—if they really form a nation, since the adoption of the Constitution, and the nation has a will, and the numerical majority is its only proper organ, in that case, the mode prescribed for the amendment of the Constitution would furnish abundant and conclusive evidence of the fact. But here again, as in its formation and adoption, there is not the slightest trace or evidence, that such is the fact; on the contrary, most conclusive to sustain the very opposite opinion.

There are two modes in which amendments to the Constitution may be proposed. The one, such as that now proposed, by a resolution to be passed by two-thirds of both houses; and the other by a call of a convention, by Congress, to propose amendments, on the application of two-thirds of the States; neither of which give the least countenance to the theory of the Senator. In both cases the mode of modification, which is the material point, is the same, and requires the concurring assent of three-four ths of the States, regardless of population, to ratify an amendment. Let us now pause for a moment to trace the effects of this provision.

There are now twenty-six States, and the concurring assents, of course, of twenty States, is sufficent to ratify an amendment. It then results that twenty of the smaller States, of which Kentucky would be the largest, are sufficient for that purpose, with a population in federal numbers of only 7,652,097, less by several hundred thousand than the numerical majority of the whole, against the united voice of the other six, with a population of 8,219,279, exceeding the former by more than half a million. And yet this minority under the amending power, may change, alter, modify or destroy every part of the Constitution, except that which provides for an equality of representation of the States in the Senate, while, as if in mockery and derision of the Senator's theory, nineteen of the larger States, with a population, in federal numbers, of 14,526,073, cannot, even if united to a man, alter a letter in the Constitution, against the seven others, with a population of only 1,382,303; and this, too, under the existing Constitution, which is supposed to form the people of these States into a nation. Finally, Delaware, with a population of little more than 77,000, can put her veto on all the other States, on a proposition to destroy the equality of the States in the Senate. Can facts more clearly illustrate the total disregard of the numerical majority, as well in the process of amending, as in that of forming and adopting the Constitution?

All this must appear anomalous, strange and unaccountable, on the theory of the Senator, but harmonious and easily explained on the opposite; that ours is an union, not of individuals, united by what is called a social compact, for that would make it a nation; nor of Governments, for that would have formed a mere Confederacy, like the one superseded by the present Constitution; but an union of States, founded on a written positive compact, forming a Federal Republic, with the same equality of rights among the States composing the Union, as among the citizens composing the States themselves. Instead of a nation, we are in reality an assemblage of nations, or peoples, (if the plural noun may be used where the language affords none,) united in their sovereign character, immediately and directly by their own act but without losing their separate and independent existence.

It results from all that has been stated, that either the theory of the Senator is wrong, or that our political system is throughout a profound and radical error. If the latter be the case, then that complex system of ours, consisting of so many parts, but blended, as was supposed, into one harmonious and sublime whole, raising its front on high and challenging the admiration of the world, is but a misshapen and disproportionate structure that ought to be demolished to the ground, with the single exception of the appartment allotted to the House of Representatives. Is the Senator prepared to commence the work of demolition? Does he believe that all other parts of this complex structure are irregular and deformed appendages; and that if they were taken down, and the Government erected exclusively on the will of the numerical majority, would effect as well, or better, the great objects for which it was instituted: "to establish justice; ensure domestic tranquillity; provide for the common defence; promote the general welfare; and secure the blessings of liberty to ourselves and our posterity." Will the Senator—will any one—can any one—venture to assert that? And if not, why not? There is the question, on the proper solution of which hangs not only the explanation of the veto, but that of the real nature and character of our complex, but beautiful and harmonious system of Government. To give a full and systematic solution, it would be necessary to descend to the elements of political science, and discuss principles little suited to a discussion in a deliberative assembly. I waive the attempt, and shall content my self with giving a much more matter of fact solution.

