

Whelan

It is even wiser than laws, which, however wise and good in themselves, have the semblance of inequality which finds response in the heart of the citizen, and which will be evaded with little remorse. The wisdom of legislation is especially seen in grafting laws on conscience.

Dr. Channing

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MR. CALHOUN'S VIEWS.

FROM THE FENELTON MESSENGER.

MR. SYMMS,
I must request you to permit me to use your columns, as a medium to make known my sentiments on the deeply important question of the relation which the States and General Government bear to each other, and which is at this time, a subject of so much agitation.

It is one of the peculiarities of the station I occupy, that while it necessarily connects its contents with the politics of the day, it affords him no opportunity officially to express his sentiments, except accidentally on an equal plane of the body over which he presides. He is thus exposed, as I have often experienced, to have his opinions erroneously and variously represented. In ordinary cases, I conceive, the correct course to be to remain silent, leaving to time and circumstances, the correction of misrepresentations; but there are occasions so vitally important, that a regard both to duty and character would seem to forbid such a course; and such, I conceive, to be the present. The frequent allusions to my sentiments, will not permit me to doubt, that such also is the public conception, and that it claims the right to know, in relation to the question referred to, the opinions of those who hold important official stations; while on my part, desiring to receive neither unmerited praise, nor blame, I feel I trust, the solicitude, which every honest and independent man ought, that my sentiments should be truly known, whether they be such, as may be calculated to recommend them to public favor, or not. Entertaining these impressions, I have concluded, that it is my duty to make known my sentiments; and I have adopted the mode, which on reflection seemed to be the most simple, and best calculated to effect the object in view.

The question of the relation, which the States and General Government bear to each other, is not one of recent origin. From the commencement of our system, it has divided public sentiment. Even in the Convention, which the Constitution was struggling into existence, there were two parties, as to what their relation should be. While different sentiments, constituted no small impediment in forming that instrument. After the General Government went into operation, experience soon proved, that the question had not terminated with the labors of the Convention. The great struggle, that preceded the national revolution of 1801, which brought Mr. Jefferson into power, turned essentially on it; and the doctrines and arguments on both sides were embodied and ably sustained; on the one, in the Virginia and Kentucky resolutions; and on the other, in the replies of the Legislature of Massachusetts and some of the other States. These resolutions and this report, with the decision of the Supreme Court of Pennsylvania about the same time, (particularly in the case of *Cobbett*, delivered by Chief Justice McKean and concurred in by the whole bench,) contain, what I believe to be, the true doctrine on this important subject. I refer to them, in order to avoid the necessity of presenting my views, with the reason in support of them, in detail.

As my object is simply to state my opinions, I might pause with this reference to documents, that so fully and ably state all of the points immediately connected with this deeply important subject; but as there are many, who may not have the opportunity, or leisure to refer to them, and, as it is possible, however clear they may be, that different persons may place different interpretations on their meaning, I will, in order that my sentiments may be fully known, and to avoid all ambiguity, proceed to state summarily the doctrines, which I conceive they embrace.

Their great and leading principle is, that the General Government emanated from the people of the several States, forming distinct political communities, and acting in their separate and sovereign capacity, and not from all of the people forming one aggregate political community; that the Constitution of the United States is in fact a compact, to which each State is a party, in the character already described; and that the several States or parties, have a right to judge of its infractions, and in cases of a deliberate, palpable, and dangerous exercise of a power not delegated, they have the right in the last resort, to use the language of the Virginia resolutions, "to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them." This right of interposition, thus solemnly asserted by the State of Virginia, be it called what it may, state right, veto, nullification, or by any other name, I conceive to be the fundamental principle of our system, resting on facts historically as certain, as our Revolution itself, and deductions, as simple, and demonstrative, as that any political, or moral truth whatever; and I firmly believe that on its recognition depends the stability and safety of our political institutions. I am not ignorant, that those opposed to the doctrine have always, now and formerly, regarded it in a very different light, as anarchical and revolutionary. Could I believe such in fact to be its tendency, to me it would be no recommendation. I yield to none, I trust, in a deep and sincere attachment to our political institutions, and the union of these States. I never breathed an opposite sentiment; but on the contrary, I have ever considered them the great instruments of preserving our liberty, and promoting the happiness of ourselves and our posterity; and next to these, I have ever held them most dear. Nearly half my life has passed in the service of the Union, and whatever public reputation I have acquired, is indissolubly identified with it. To be too national has, indeed, been considered by many, even of my friends, to be my greatest political fault. With these strong feelings of attachment, I have examined with the utmost care, the bearing of the doctrine in question; and so far from anarchical, or revolutionary, I solemnly believe it to be, the only solid foundation of our system, and of the Union itself, and

