Hillsborough Recorder.

UNION, THE CONSTITUTION AND THE LAWS—THE GUARDIANS OF OUR LIBERTY.

Vol. XXII. THURSDAY, FEBRUARY 10, 1842. No. 1110.

Debate in the Senate.

SPEECH OF

Henry Clay, of Kentucky,

ON HIS RESOLUTIONS TO AMEND THE CONSTITUTION.

January 24 1842.

The resolutions submitted some time since by Mr. Clay, proposing to amend the Constitution in regard to the veto and other powers, were called up as the special order of the day.

The resolutions having been read—

Mr. CLAY addressed to the Senate. Whatever, he said, might be the ultimate fate of the amendment which had just been read, or of the two other kindred amendments which he had the honor of offering at the same time with it, he should at least enjoy the consciousness of having discharged his duty in their presentation. He must regret, indeed, that the duty of presenting and advocating their adoption by the Senate, had not devolved upon abler and more skilful hands; still, however, he considered the measure as one he was bound in conscience to present in his place for the action of this body.

Nor had the performance of this duty been prompted, as some might suppose, and as had been suggested in certain quarters, by any recent exercise of the power to which the resolution had reference; yet he was free to confess that although the subject was one which had long been in his mind, and on which he had thought much and deeply for years past, the course of recent events had certainly not tended to weaken, if it had not added much to the strength of his impressions on the general subject. As far back as seven years ago, a worthy and lamented friend of his from Maryland, now no more, had, in concert with himself, presented a proposition, the object of which had been to modify, and further to restrain the exercise by the Executive of this veto power. The draughting of the resolution, its presentation, and even the observations with which it was to be accompanied, all had been subjects of joint consultation and consideration between himself and that gentleman. He adverted to this fact for no other purpose than to repel the idea, if it were entertained in the mind of any who now heard him, that the amendment now under consideration, and the others which accompanied it, had been suggested by recent occurrences. As far back as June, 1840, on one of the most solemn occasions in which he had ever been called to address a popular assembly—he alluded to the time when he enjoyed the opportunity of addressing the friends of his youth and the people of his native county of Hanover, on the subject of the duties to be looked for at the hands of the new Whig Administration which was expected to come into power in consequence of the glorious and universal triumph of the Whig party at the then approaching election—he had placed emphatically and in front of them all, that which formed the subject of the present resolution. After speaking of the veto power generally, and more particularly of its exercise by a late President of the United States, the speech proceeded to say:

"The first, and, in my opinion, the most important object which should engage the serious attention of a new Administration, is that of circumscribing the Executive power, and throwing around it such limitations and safeguards as will render it no longer dangerous to the public liberties.

"Whatever is the work of man necessarily partakes of his imperfections; and it was not to be expected that, with all the acknowledged wisdom and virtues of the framers of our Constitution, they could have sent forth a plan of Government, so free from all defect, and so full of guarantees, that it should not, in the conflict of embittered parties and of excited passions, be perverted and misinterpreted. Misconceptions or erroneous constructions of the powers granted in the constructions of the powers granted in the Constitution would probably have occurred, after the lapse of many years, in seasons of entire calm, and with a regular and temperate administration of the Government; but during the last twelve years the machine, driven by a reckless charioteer with frightful impetuosity, has been greatly jarred and jolted, and it needs careful examination and a thorough repair.

"With the view, therefore, to the fundamental character of the Government itself, and especially of the Executive branch, it seems to me that, either by amendments of the Constitution, when they are necessary, or by remedial legislation, when the object falls within the scope of the power of Congress, there should be,

"1st A provision to render a person ineligible to the office of President of the United States, after a service of one term. Much observation and deliberate reflection have satisfied me that too much of the time, the thoughts, and the exertion of the incumbent, are occupied, during his first term, in securing his re-election. The public business consequently suffers; and measures are proposed or executed with less regard to the general prosperity than to their influence upon the approaching election. If the limitation to one term existed, the President would be exclusively devoted to the discharge of his public duties; and he would endeavor to signalize his administration by the beneficence and wisdom of its measures.

"2d. That the veto power should be more precisely defined, and be subjected to further limitations and qualifications."

Thus it would be perceived by the Senate that, whatever truth or soundness there might be in the opinion which he had embodied in the resolution now submitted to the Senate, it was an opinion long since deliberately formed and expressed, and one which had often since been considered and reviewed, unprompted by any of those recent occurrences to which it might otherwise have been supposed to owe its origin.

