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LEGISLATIVE DEBATE.

SPEECH OF MR. GRAHAM, OF HILLSBOROUGH,
On the Resolutions to Instruct Mr. Mangum.
(CONCLUDED.)

But, Sir, I will not leave the subject before us to go into an examination of the comparative merits of the Legislative and Executive departments of Government in other ages and countries; nor would I make an invidious distinction between those of my own, much less pass unrebuked an illegal exercise of power in either. I have been endeavouring to show that the President could derive no power over the public revenue from any of the grants in the Constitution, and as no law has been produced, bestowing such a power, the Resolution of the Senate is taken to be true.

But suppose that I am deceived in all this, the demonstration of its truth is by no means necessary to the vindication of the resolution of the Senate. From the very nature of our Government, the Executive, as such, is but the minister to perform the dictates of the Legislature; and as the authority to command implies the right to obedience, it is at any time competent to the Legislative power, to declare whether, its will has been properly executed, or whether, under a pretence of it, Executive deeds have been done which it never authorised; this may be effected by a statute declaratory of what the law is, or by the expression of an opinion in the shape of a Resolution. Where the Legislative power consists in distinct bodies, either may make such a declaration, with or without the concurrence of the other. As both are charged with the responsible duty of examining the whole body of the laws, to ascertain what defects exist, and to provide suitable remedies, so both are equally bound to scrutinize the administration of the laws; and, if they be found to be misunderstood or misapplied, to declare their true meaning and insist on their correct administration—such declarations are not always made by the terms of enactment merely, but these are usually preceded by a preamble, reciting that "Whereas the Judiciary has decided improperly," or whereas some Executive officer has acted improperly. The terms of censure implied or expressed in such a preamble on the conduct of the officer in question, may be more or less severe. The right to use them is certainly unquestionable, and is under no other restraints than are attached to all the rights of a Legislative body within the pale of the Constitution—their discretion and sense of propriety is their only guide.—If the Senate of the United States had used the language of their Resolution by way of preamble to a statute, "declaring and enacting" that the Bank of the United States does and shall possess the right to the "custody of the public monies so long as they are kept safely and paid out faithfully," they certainly would have been within the limit of their powers, and yet the only effect of such an act on their part would have been the same with this resolution; that is, to express the opinion of that branch of the Legislature on the illegality of the conduct of the President, that the act of 1816 ought to be executed as it had always been heretofore.