that the opposite doctrine, which denies to the States the right of protecting their reserved powers, and which would vest in the General Government, (it matters not through what Department,) the right of determining exclusively and finally the powers delegated to it, is incompatible with the sovereignty of the States, and of the Constitution itself, considered as the basis of a Federal Union. As strong as this language is, it is not stronger, than that used by the illustrious Jefferson, who said, to give to the General Government the final and exclusive right to judge of its powers, is to make "its discretion and not the Constitution the measure of its powers;" and that "in all cases of compact between parties having no common Judge, each party has an equal right to judge for itself, as well of the operation, as of the mode and measure of redress." Language cannot be more explicit; nor can higher authority be adduced.

These different opinions are entertained on this subject, I consider, but as an additional evidence of the great diversity of the human intellect. Had not able, experienced and patriotic individuals, for whom I have the highest respect, taken different views, I would have thought the right too clear to admit of doubt; but I am taught by this, as well as by many similar instances, to treat with deference opinions differing from my own. The error may possibly be with me; but, if so, I can only say, that after the most mature and conscientious examination, I have not been able to detect it. But with all proper deference, I must think, that there is the error, who deny, what seems to be an essential attribute of the conceded sovereignty of the States; and who attribute to the General Government a right utterly incompatible with what all acknowledge to be its limited and restricted character; an error originating principally, as I must think, in not duly reflecting on the nature of our institutions, and on what constitutes the only rational object of all political constitutions.

It has been well said by one of the most sagacious men of antiquity, that the object of a constitution is to restrain the government, as that of laws is to restrain individuals. The remark is correct, nor is it less true, where the Government is vested in a majority, than where it is in a single or a few individuals; in a republic, than a monarchy or aristocracy. No one can have a higher respect for the maxim, that the majority ought to govern, than I have, taken in its proper sense, subject to the restrictions imposed by the Constitution and confined to subjects, in which every portion of the community have similar interests; but it is a great error to suppose, as many do, that the right of a majority to govern is a natural and not a conventional right; and, therefore, absolute and unlimited. By nature every individual has the right to govern himself; and Governments, whether founded on majorities, or minorities, must derive their right from the assent, expressed or implied, of the governed, and be subject to such limitations, as they may impose. Where the interests are the same, that is where the laws that may benefit one, will benefit all, or the reverse, it is just and proper to place them under the control of the majority; but where they are dissimilar, so that the law, that may benefit one, may be ruinous to another, it would be on the contrary unjust and absurd to subject them to the will, and such, I conceive to be the theory on which our Constitution rests.

That such dissimilarity of interests may exist, it is impossible to doubt. They are to be found in every community, in a greater, or less degree, however small, or homogeneous; and they constitute, every where, the great difficulty of forming, and preserving free institutions. To guard against the unequal action of the laws, when applied to dissimilar and opposing interests, is, in fact, what mainly renders a constitution indispensable; to overlook which, in reasoning on our Constitution, would be to omit the principal element, by which to determine its character. Were there no contrariety of interests, nothing would be more simple and easy than to form and preserve free institutions. The right of suffrage alone would be a sufficient guaranty. It is the conflict of opposing interests which renders it the most difficult work of man.