It is sufficient, for that purpose, to point to the actual operation of the Government, through all the stages of its existence, and the many and important measures which have agitated it from the beginning; the success of which one portion of the people regarded as essential to their prosperity and happiness, while other portions have viewed them as destructive of both. What does this imply, but a deep conflict of interests, real or supposed, between the different portions of the community, on subjects of the first magnitude—the currency, the finances, including taxation and disbursements; the Bank, the protective tariff, distribution, and many others; on all of which the most opposite and conflicting views have prevailed? And what would be the effect of placing the powers of the Government under the exclusive control of the numerical majority—of 8,000,000 over 7,900,000; of six States over all the rest—but to give the dominant interest, or combination of interests, an unlimited and despotic control over all others? What, but to vest it with the power to administer the Government for its exclusive benefit, regardless of all others, and indifferent to their oppression and wretchedness? And what, in a country of such vast extent and diversity of condition, institutions, industry, and productions, would that be, but to subject the rest to the most grinding despotism and oppression? But what is the remedy? It would be but to increase the evil, to transfer the power to a minority, to abolish the House of Representatives, and place the control exclusively in the hands of the Senate—in that of the four millions, instead of the eight. If one must be sacrificed to the other, it is better that the few should be to the many, than the many to the few.

What then is to be done? If neither the majority, nor the minority, the grater nor less part, can be safely trusted with the exclusive control? What but to vest the powers of the Government in the whole—the entire people—to make it in truth and reality the Government of the people, instead of the Government of a dominant over a subject part, be it greater or less—of the whole people—self-government; and if this should prove impossible in practice, then to make the nearest approach to it, by requiring the concurrence in the action of the government of the greatest possible number consistent with the great ends for which Government was instituted—justice and security, within and without? But how is that to be effected? Not certainly by considering the whole community as one, and taking its sense as a whole by a single process, which, instead of giving the voice of all, can but give that of a part. There is but one way by which it can possibly be accomplished; and that is by a judicious and wise division and organization of the Government and community, with reference to its different and conflicting interests, and by taking the sense of each separately, and the concurrence of all as the voice of the whole. Each may be imperfect of itself, but if the construction be good and all the keys skilfully touched, there will be given out in one blended and harmonious whole, the true and perfect voice of the people.

But on what principle is such division and organization to be made to effect this great object, without which it is impossible to preserve free and popular institutions? To this no general answer can be given, it is the word of the wise and experienced, having full and perfect knowledge of the country and the people in every particular for whom the Government is intended. It must be made to fit, and when it does, it will fit no other, and will be incapable of being imitated or borrowed. Without, then, attempting to do what cannot be done, I propose to point out how that which I have stated has been accomplished in our system of Government, and the agency the veto is intended to have in effecting it.

I begin with the House of Representatives.—There each State has a Representative according to its federal numbers, and when met, a majority of the whole number of members controls its proceedings thus giving to the numerical majority the exclusive control throughout. The effect is to place its proceedings in the power of eight millions of people over all the rest, and six of the largest States, if united, over the other twenty; and the consequence, if the House was the exclusive organ of the people, would be the domination of the stronger over the weaker interests of the community, and the establishment of an intolerable and oppressive despotism.—To find the remedy against what would be so great an evil, we must turn to this body. Here an entirely different process is adopted to take the sense of the community. Population is entirely disregarded, and States, without reference to the number of people, are made the basis of representation; the effect of which is to place the control here in a majority of the States, which, had they the exclusive power, would exercise it as despotically and opressively as would the House of Representatives.

Regarded, then, separately, neither truly represents the sense of the community, and each is imperfect of itself; but when united, and the concurring voice of each is made necessary to enact laws, the one corrects the defects of the other; and, instead of the less popular derogating from the more popular, as is supposed by the Senator, the two together give a more full and perfect utterance to the voice of the people than either could separately. Taken separately, six States might control the House, and a little upwards of four millions might control the Senate, by a combination of the fourteen smaller States; but by requiring the concurrent votes of the two, the six largest States must add eight others to have the control in both bodies. Suppose, for illustration, they should unite with the eight smallest, which would give the least number by which an act can pass both Houses, if the members should be true to those they represent, would be 9.788,570 against a minority of 6,110,796, instead of 8,000,000 against 7,900,000, if the assent of the most popular branch alone was required.

