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MR. RAYNER'S FIRST SPEECH,

ON THE

BILL FOR RE-DISTRICTING THE STATE

IN THE HOUSE OF COMMONS,

December 9th, 1846.

MR. RAYNER said, that in first introducing the Bill before the House, and in now rising to advocate it, he had been, and now was, conscious of the responsibility which he incurred. He was well aware of the vituperation and obloquy which awaited him. He might well expect that his course and his humble name, would, for some time to come, afford a theme of denunciation to a malignant party Press, and of unsparing abuse to every unscrupulous demagogue in the State. But for himself, he had counted the cost, and was ready and prepared to abide the result. My own honest convictions, (said Mr. R.) and the approbation of the just and reflecting portion of my countrymen, must and will sustain me. Divine wisdom seems to have decreed, that in the moral government of the world, no good is to be achieved, no blessing is to be attained, except by a corresponding sacrifice. This is eminently so, in the strife and tumult of political life—He who desires to receive the approval of an honest conscience for an unflinching discharge of duty—or to obtain the esteem and support of the wise and the good, for a disinterested effort to promote the happiness and welfare of his country—he who devotes himself to the task of avenging the wrongs of the injured, and in aiding the efforts of the deserving, must prepare himself to meet the peltings of many a pitiless storm of censure and denunciation.—For myself, I ask no higher honor, than to receive the detractions of those whose vocation is censure, and whose moral food is defamation, for the position I now occupy, in endeavoring to sustain the great fundamental principle of republican government, which I insist on has been outraged, and the injury done to which, it is the object of the bill now before us, to redress.

But the duty which I owe to those upon whom I rely to sustain me—to my gallant comrades in the cause of Constitutional liberty, with whom I have so long struggled—requires, that I should attempt to set forth somewhat in detail, the grounds of our action—and appeal to the calm and sober reflection of our countrymen, for the rectitude of our intentions and the propriety of our course.

In considering this proposition to rearrange the Congressional Districts of the State at this time, there are two prominent points of view in which it presents itself to the mind. First—have we the Constitutional power to do it; and secondly—admitting we have the power, is it expedient and proper to exercise that power at this time. In regard to the power, I presume it will be admitted by all, that the General Assembly of the State has sovereign and unlimited power over all questions of legislation; except in so far as it is restricted by the Constitution of the State, the Constitution of the United States, and all National Laws and Treaties made in pursuance thereof. This sovereign power is indispensable to the ability of government to maintain its authority and enforce its decrees—in all systems, it must reside somewhere—and in our State it must reside in the General Assembly, subject to the restrictions just named. This exercise of sovereign power must, it will also be admitted, extend to every subject of legislation; the passing, modifying, amending, or repealing, all laws which the General Assembly, as the Constitutional organ of the popular will, may deem to be required by the public good, subject to the restrictions mentioned. Does the Constitution of the State contain any provision prohibiting the Legisture from remodeling the Congressional Districts, at this time, or oftener than once in ten years? No such provision can be found—no such pretence will be set up. In fact, the State Constitution being designed for, and adapted to an internal municipal government, has no provision on a question which afterwards grew out of our federal relations; and it is from the Constitution of the United States only, that any and every power has been exercised by the State Legislature over the subject of Congressional elections. Then, is there any thing in the Federal Constitution to prohibit our action on this question, at this time?

There are but two clauses in the Constitution of the United States bearing directly on this question. The first, is the second section of the first article, which provides that

"Representatives and direct taxes shall be apportioned among the several States, according to their respective numbers, &c. The actual enumeration shall be made within three years after the first Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct."