Where the diversity of interests exists in separate and distinct classes of the community, as in the case in England, and was formerly the case in Sparta, Rome and most of the free States of antiquity, the rational constitutional provision is, that each should be represented in the Government as a separate estate, with a distinct voice, and a negative on the acts of its co-estates, in order to check their encroachments. In England, the constitution has assumed expressly this form; while in the governments of Sparta and Rome the same thing was effected under different but not much less efficacious forms. The perfection of their organization, in this particular, was that, which gave to their constitutions of those renowned States all of their celebrity, which secured their liberty for so many centuries, and raised them to so great a height of power and prosperity. Indeed, a constitutional provision giving to the great and separate interests of the community the right of self protection, must appear to those who will duly reflect on the subject, not less essential to the preservation of liberty, than the right of suffrage itself. They in fact have a common object, to effect which, the one is as necessary, as the other; to secure responsibility, that is, that those who make and execute the laws should be accountable to those, on whom the laws in reality operate; the only solid and durable foundation of liberty. If without the right of suffrage, our rulers would oppress us, so, without the right of self protection, the major would equally oppress the minor interests of the community. The absence of the former would make the governed the slaves of the rulers, and of the latter the feeble interests the victim of the stronger.

Happily for us, we have no artificial and separate classes of society. We have wisely exploded all such distinctions; but we are not, on that account, exempt from all contrariety of interests, as the present distracted and dangerous condition of our country unfortunately, but too clearly proves. With us they are almost exclusively geographical; resulting mainly from difference of climate, soil, situation, industry and production; but are not, therefore, less necessary to be protected by an adequate con-

stitutional provision, than where the distinct interests exist in separate classes. The necessary truth, greater, as such separate and dissimilar geographical interests, are more liable to come into conflict, and more dangerous when in that state, than those of any other description; so much so, that *surely in the first instance on record, where they have not formed in an extensive territory, separate and independent communities, or subjected the whole to despotic sway.* That such may not be our unhappy fate also, must be the sincere prayer of every lover of his country.

So numerous and diversified are the interests of our country, that they could not be fairly represented in a single government, organized so, as to give to each—great and leading interest, a separate and distinct voice, as in the governments, to which I have referred. A plan was adopted better suited to our situation, but perfectly novel in its character. The powers of the government were divided, not as heretofore, in reference to classes, but geographically. One General Government was formed for the whole, to which was delegated all of the powers supposed to be necessary to regulate the interests common to all of the States, leaving others subject to the separate control of the States; being from their local and peculiar character, such, that they could not be subject to the will of the majority of the whole Union, without the certain hazard of injustice and oppression. It was thus, that the interests of the whole were subjected, as they ought to be, to the will of the whole, while the peculiar and local interests were left under the control of the States separately, to whose custody only, they could be safely confided. This distribution of power, settled solemnly by a constitutional compact, to which all of the States are parties, constitutes the peculiar character and excellence of our political system. It is truly and emphatically *American; without example, or parallel.*

To realize its perfection, we must view the General Government and the States as a whole, each in its proper sphere sovereign and independent, each perfectly adapted to their respective objects; the States acting separately, representing and protecting the local and peculiar interests; acting jointly, through one General Government, with the weight respectively assigned to each by the Constitution, representing and protecting the interest of the whole; and thus perfecting by an admirable, but simple arrangement of the great principle of representation and responsibility, without which no government can be free, or just. To preserve this sacred distribution, as originally settled, by coercing each to move in its prescribed orb, is the great and difficult problem, on the solution of which, the duration of our Constitution, of our Union, and in all probability, our liberty depends. How is this to be effected?