This more full and perfect expression of the voice of the people by the concurrence of the two, compared to either separately, is a great advance towards a full and perfect expression of their voice; but great as it is, it falls short, and the framers of the Constitution were accordingly not satisfied with it. To render it still more perfect, their next step was to require the assent of the President, before an act of Congress could become a law, and, if he disapproved, to require two thirds of both Houses to overrule his veto. We are thus brought to the point immediately under discussion, and which, on that account, claims a full and careful examination.

One of the leading motives for vesting the President with this high power, was, undoubtedly, to give him the means of protecting the portion of the powers allotted to him by the Constitution, against the encroachment of Congress. To make a division of power effectual, a veto in one form or another is indispensable. The right of each, to judge or itself of the extent of the power allotted to its share, and to protect itself in its exercise, is what in reality is meant by a division of power. Without it, the allotment to each department would be a mere partition, and no division at all. Acting under this impression, the framers of the Constitution have carefully provided that this approval should be necessary, not only to the acts of Congress, but to every resolution, vote or order, requiring the consent of the two Houses, so as to render it impossible to elude it by any conceivable device. This of itself was an adequate motive for the provision, and were there no other, ought to be a sufficient reason for the rejection of this resolution. Without it, the division of power between the legislative and Executive departments, would have been merely nominal.

But it is not the only motive. There is another and deeper, to which the division itself of the Government into departments is subordinate; to enlarge the popular basis, by increasing the number of voices necessary to its action. As numerous as are the voices required to obtain the assent of the people through the Senate and the House to an act, it was not thought by the framers of the Constitution sufficient for the action of the Goverment in all cases. Nine thousand eight hundred, as large as is the number, were regarded as still too few, and six thousand one hundred too many to remove all motives for oppression: the latter being not too few to be plundered, and the former not too large to divide the spoils of plunder among. Till the increase of numbers on one side, and the decrease on the other reaches that point, there is no security for the weaker against the the stronger, especially in so extensive a country as ours. Acting in the spirit of these remarks, the authors of the Constitution, although they deemed the concurrence of the Senate and the House as sufficient, with the approval of the President, to the enactment of laws in ordinary cases, yet, when he dissented, they deemed it a sufficient presumption against the measure to require a still greater enlargement of the popular basis for its enactment. With this view, the assent of two-thirds of both Houses were required to overrule his veto, that eighteen States in the Senate, and a constituency of ten millions six hundred thousand in the other House.

But it may be said that nothing is gained towards enlarging the popular basis of the Government by the veto power; because the number necessary to elect a majority to the two Houses, without which the act could not pass, would be sufficient to elect him. That is true. But he may have been elected by a different portion of the people, or if not, great changes may take place during his four years, both in the Senate and the House, which may change the majority that brought him into power, and with it the measures and policy to be pursued. In either case he might find it necessary to interpose his veto to maintain his views of the Constitution, or the policy of the party of which he is the head, and which elevated him to power.

But a still stronger consideration for vesting him with the power may be found in the difference of the manner of his election, compared with that of the members of either House. The Senators are elected by the votes of the Legislatures of the respective States, and the members of the House by the people, who, in almost all the States, elect by districts. In either is there the least responsibility of the members of any one State, to the Legislature or people of any other State? They are, as far as their responsibility may be concerned, solely and exclusively under the influence of the States and people, who respectively elect them. Not so the President. The votes of the whole are counted in his election, which makes him more or less responsible to every part—to those who voted against him, as well as to those whom he owes his election, which he must feel sensibly. If he should be an aspirant for a re-election, he will desire to gain the favorable opinion of States that opposed him, as well as to retain that of those which voted for him. Even if he should not be a candidate for re-election,

*Mr. CLAY here interrupted Mr. CALHOUN, and said that he meant a majority according to the forms of the Constitution. Mr. Calhoun, in return, said he had taken down the words of the Senator at the time, and would vouch for the correctness of his statement. The Senator not only laid down the propositions as stated, but he drew conclusions from them against the President's veto, which could only be sustained on the principle of the numerical majority. In fact his course at the extra session, and the grounds assumed both by him and his colleague in this discussion, had their origin in the doctrines embraced in that proposition.