It is likewise incident to every Legislative Assembly, as well as Judicial tribunal, unless positively restrained, not merely to protect itself from interruption in the discharge of its duties, whence arise the power to punish for contempts, but also to resist any invasion of its rights by the other departments of Government; and when the Constitution has provided no superior to determine such matters, it must be itself the judge on the question, whether such an invasion has been made. The mild and feeble mode in which only it is able to resist, can make no difference—it may not possess the power to compel the encroaching department to desist, but this does not prevent it from giving the alarm and rousing the vigilance of those from whom Government has derived its existence. If the other House of the Legislature should pass a Resolution directing the public Treasurer to pay a sum of money to an officer without sending it here for our concurrence, it would not only be our right, but our duty, to remonstrate against such a procedure. If his Excellency the Governor should draw a warrant on the Treasury in favor of any individual under pretence or mistake that an appropriation had been made therefor by law, we should likewise resist that by protest or resolution. The Governor of this State in 1818 appointed a judge of the Superior Court to fill a vacancy which had occurred, without the knowledge of the General Assembly, during their session. The letter of the Constitution authorised such an appointment only when the vacancy happened "during their recess" The Legislature which next convened, probably concurred in the Governor's construction; but with all due respect for that distinguished and patriotic Magistrate, (Gov. Branch,) had the General Assembly or either House of it been of a different opinion, might they not have resolved that His Excellency in making such appointment had assumed power "not granted by the Constitution and laws, but in derogation of both?" When such a declaration shall be made must depend solely on the opinion of the department or body which believes its rights to have been violated. From the imperfection of man it may be inappropriately made, but the like result may happen in the exercise of any of its powers. The Senate of the United States, therefore, being a Legislative body, clothed with as full Legislative powers as the House of Representatives, excepting in the single particular of being unable to originate revenue bills, had a perfect right whenever it was convinced of the fact, to declare that the President had invaded the province of the lawmakers and under colour of executing his constitutional function had assumed powers which belonged only to Congress. Though inferior in number, and though chosen differently from the other House, they are, with the exception before stated, equally charged with the high and solemn duties, not merely of enacting laws for this vast Republic, but by perpetual vigilance of guarding from usurpation those inestimable rights, which it required ages and centuries, the blood of many martyrs and the horrors of innumerable wars to rescue from the hold of Executive power beyond the Atlantic. This ordinary incident of Legislative power would never have been denied to the Senate, but for the confusion of ideas arising from its also possessing Judicial and Executive powers; but it must be recollected that the two latter are in addition to, and do by no means abridge its Legislative authorities, because for one purpose, it is a Judicatory and for another an Executive council. It is not merely the less a branch of the Legislature, capable of framing and passing laws, of declaring their true meaning, of inquiring into the acts of all those entrusted with their execution and of asserting whether their intention has been fulfilled, or whether the conduct of any Executive officer from the highest to the lowest has been in accordance with law, or in violation of it. The right of defending all its powers against infringement belongs of course to the Senate, if the President should appoint an officer "to fill up a vacancy" which had happened during their session, and not "during the recess," or if he should exchange a ratification of a treaty with a Foreign Power, without consulting them, they would be authorized and bound to remonstrate against either, as an infraction of their Executive power. The Constitution declaring that officers shall be appointed and treaties concluded by and "with the advice and consent of the Senate;" if the House of Representatives should presume to pass judgment of removal from office against any individual or declare him incapable of holding office, the Senate may protest against that as a direct encroachment on their Judicial functions; so, if the House of Representatives, or President, or both, as co-ordinate branches of the law enacting power, shall assail its Legislative rights, it may in like manner defend these, which are far more extensive than the two former, comprehending every legislative authority granted to the other House, with the exception only before stated. It has been boldly promulged by the head of a Department, during the present year, that the Senate has no right to investigate its affairs. If this indeed be true, then is the Senate deprived of half its efficiency in the enactment of laws for how are they qualified to pass new laws, unless they can ascertain not merely how the old are written, but how they operate practically? And the people are robbed of one half of the sentinels whom they thought they had appointed to watch and examine the administration of the laws, to commend the faithful and condemn the unfaithful ministerial servants. Shall I be told, as has been asserted before, that the Senate in such investigation may conceive opinions and contract prejudices which may render them unfit to act as judges, if an impeachment shall be preferred against a delinquent officer thus detected? This argument from inconvenience, if it be entitled to any notice, may be readily answered. Sir, positive stipulations, the observance of which is enjoined by oath, are not to be disregarded by individual ideas of propriety and convenience, and that Senator would deserve and receive the severest reproof, who excused himself for a failure to sift the conduct of any public officer, by the fear that he would thus morally disqualify himself for the trial of an impeachment, should one be instituted by the other House of Congress—the same species of reason would forbid the Senate to vote for, or the President to approve, a declaration of war, lest they should in its progress so far lose temper as to be unfitted to negotiate a Treaty of Peace. A Judge in like manner would, by the acceptance of his office, surrender the power of self-defence, being unable to deal any but Judicial blows. It was the intention of the framers of our Constitution, that the Senators in Congress, to whom these threefold duties are confided, should possess the highest qualifications of mind and heart; but to guard against the frailties of human nature in its State, when they put off the Legislative to assume the Judicial robe, they are required to take a new oath or affirmation, to direct their attention to the charges alledged and the evidence adduced by the other House, and as faithful triers to make their decision upon these only. It might possibly have been more proper to have given the Judicial and Executive powers of the Senate to some other body, but it is difficult to conceive how the superaddition of these should in any manner diminish its power of defending itself, and the right of free examination into the execution of the laws, and animadversion on the acts of Executive officers of any grade, which, as I have endeavored to show, belongs to every Legislative body—a right which has been no where exercised more freely than in the American Congress. In the year 1794, Mr. Giles of Virginia, introduced sundry Resolutions into the House of Representatives, casting the hardest censure on Alexr' Hamilton, then Secretary of the Treasury, charging him among other things, with neglect of his office and indecorum to the House, (*Marshall's life of Washington, vol* 5.)