The question is new, when applied to our peculiar political organization, where the separate and conflicting interests of society are represented by distinct, but connected Governments; but is in reality an old question under a new form, long since perfectly solved. Whenever separate and dissimilar interests have been separately represented in any Government; whenever the sovereign power has been divided in its exercise, the experience and wisdom of ages have devised but one mode, by which such political organization can be preserved; the mode adopted in England, and by all Governments ancient and modern, blessed with Constitutions deserving to be called free; to give to each co-estate the right to judge of its powers, with a negative, or veto on the acts of the others, in order to protect against encroachments, the interests it particularly represents; a principle which all of our Constitutions recognize in the distribution of power among their respective Departments, as essential to maintain the independence of each, but which to all, who will duly reflect on the subject, must appear far more essential, for the same object, in that great and fundamental distribution of powers between the States and General Government. So essential is the principle that to withhold the right from either, where the sovereign power is divided, is in fact to annul the division itself, to consolidate in the one, left in the exclusive possession of the right, all of the powers of the government; for it is not possible to distinguish, practically, between a government having all power, and one having the right to take what powers it pleases. Nor does it in the least vary the principle, whether the distribution of power be between co-estates, as in England, or between distinctly organized, but connected governments, as with us. The reason is the same in both cases, while the necessity is greater in our case, as the danger of conflict is greater, where the interests of a society are divided geographically, than in any other, as has already been shown.

These truths do seem to me to be incontrovertible; and I am at a loss to understand how any one, who has maturely reflected on the nature of our institutions, or who has read history, or studied the principles of free governments to any purpose, can call them in question. The explanation must, it appears to me, be sought in the fact, that in every free State, there are those, who look more to the necessity of maintaining power, than guarding against its abuses. I do not intend reproach, but simply to state a fact apparently necessary to explain the contrariety of opinions, among the intelligent, where the abstract consideration of the subject, would seem scarcely to admit of doubt. If such be the true cause, I must think the fear of weakening the government too much in this case to be in a great measure unfounded, or, at least that the danger is much less from that, than the opposite side. I do not deny that a power, of so high a nature, may be abused by a State; but, when I reflect, that the States unanimously called the general government into existence with all of its powers, which they freely surrendered on their part, under the conviction that their common peace, safety and prosperity required it; that they are bound together by a common origin, and the recollection of common suffering and a common triumph in the great and splendid achievement of their independence; and that the strongest feelings of our nature, and among them, the love of national power and distinction, are on the side of the Union; it does seem to me, that the fear, which would strip the States of their sovereignty, and de-

grade them, is in fact, to mere dependent corporations, lest they should abuse a right indispensable to the peaceable protection of those interests, which they reserved under their own peculiar guardianship, when they created the General Government, is unnatural and unreasonable. If those who voluntarily created the system, cannot be trusted to preserve it, what power can?

So far from extreme danger, I hold, that there never was a free State, in which this great conservative principle, indispensable in all, was ever so safely lodged. In others, when the co-estates, representing the dissimilar and conflicting interests of the community came into contact, the only alternative was compromise, submission, or force. None in ours. Should the General Government, and a State come into conflict, we have a higher remedy; the power which called the General Government into existence which gave it all of its authority, and can enlarge, contract, or abolish its powers at its pleasure, may be invoked. The States themselves may be appealed to, three fourths of which, in fact, form a power, whose decrees are the Constitution itself, and whose voice can silence all discontent. The utmost extent then of the power is, that a State acting in its sovereign capacity, as one of the parties to the Constitutional compact, may compel the Government, created by that compact, to submit a question touching its infraction, to the parties, who created it; to avoid the supposed danger of which, it is supposed to resort to the novel, the burlesque, and, I must add, fatal project of giving to the General Government the sole and final right of interpreting the Constitution, thereby reversing the whole system, making that instrument the creature of its will, instead of a rule of action imposed on its creation, and annihilating in fact the authority which imposed it, and from which the government itself derives its existence.