The particular amendment now before the Senate for its consideration, and to which he should speak before he more briefly adverted to the others which accompanied it, was that which related to the VETO POWER. And while on this subject of redeeming the pledge which was, in some sort, given by him as one of the humblest members of that party which had not long since so signally triumphed, he hoped the Senate would allow him, in all truth and sincerity, to say that he desired to see a party, when it came into power, redeem the pledges and fulfil the promises it made when out of power; and not exhibit that disgraceful spectacle so often witnessed in the political history of other nations, of professing one set of principles, and employing them as a means towards getting into power, and then, when successful in obtaining their wishes, turn round, forget all they had said and promised, and go on to administer the government just as their predecessors had done. He could assure gentlemen that, on the questions of restraining and limiting Executive power, on the necessity of an economical administration of the Government, on regulating the dismissing power of the President, on securing a fair and just responsibility in all the Departments; in a word, on every great question of national policy to which the party to which he considered himself as belonging were pledged to the People and to the world, they would find him, on all occasions, during the short time in which he expected to remain a member of the body, heartily ready to co-operate in carrying out into practice all they had avowed in principle.

It was his purpose to go but very briefly into the history and origin of the veto power. It was known to all to have originated in the institution of the tribunitian power in ancient Rome; that it was seized upon and perverted to purposes of ambition when the empire was established under Augustus; and that it had not been finally abolished until the reign of Constantine. There could be no doubt that it had been introduced from the practice under the empire into the monarchies of Europe, in most of which, in some modification or other, it was now to be found. But, although it existed in the national codes, the power had not, in the case of Great Britain, been exercised for a century and a half past; and, if he was correctly informed on the subject, it had, in the French monarchy, never been exercised at all. During the memorable period of the French revolution, when a new Constitution was under consideration, this subject of the veto power had been largely discussed, and had agitated the whole country. Every one must recollect how it had been turned against the unfortunate Louis XIV, who had been held up to the ridicule of the populace, under the title of "*Monsieur Veto*," as his wife, the Queen, had been called "*Madame Veto*," and although, after much difficulty, the power had finally found a place in the Constitution, not a solitary instance had occurred of its actual exercise. Under the colonial state of this country, the power was transplanted, from the experience which had been had of it in Europe, to the laws relating to the colonies, and that in a double form, for there was a veto of the Colonial Governor, and also a veto of the Crown. But what was thought of this power by the inhabitants of these States when rising to assert their freedom, might be seen in the words of the instrument in which they asserted their independence. At the head of all the grievances stated in that paper, as reasons for our separation from Great Britain, was placed the exercise of this very power of the Royal Veto. Speaking of the King, the Declaration of Independence employed this language:

"He has refused his assent to laws the most wholesome and necessary for the public good. He has forbidden his Governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them."

No doubt the idea of engrafting this power upon our own Constitution was adopted by the Convention from having always found it as a power recognised in European Governments, just as it had been before derived by them from the practice and history of Rome. At all events, the power was inserted at one fell swoop, not only in the General Constitution of the Federal Government, but also in the Constitutions of a portion of the States. Fifty years had now elapsed since the Federal Constitution was formed, and it was no derogation from the wisdom and patriotism of the venerable men who framed it, now to say that the work of their hands, though as perfect as ever had proceeded from human hands, was not absolutely so; because that was what nothing that sprang from man had ever been. But now, after the lapse of half a century, it was interesting to pause—to look back—to review the history of that period, and to compare the predictions of those who then looked into the future with the actual results of subsequent experience. Any one at all acquainted with the contemporaneous history of the Constitution must know that one great and radical error which possessed the minds of the wise men who drew up that instrument was an apprehension that the Executive Department of the then proposed Government would be too feeble to contend successfully in a struggle with the power of the Legislature: hence it was found that various expedients had been proposed in the Convention, with the avowed purpose of strengthening the Executive arm; one of which went so far as to propose that the President should be Chief Magistrate for life. All these proposals had their origin in the one prevailing idea—that of the weakness of the Executive, and its incompetence to defend itself against the encroachments of Legislative domination and dictation.

Now let any man look at the actual working of the machine they constructed, and see whether the anticipations which haunted their mind on this subject had been realized or falsified by the subsequent political history of this Government. Let him see whether the Executive Department was the weak spot in the system. Much had been said about the encroachments of the Federal Government on the Governments of the States, from which complaints had arisen what was called the States-rights party and its opposite; but an examination of the facts of the case would demonstrate that no solitary instance had yet occurred of any such encroachment by the General Government; but, on the contrary, Mr. C could demonstrate, were this the proper time or occasion for doing so, that there had been an abandonment by that Government of the exercise of its own just powers in relation to the States, and this to such an extent that the existing state of the country presented very much the same aspect as the old Confederation had once done, with all its weakness and imbecility.