In 1796, a Resolution passed the House of Representatives calling on the President (Washington,) to lay before the House a copy of the instructions to our Minister, together with the correspondence and other documents relative to Jay's treaty. The President in a written message refused to communicate the information desired, declaring that "to admit a right in the House of Representatives to demand and have as a matter of course, all the papers respecting a negotiation with a foreign power, would be to establish a dangerous precedent." The message further proceeds: "it does not occur that the inspection of the papers asked for can be relative to any purpose under the cognizance of the House of Representatives, except that of an impeachment, which the resolution has not expressed." And concludes, "a just regard to the Constitution and the duties of my office, under all the circumstances of this case, forbids a compliance with your request." Whereupon, Mr. Blount of North Carolina, in Committee of the Whole, moved the following Resolutions which were adopted by the House.

Resolved, That, it being declared by the second section of the second article of the Constiution, "that the President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur," the House of Representatives do not claim any agency in making treaties, but that when a treaty stipulates regulations or any subjects submitted by the Constitution to the powers of Congress, it must depend for its execution as to such stipulations on a law or laws to be passed by Congress; and it is the constitutional right and duty of the House of Representatives in all such cases to deliberate on the expediency or inexpediency of carrying such Treaty into effect and to determine and act thereon, as in their judgment may be most conducive to the public good.

Resolved, That it is not necessary to the propriety of any application from this House to the Executive, for information desired by them and which may relate to any constitutional functions of the House, that the purposes for which such information may be wanted, or to which the same may be applied, should be stated in the application.—(*Journal Ho. of Reps.* 2 *vol*, 480,488,489.)

These Resolutions assert in substance, that the President in withholding the information sought by the Houses, on the ground that it had not been asked for, as evidence on an impeachment, had contravened their rights and violated his constitutional duty, yet they were adopted by a vote of 75 to 35. Among the former of whom are such names as James Madison and Nathaniel Macon. This censure of the House, however, drew forth no remonstrance from the President; he did not doubt their power to express their opinion, as to their constitutional rights. A still stronger precedent is afforded by the case of Jonathan Robbins, during the administration of the elder Adams. A person of this name was in prison in South-Carolina, for trial, on a charge of Piracy and Murder, committed on board a British ship of War on the high seas. On a requisition of the British Government, under the treaty of peace, the President informed the judge of that District that he considered an offence committed on board a public ship of War on the high seas, to have been committed within the jurisdiction of the nation to whom the ship belongs, and requested the judge to deliver up the prisoner to the agent of Great-Britain; *provided*, that the stipulated evidence of his criminality should be produced. The judge accordingly surrendered him, and he was tried and executed by a court martial, on a charge of mutiny and murder. The House of Representatives called for the papers relative to the case, and resolutions were introduced reciting all the facts, and concluding "that the decision of those questions by the President against the jurisdiction of the courts of the United States in a case where those courts had already assumed and exercised jurisdiction; and his advice and request to the judge of the district court, that the person thus charged should be delivered up; provided, only such evidence of his criminality should be produced, as would justify his apprehension and commitment for trial, are a dangerous interference of the Executive with judicial decisions; and that the compliance with such advice and request on the part of the Judge of the District Court of South-Carolina, is a sacrifice of the Constitutional Independence of the Judicial power, and exposes the administration thereof, to suspicion and reproach." These resolutions were not adopted, because a majority of the House believed the conduct of the President to be legal.—But so far as I am informed, no doubt was expressed as to the right of the House to entertain them, and many distinguished names are recorded against the motion to discharge from their further consideration. Here, then, is a proposition for bitter censure, not only on the President, but on a judge of the United States, in relation to their conduct in the construction of a treaty, in defining the limits between the Executive and Judicial powers, and on a difficult question of admiralty law, retained under consideration near twenty days, and finally rejected against the wishes of Albert Gallatin, Nathaniel Macon, John Randolph and others, who have been quoted here as proper expositors of the Constitution. I will only mention in addition to these the almost unanimous vote of commendation to President Washington, when retiring from office, (*Journal Ho. of Reps. vol.* 2, 619) and leave it to candor to say, whether if they have a right to praise, they have not a right also to blame.