That such would be the result, were the right in question vested in the Legislative, or Executive branch of the Government is conceded by all. No one has been so hardy as to assert, that Congress, or the President ought to have the right, to deny, that if vested finally and exclusively in either, the consequences, which I have stated would not necessarily follow; but its advocates have been reconciled to the doctrine, on the supposition, that there is one Department of the General Government, which, from its peculiar organization, affords an independent tribunal through which the Government may exercise the high authority, which is the subject of consideration, with perfect safety to all.

I yield, I trust to few, in my attachment to the Judiciary Department. I am fully sensible of its importance and would maintain it to the fullest extent in its Constitutional powers and independence; but it is impossible for me, to believe, that it was ever intended by the Constitution, that it should exercise the power in question, or that it is competent to do so, and, if it were that it would be a safe depository of the power.

Its powers are judicial and not political, and are expressly confined by the Constitution "to all cases in law and equity arising under this Constitution, the laws of the United States and the treaties made, or which shall be made, under its authority;" and which I have high authority in asserting, excludes political questions and comprehends those only, where there are parties amenable to the process of the Court. Nor is its incompetency less clear, than its want of Constitutional authority. There may be many and the most dangerous infractions on the part of Congress, of which, it is conceded by all, the Court, as a Judicial tribunal, cannot from its nature take cognizance. The Tariff itself is a strong case in point; and the reason applies equally to all others, where Congress perverts a power, from an object intended, to one not intended, the most insidious and dangerous of all the infractions; and which may be extended to all of its powers, more especially to the taxing and appropriating.—But, supposing it competent to take cognizance of all infractions of every description, the insuperable objection still remains, that it would not be a safe tribunal to exercise the power in question.

It is an universal and fundamental political principle, that the power to protect, can safely be confided only to those interested in protecting, or their responsible agents, a maxim not less true in private than in public affairs.—The danger in our system is, that the General Government, which represents the interests of the whole, may encroach on the States, which represent the peculiar and local interests, or that the latter may encroach on the former. In examining this point, we ought not to forget, that the Government through all of its Departments, Judicial, as well as others, is administered by delegated and responsible agents; and that the power which really controls ultimately all the movements is not in the agents, but those who elect or appoint them.—To understand then its real character, and what would be the action of the system in any supposable case, we must raise our views from the mere agents, to this high controlling power, which finally impels every movement of the machine. By doing so, we shall find all under the control of the will of a majority, compounded of the majority of the States, taken as corporate bodies, and the majority of the people of the States estimated in federal numbers. These united constitute the real and final power, which impels and directs the movements of the General Government. The majority of the States elect the majority of the Senate; of the people of the States, that of the House of Representatives; the two united, the President and the President and a majority of the Senate appoint the Judges; a majority of whom, and a majority of the Senate and the House with the President, really exercise all of the powers of the Government, with the exception of the cases where the constitution requires a greater number than a majority. The Judges are, in fact, as truly the Judicial Representatives of this unlimited majority, as the majority of Congress itself, or the President, as its legislative, or executive representative; and to confide the power to the Judiciary to determine finally and conclusively.

I refer to the authority of Chief Justice Marshall in the case of *Johathan Robbins*. I have not been able to refer to the speech and speak from memory.

what powers are delegated, and what reserved; it would be in reality to confide it to the majority, whose agents they are, and by whom they can be controlled in various ways, and, of course, to subject, (against the fundamental principle of our system, and all sound political reasoning,) the reserved powers of the States, with all of the local and peculiar interests, they were intended to protect, to the will of the very majority, against which, the protection was intended. Nor will the tenure by which the Judges hold their office, however valuable the provision in many other respects, materially vary the case. Its highest possible effect would be to retard and not finally to resist, the will of a dominant majority.