But while there had been no such thing in practice as an encroachment by the Federal upon the State governments, there had, within the Federal Government itself, been a constant encroachment by the Executive upon the Legislative Department.

First, it attacked the treaty-making power. None could now read the language of the Constitution without at once coming to the conclusion that the intention of the authors of that instrument was that the Senate should be consulted by the President not merely in the ratification but in the inception of all treaties: that in the commencement of the negotiations, the instructions of the ministers appointed to treat, the character and provisions of the treaty, the Senate should be consulted, and should first yield its assent. And such had, in fact, been the interpretation put upon the treaty-making power in the first and purest years of our Government. Every one must recollect the early history of the exercise of the power, and the high sanction for such a usage. The first President had been wont to come to the Senate, there to propose a foreign mission, and to consult with his constitutional advisers, the members of the Senate, on the instructions to be given to the minister who should be sent. But this practice had since been abandoned. The President now, without a word of consultation with the Senate, on his own mere personal sense of propriety, concluded a treaty and promised to the foreign Power its ratification; and then, after all this had been done, and the terms of the treaty agreed upon, he for the first time submitted it to the Senate for ratification. Now every one must see that there was a great difference between rejecting what had been already actually done, and refusing to do that thing if asked beforehand. All must feel that they often give their official assent to what they never would have sanctioned but for the consideration that the treaty was already concluded, and that the faith of the nation was in some sort pledged for its ratification. Another consequence of this Executive encroachment was one from which foreign Powers often experienced great inconvenience—he meant the amendments of treaties by the Senate after they were at length submitted. So great had the inconvenience from this source been, that in more recent treaties it had come to be the practice to insert in the body of the treaty itself a provision against all alteration, so that it must be ratified in its existing form or not ratified at all.

The next Executive encroachment he should notice was that which occurred in the dismissal from office of persons appointed by and with the consent of the Senate. The effect of this practice was virtually to destroy all agency and co-operation of the Senate in such appointments. Of what avail was it that the Senate should to day solemnly ratify and confirm the appointment of an individual to an office under the Government, when the President could to-morrow reverse the effect of their act by his mere breath? Every one knew that the power of removal had been grossly perverted. In the early days of the Constitution it had been maintained that that power could be exercised only in case of malfeasance or misfeasance in office, and that the President who should dare to employ it for any other end would subject himself to impeachment. But our history and experience has gone to show that this liability to impeachment was a mere scarecrow, and that it could never have any practical effect in a popular Government, constituted as ours was ever like to be. By the free exercise of this power of removal the Senate had lost its practical influence on the whole subject of appointment to office. Instance after instance had occured where an individual had been dismissed by the Executive whom the Senate would gladly have replaced in office, but whom they were unable to retain there, and were therefore compelled to sanction the nomination of a successor. The actual result of such a state of things was, he repeated it, that the co-operation of the Senate with the President in the matter of appointments had been almost completely nullified for years past. Indeed, so perfectly was this understood, that, when the Senate were deliberating with closed doors on Executive nominations, Mr. C. frequently walked out of the Chamber. Deliberation in such a case was one of the idlest things in the world, because every one knew that all resistance must be unavailing. And, even should the objections against the nominee be so gross and undeniable that resistance to his appointment should succeed, they might generally calculate on another nomination not more to the taste of the Senate; and when at length the office was filled, the tenure of the incumbent was not on the joint will of the President and Senate acting together, but upon the single will, upon the mere arbitrary breath, of one man.

Mr. C. said that it was not his purpose to go into all the details of these encroachments by the Executive upon the constitutional powers and prerogatives of a single Legislative branch of the Government. He would now pass to its attacks on the powers of the Congress of the United States.

And the first instance of this to which he should refer was the creation of officers and the designation of their salaries, without the consent of Congress or any consultation with it. Another and a more formidable instance was to be found in the assumption within the last few years of the purse of the nation. He alluded, as every body must understand, to the seizure by a late Executive of the public deposites placed by law in the Bank of United States—a removal which had been effected under the avowed claim of power to employ the prerogative of removal as a means to compel subordinate executive officers to comply with the will of the President, on the principle that the Executive was a unit, and that a single will must control the entire Executive Department. This seizure of the public deposites had yet been unprovided against; the Congressional power to control them had been unresumed, and thus a state of things was permitted to continue by which the nation was virtually placed at the feet of the Executive.