Is it objected that these authorities come from the House of Representatives alone? My friend from Bertie (Mr. Outlaw) has adduced a precedent of a like proceeding in the Senate, (Gov. Branch's Resolution, 1826) which is too recent to require further comment now. The unanimous condemnation of the Postmaster-General in the same body, at the last session of Congress, demonstrates even to the unwilling, that their right to do so is unquestionable. But what power has the House of Representatives to pass judgement on the acts of Executive officers by resolution which is not possessed by the Senate. By the Constitution, the House has "the sole power of impeachment," and the Senate "the sole power to try all impeachments." The power to impeach, however, does not give the right to censure, in any other way than by filing a criminal information to bring an offender to trial before the other body. It is a power to indict an offender, but not to find him guilty. Yet the Resolutions before stated both begin and end the accusation, both charge and convict. They cannot, therefore, be traced to the impeaching function of the House of Representatives, but result as an incident from their legislative authority.

I regret, sir, that I have felt obliged to detain the House thus long, in endeavoring to demonstrate the right of the Senate of the United States to declare its opinion, whenever it shall judge it to be proper, of the official conduct of the President or of any inferior Executive officer. I have been accustomed to consider this right of all legislative bodies as one of the elementary principles of freedom. The history of liberty for at least eight hundred years in Great Britain exhibits an almost constant struggle between the Legislative and Executive powers of Government—the Parliament insisting on the rights of the people, and the King asserting the "original, unchecked Executive powers" of monarchy. But ever since the assemblage of the inflexible Barons at Runnymede, the right of the former to speak their minds freely of the conduct of their Sovereign, if it has been denied by the slaves of courts, has been exercised with the boldness which belongs to the votaries of freedom every where. As far back as the reign of Henry 3d, we are told by history, that "in full Parliament, when Henry demanded a new supply, he was openly reproached with a breach of his word, and the frequent violations of the charter. He was asked if he did not blush to desire any aid from his people, whom he professedly hated and despised, and to whom on all occasions he prefered aliens and foreigners, and who groaned under the oppressions which he either permitted or exercised over them." (*Hume* 1 *Vol.* 345) The famous *Petition of Right* was but a declaration in indignant terms, that the King had exercised prerogatives unauthorised by the British Constitution and in contravention of the rights of Parliament. In the latter years of Charles 1st, the Preamble of a bill to raise soldiers, denied the King's right to impress subjects into the military service. Charles came to Parliament and offered to sanction the bill without the Preamble, "by which means, he said, that ill-timed question with regard to the prerogative would be avoided, and the pretensions of each party be left entire." Both Houses took fire at the measure. The Lords as well as Commons passed a vote "declaring it to be a high breach of privilege for the King to take notice of any bill which was in agitation in either of the Houses, or to express his sentiments in regard to it before it was presented to him for his assent." Such are the terms of denunciation in which the Legislative Assemblies of England were permitted to speak of their monarch before their rights were firmly established by the Revolution of 1688. Since that period, the most high prerogative Tory has never breathed a doubt of such a right in Parliament to its fullest extent. But it is vehemently contended here, that one of the Houses of the American Congress, the Representatives of the whole twenty-four States, has no right to express its opinion, that the President of the United States had assumed powers which did not belong to him, but which were by the Constitution conferred on the Legislature—that their mouths must be sealed as to all his acts, except when opened for the ascription of praise, and that if, in an unguarded moment, under the impulse of the spirit of freedom, they have ventured to question the legality of a single one, the most honored sons of all the States must be humbled not merely to confess their sorrow, but to undo the deed. Sir, I appeal to every American citizen to say whether the powers of their President are more absolute than those of a British King, or whether their Congress, in either House, has not the right, to speak of the former with a freedom at least equal to that of the Lords and Commons in regard to the latter. Why, Sir, the expression contained in the Resolution of the Senate, respecting the President, is high commendation compared with the censure and animadversion, which for centuries past, the two Houses of Parliament have habitually passed on a King who, according to the theory of that Government, "can do no wrong." The legitimate powers of the President are tremendous enough. To say nothing of the chief command of the whole military force, and the negative on acts of Legislation, the power to appoint forty thousand officers, compensated by salaries of many millions of dollars, and comprising the honors most grateful to ambition, the power to remove these again at will, and the power to conclude, with the concurrence of the Senate, all treaties with foreign nations, are quite as great as the jealous spirit of liberty will accord to any one man. Add to these the claims recently set up of controling all incumbents while in office under penalty of removal, and thus to suspend any law or to compel any thing to be done under the form of law: of the entire custody and control of the public treasure; and fordid the Senate to question any Executive act, and a perpetual dictatorship is established, "to take care that the Republic shall suffer no harm;" to be sure but this also implies that it shall receive no good unless it so please the Chief Magistrate.