But, it is useless to multiply arguments. Were it possible that reason could settle a question where passions and interests of men are concerned, this point would have long since been settled for ever, by the State of Virginia. The report of her Legislature, to which I have already referred, has really, in my opinion, placed it beyond controversy. Speaking in reference to this subject, "It says it has been objected" (to the right of a State to interpose for the protection of her reserved rights) "that the Judicial authority is to be regarded, as the sole expositor of the Constitution; on this objection it might be observed, first, that there may be instances of usurped powers, which the terms of the Constitution could never draw within the control of the Judiciary Department; secondly, that if the decision of the Judiciary be raised above the sovereign parties to the Constitution, the decisions of the other departments, not carried by the forms of the Constitution before the Judiciary, may be equally authoritative and final with the decision of that Department. But the proper answer to the objection is, that the resolution of the General Assembly relates to those great and extraordinary cases, in which all of the forms of the constitution may prove ineffectual against infractions dangerous to the essential rights of the parties to it. The resolution supposes, that dangerous powers not delegated, may not only be usurped and executed by the other departments, but that the Judicial Department may also exercise or sanction dangerous powers beyond the grant of the Constitution, and consequently that the ultimate right of the parties to the Constitution to judge, whether the Compact has been dangerously violated, must extend to violations by one delegated authority, as well as by another—by the Judiciary, as well as by the Executive or Legislative."

Against these conclusive arguments, as they seem to me, it is objected, that if one party has the right to judge of infractions of the constitution, so has the other, and that consequently in cases of contested powers between a State and the General Government, each would have a right to maintain its opinion, as is the case when sovereign powers differ in the construction of treaties or compacts, and that of course, it would come to a mere question of force. The error is in the assumption, that the General Government is a party to the Constitutional Compact.—The States, as has been shown, formed the compact, acting as sovereign and independent Communities. The General Government is but its creature; and though in reality a government with all the rights and authority, which belong to any other government, within the orb of its powers, it is, nevertheless, a government emanating from a compact between sovereigns, and partaking in its nature and object of the character of a joint administration, appointed to superintend and administer the interests in which all are jointly concerned, but having, beyond its proper sphere, no more power, than if it did not exist. To deny this would be to deny the most incontrovertible facts, & the clearest conclusions; while to acknowledge its truth is to deny utterly the objection, that the appeal would be to force, in the case supposed. For if each party has a right to judge, then under our system of government, the final cognizance of a question of contested power would be in the States, and not in the general government. It would be the duty of the latter, as in all similar cases of a contest between one or more of the principals and a joint commission or agency, to refer the contest to the principals themselves. Such are the plain dictates of reason and analogy both. On no sound principle can the agents have a right to final cognizance, as against the principals, much less to use force against them, to maintain their construction of their powers. Such a right would be monstrous; and has never, heretofore, been claimed in similar cases.

That the doctrine is applicable to the case of a contested power between the States, and the General Government, we have the authority not only of reason and analogy, but of the distinguished statesmen already referred to. Mr. Jefferson, at a late period of his life, after long experience and mature reflection, says, "With respect to our State and Federal governments, I do not think their relations are correctly understood by foreigners. They suppose the former subordinate to the latter. This is not the case. They are co-ordinate departments of one simple and integral whole. But you may ask if the two departments should claim each the same subject of power, where is the umpire to decide between them? In cases of little urgency or importance, the prudence of both parties will keep them aloof from the questionable ground; but if it can neither be avoided nor compromised, a convention of the States must be called, to ascribe the doubtful power to that department which they may think best." It is thus that our Constitution by authorizing amendments, and by prescribing the authority and mode of making them, has by a simple contrivance, with its characteristic wisdom, provided a power which in the last resort, supercedes effectually the necessity, and even the pretext for force; a power to which none can fairly object; with which the interests of all are safe; which can definitely close all controversies in the only effectual mode, by freeing the compact of every defect and uncertainty, by an amendment of the instrument itself. It is impossible for human wisdom, in a system like ours, to devise another mode which shall be safe and effectual, and at the same time consistent with what are the relations and acknowledged powers of the two great departments of our government. It gives a beauty and security peculiar to our system, which if duly appreciated, will transmit its [Refer to the 4th page.]