Let not gentlemen mock him by talking about the impossibility of the President's drawing money out of the Treasury except under an appropriation by Congress; let them not tell him of the responsibility of public officers; let them look at facts; let them look at what has actually occurred on the removal of two or three Secretaries of the Treasury, in order to accomplish this very seizure of the public treasure, and then let them look at the dismissal of a countless host of subordinate officers because they did not happen to hold the same political opinions that were held by the President. Of what avail were laws? The President had nothing to do but say to his Secretary, issue your warrant for such a sum of money and direct the Register and Comptroller to sign it, and if they should talk about a regard for their oaths and boggle at obeying, tell them to do what I command them, and if not, I will find men who will. And he would here say to all those who professed to be desirous of guarding against such abuses of trust, that unless it were done by an amendment of the Constitution, or by a revival and resumption of the power already possessed by Congress under the Constitution, they never could effect their purpose. All efforts, all devices, all guards, all guaranties, all attempts of whatever kind, to separate the purse from the sword would prove in practice utterly vain and ineffectual. There was a third instance of this encroachment which he was authorized by facts to state, but on which he should not at this time dwell. Not only had the purse of the nation been seized; not only did it still remain in the hands of the President, but the nation had seen armies raised by Executive mandate, not only without authority or shadow of authority of law, but, as in the case of the Florida volunteers, after a law had been asked for and positively refused. Other instances might be cited in which a military force had been raised without the sanction of Congress.

Without, therefore, going any further, Mr. C. said that he thought a careful review of the operations of this Government down to the present hour, would fully demonstrate that, while it had made no encroachment on the States, there had been a constant encroachment by the Executive on the legislative authority.

And was not this in the nature of things? The Executive branch of the Government was eternally in action; it was ever awake; it never slept; its action was continuous and unceasing, like the tides of some mighty river which continued flowing and flowing on, swelling and deepening and widening in its onward progress, till it swept away every impediment and broke down and removed every frail obstacle which might be set up to impede its course. Let gentlemen look at all history, and they would find that it had been ever so. The legislative branch of Government met only periodically; its power lay in its assembling and acting; the moment it adjourned its power disappeared; it was dissipated, gone; but there stood the President at the head of the Executive Department, ever ready to enforce the law and to seize upon every advantage which presented itself for the extension and augmentation of its power.

And now he would, upon principle, examine for a few moments the motives which might be supposed to have actuated the members of the Convention in conferring upon the Executive this veto power. Let us throw ourselves back to the period in which they lived and acted, and then institute a comparison between the expectations in which they had indulged and the actual facts as they had since occurred.

On principle, certainly, the Executive ought to have no agency in the formation of laws. Laws were the will of the nation authoritatively expressed. The carrying of those laws into effect was the duty which ought to be assigned to the Executive, and this ought to be his sole duty, for it was an axiom in all free Governments that the three great departments, legislative, executive, and judicial, should ever be kept separate and distinct. And a Government was the most perfect when most in conformity with this fundamental principle. To give, then, to the Executive any agency in the ascertainment and expression of the will of the nation, was so far a violation of this great leading principle. But it was said that the framers of our Constitution had nevertheless been induced to place the veto upon the list of Executive powers by two considerations; the first was a desire to protect the Executive against the powers of the legislative branch, and the other was a prudent wish to guard the country against the injurious effects of crude and hasty legislation. But, where was the necessity to protect the Executive against the Legislative department? Were not both bound by their solemn oaths to support the Constitution? The Judiciary had no veto. If the argument was a sound one, why was not the same protection extended to the Judiciary also? Was there not ample security against the encroachments of the legislative power in the absence of the veto? First, there was the solemn oath of office: then there was the authority of the judiciary: then there was the responsibility of individual members to the People, and this responsibility continually kept up by a frequent appeal to the People: and, lastly, there was the ultimate conflict of the President and the Legislature before the grand tribunal of the nation itself, in case of any attempt by the Legislature to deprive him of the rightful exercise of his authority. Besides, if a veto be necessary as a defence against legislative power, why was there no veto against the highest description of all legislation, the fundamental legislation by a convention? There was no veto there—there was no apprehension of hasty action—no necessity was recognised for the controlling will of one man to save the nation from the heedless acts of its own representatives. But in the case of ordinary legislation why should such apprehensions be indulged? On this subject experience was our safest guide. Now, Mr. C. had taken the pains to look into the provisions of twenty-six State Constitutions in relation to this matter of the veto, and the result was highly curious and interesting. The States were in this respect divided, as equally as their number would admit, into three distinct classes. Nine of them gave to the Executive the veto power unless controlled by two thirds of the Legislature. Eight other States conferred the veto, but controlled it by a second vote of a majority, as was proposed in the amendment now under consideration. While the nine remaining States had not inserted the veto at all; and at the head of these stood one which had been called the mother of States—Virginia. Now, some of these State Constitutions were of a date anterior to that of the Constitution of the U. States itself. If there had been this very great danger of Executive encroachment and of hasty legislation, one would suppose it would have been heard of in these nine States. Had any instance yet occurred to show that such a danger did exist? Mr. C. had heard of none—read of none—and he put it to the advocates of this arbitrary and monarchical power, he put it especially to Democrats, who, while they professed themselves, and he credited not humbly and conscientiously professed themselves, friends of the People, came out in the contest between monarchical prerogative on the one hand and civil freedom on the other, as the avowed advocates of prerogative—he put it to all of them to tell, if such dangers both of encroachment and rashness as were pretended as a pretext for the veto did actually exist, how it happened that in the nine States he had named, during so long a period as had elapsed since their Constitutions were formed, no instances had occurred either of encroachment by the Legislature on the powers of the Executive, or of such rash and hasty legislation as called for the restraint and safeguard of a single sovereign will?