Mr. Speaker: It may possibly be unfortunate that any collision should arise between any of the branches of the Federal Government; but sir, if not to be encouraged, they certainly ought not to be prohibited. The liberties of the people and the rights of the States are surely in as little danger from the disagreement as from the combination of the departments of the Government to sustain each other. At all events, the Legislature of a State, should be the last body on earth to degrade or restrain within improper bounds, the Senate of the Union. It is the great palladium of the rights of the States—on that theatre only, do those sovereign communities meet as equals. Bring this into contempt or destroy its independence, and you rear over our heads one consolidated Government, consisting of a single National Assembly, and an Executive, chosen alike by the whole people of the Union, and limited only by the will of the great majority. The checks and balances of the system are gone, and the lines of division between the different States obliterated. Does it become us *then*, even if satisfied that the Resolution of the Senate was erroneous, by this harsh denunciation, to make war on the depository of rights so sacred? Against the present power and patronage of the Executive, unaided by legislative interference, the Senate cannot stand, unless armed in a righteous cause. Why then are we invoked as allies! But is there no feeling of Carolina pride which would shield *our* Senator from rebuke, even had he expressed an erroneous opinion? What is the offence with which he is here charged? That he has slept upon his post? Oh no: it is that he was too vigilant. Possessing something of the spirit of those men "who snuffed the approach of danger in the tainted breeze," he has given the alarm at a supposed assault on the Constitution, and rushed to the rescue. Had he, though fully convinced of the approaching attack, observed a cowardly silence, or basely cried "all's well," placed, as he was, high on the watchtower of our liberties, he would have deserved the deep execration of his countrymen. And will those *then*, who, though believing this danger imaginary, admit that liberty is to be preserved only by perpetual vigilance, destroy that vigilance in their own servants by inflicting degradation and disgrace? Will freemen themselves "pardon nothing to the spirit of liberty?" Sir, men are not prone to desert the ranks of power and patronage, or incur their displeasure. It is far less difficult to float in a current than to stem its tide, and the public servant who exchanges administration for opposition, must be excused at least from the motive of present reward, and should not be lightly condemned. The tendency of the selfish passions to prefer the side which dispenses office and emolument, is obvious to all; and all history will prove that far more Statesmen have betrayed their trusts and basely sold the interests of their constituents, by going over to the Administration, than by leaving it. Beware then, how you reprove the independence of your Representatives, lest you encourage them to prefer their own ease and advancement to their country's good.