Now, before he proceeded further, he invited gentlemen to form a just estimate of this veto power; to look at it, to see what it was, to ascertain what was its value, what it amounted to in the practical operations of Government. He should not pretend to go into any inquiry as to its moral value, or to estimate its influence on the individual who exercised it, or the degree and extent which, by means of it, in connexion with a vast patronage, the President could sway the minds of other men, for that was a power which admitted of no estimate. He should confine himself to what might be called a mere numerical estimate of the amount of the veto power, and would make this estimate by taking the numbers of the two Houses of Congress, as those Houses now stood. The Senate at present consisted of fifty two members; of that number a majority consisted of twenty-seven; two-thirds amounted to thirty six. Supposing a law to be passed by a bare majority, (and in all great and contested questions bills were wont to be passed by very small majorities,) then there would be in its favor twenty seven votes. The bill was submitted to the President and returned by him with his veto. The force of the Presidential veto could not be overturned but by thirty-six votes. Here, then, the veto in the hands of the President was equal in its effect upon legislation to nine Senatorial votes. Mr. C. dismissed all considerations of influence derived from his office, all the glitter and eclat of the President's high station, and all the persuasion directed to the interests of men by his vast patronage; all this he laid out of view, and looked merely at the numerical fact that in the Senate the veto was equal to nine votes. And now in regard to the other branch. The House of Representatives consisted of 242 members; to constitute a majority required 122; two thirds amounted to 162. By looking at this difference, it would be seen, as in the case of the Senate, that the Executive veto amounted in effect to forty Representative votes.

Now, Mr. C. did not mean to say any thing in the least derogatory to the wisdom, or fairness, or integrity, or patriotism of any President of the U. States. It was not necessary, and he was utterly unwilling, without necessity, to injure the feelings of any man. We had had six Presidents who had previously been Senators. They were able and eminent men; but he wished to inquire whether any gentleman could show that their wisdom and other distinguished qualities had been so great as to be equal to the wisdom of nine other Senators? Could it be shown that their patriotism and intelligence and integrity were equal to those of forty members of the House of Representatives? If not, how did it happen that a man who, when in that Chamber, and acting with his fellow Senators, had been considered upon a par with them, was no sooner transferred to the other end of the avenue than his will became equal to that of nine Senators and forty Representatives? How, he asked, did this happen, and wherein was it just or right? Was it not sufficient that this man, after his political apotheosis, should enjoy all the glitter and distinction and glory attached to his office? Was it not enough that he wielded so vast and formidable an amount of patronage, and thereby exerted an influence so potent and so extensive? Must there be superadded to all a legislative force equal to nine Senators and forty members of the House of Representatives?

Again: let the subject be looked at in another point of view, and that was the balance of power among the states. Now, gentlemen might reason as they pleased about what a particular President would or ought to do, but Mr. C. would answer for it that he would never forget, amid