Sir, I have thus far said nothing of the particular riquirement which these Resolutions impose.—The demand of our Senator to acknowledge the error, if not the falsehood, of an opinion expressed on his oath. Every public servant is required to take an oath to the Constitution, in order that the great principles of justice and liberty, which it embodies, may be kept inviolate; and whenever, by word or deed, he decides a constitutional question, the eye of heaven has been called to witness his sincerity, and divine vengeance imprecated, if he shall fail to express the honest conviction of his mind. Nor is this all. If it be true, that it is a part of Legislative duty, to observe the administration of the laws, and to declare wherein they have been misinterpreted or misapplied, every legislator undertakes by his oath, to make such declaration, whenever he believes that the Constitution has been materially violated by an Executive officer. Under this high sanction, as well as a patriotic sense of duty, was the Resolution of the Senate passed, and the vote of Mr. Mangum given.—Yet, we are about to command him, to aver that this Resolution is not merely untrue, but unworthy to remain among the records of the things that once were done. Really, sir, it would seem to me equally proper to direct him to vote for a resolution, asserting that none such as this obnoxious one, of the last session, ever had passed. That would require him expressly to tell a falsehood. This, requires him to suppress the truth—That would ask him to declare the non-existence of a fact, which all the world knows to exist. This commands him to destroy the best evidence by which its existence is proved. Is it expected or desired, that he shall obey this mandate? Can he do it, without the lowest humiliation and infamy? And can honor from dishonor grow? Can fame from infamy proceed? Can we make a disgraceful requisition of him, without disgracing ourselves and the State? But these consequences must be disregarded, and the legislative history of the country mutilated, not because, in the language of the first resolution, we shall thereby illumine his mind "upon any great question of national policy" or confirm and strengthen him "in time of public emergency"—but because a place may be thereby vacated.—Instructions, it would seem, should relate to a future action upon "great questions of national policy.—These however pertain to the past, and if implicitly obeyed can only falsify the Journal of the last Session of Congress. Sir, the Journal of a Legislative Assembly is its autobiography—"its life written by itself." Whether well or ill, that which was really done should be truly noted. If the act which it records be wise and just and beneficial in its consequences, it is a memorial to the honor and wisdom of its authors; if otherwise, it confers on them an immortality of a different kind. If the charge contained in the resolution of the Senate, be untrue and unreserved as regards the President, the imputation will only recoil on themselves, both in the estimation of the present age and of posterity. But how futile and ineffectual are these resolutions in attaining their apparent object? The Journals of the Senate have been printed and distributed in all our public libraries and have gone forth in the daily and weekly papers to the ends of the earth. Is it supposed, that by blotting out from the manuscript at Washington, that all copies will be destroyed, and this horrible Resolution forgotten? We read in natural history of a wingless bird, which is hunted for its plumage, and when hard pressed by the horseman in the chase, hides its head in leaves and vainly suppose that its whole body is concealed. The proceeding contemplated by these Resolutions, appears to me, sir, to be founded on a like vain supposition. As well may we attempt to gather in all the leaves of the last Autumn, as to destroy the notoriety which that Resolution has acquired.

But again: In what way is the "vote for expunging" to be given? On a resolution, I presume, to be hereafter introduced. And will not that Resolution recite the one to be effaced, and revive its existence as often as it may be destroyed? Let us see the practical operation of these instructions. Suppose them to have passed, and that some "learned Theban" in the Senate of the United States has introduced a resolution "decaring that a Resolution of the last session in the following words, to wit, &c. be expunged from the Journals," (it must be recited to ascertain its indentity) and that this latter resolution has passed. The Journals of the previous Session are brought in, and that execution may be thoroughly done upon the offending manuscript, the Vice-President, by whitening or blackening, annihilates both its body and spirit. This might be considered as a not "unsubstantial death."—But on the next morning, when the Clerk