Now, what was the object contemplated by this provision? It is plain that it was intended for the purpose of keeping steadily in view, and constantly in operation, the great principle of compromise forming the basis of the Constitution—that whilst the States were represented with equality of strength in the Senate, they should be represented according to their relative population in the House of Representatives. The "enumeration" here mentioned, was clearly for the purpose of ascertaining the "respective numbers" of the several States, that the number of representatives to which each might be entitled, should be "apportioned" accordingly.—The framers of the Constitution seem to have had a foresight of the increasing strength and greatness of their country; of the shifting localities of population and power; of the mighty growth of new States, and the comparative decline of the old. This enumeration once in ten years, was to secure to population however it might change its seat, to numbers wherever they might be found, their due representation in the popular branch of the National Legislature.—The manner of choosing these Representatives by the several States, does not come within the purview of this provision at all. In fact, not the most remote allusion is made to it. The ten years mentioned, refers exclusively to the period to intervene between each "actual enumeration." This whole section of the Constitution explains itself by providing for the enumeration, immediately after the provision for apportioning representatives among the States, according to their respective numbers. It is the apportionment of the number of representatives to each State, under the enumeration of its inhabitants, which is to be made once in ten years only—and I freely admit, that this apportionment as to number, must remain for ten years, and no State legislation can affect it.

But what says the Constitution in regard to the manner of choosing Representatives? The fourth section of this same first article, declares that

"The times, places and manner of holding elections shall be prescribed in each State by the Legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing Senators."

Here the entire control of the "manner" as well as of the "times and places" of holding elections, is, in the absence of Congressional action, left to the Legislature of each State; subject to no other limitation but that such State shall elect no more members than Congress may have apportioned to it, under an enumeration of its people. The words "each State" in that clause of the Constitution last mentioned, shows that it was intended to leave the manner of election to the peculiar wish or fancy of every State; without requiring uniformity, unless Congress should see fit to alter the State regulations. And until the passage of the last apportionment act in 1842, no uniformity has ever existed in the several States as to the manner. Some States have elected by general ticket, some by single districts and others by double districts. And these systems have been changed and modified from time to time, during the intervening periods between the regular times of enumeration and apportionment. It is well known that a few years since the State of Alabama changed her system of electing by districts to that of general ticket, and before the next election, returned again to the old mode.—It is also well known, that since the last apportionment was made, the States of New Hampshire, Georgia, and Missouri have elected by the general ticket system, and yet have all three since altered their regulations, and returned to the district system. Will it be pretended that these changes were not rightfully and constitutionally made? And if a State may so change its districts as to amalgamate them all into one—or when so amalgamated, parcel them out into separate divisions, and that too during the interval between the decennial periods of apportionment, will it be contended that a State can not change the territorial limits, and re-arrange the component parts of her respective districts when once made? Will it be denied, that but for the action of Congress, this Legislature might so change the districts as to abolish them altogether, and resort to the general ticket system? The major proposition must include the minor—and if a State can in the absence of Congressional restriction, so change the districts as to unite them all into one; certainly it can change them by such a re-arrangement of Counties, as to still have them in conformity to the Act of Congress, of separate and distinct but contiguous territory.

I admit that the Legislature cannot unite all the districts into one by adopting the general ticket system; for the apportionment act of 1842, for the first time in our history, altered the State regulations so far as to prevent this.—The clause of that act bearing on this question, is as follows—

"That in every case where a State is entitled to more than one Representative, the number to which each State shall be entitled under this apportionment, shall be elected by Districts composed of contiguous territory equal in number to the number of Representatives to which said State may be entitled, no one District electing more than one Representative."

But for this act, I have attempted to show, the State Legislature has entire control on the manner of holding elections; either by destroying the districts altogether in adopting general ticket system, by changing them into double or triple Districts, or by constructing them of Counties not contiguous to each other. To what extent then, does this Act of Congress interfere with the power of the States on the manner of holding elections? Why of course, only to the extent expressly specified in the Act—and that is, that the Districts shall be composed of contiguous territory, and that no one District shall elect more than one Representative. In every other particular, the power of the State Legislatures over this subject is as ample as before the Act was passed. To the extent of its interference only, under the Act of '42, Congress has assumed the power which before belonged to the States. Will it be denied that Congress may at the very next Session, revise the whole plan—may it not provide for the election by general ticket in all the States—may it not repeal the clause of the Act of '42 which I have read, and leave each State to adopt its own favorite plan—and thus entirely disarrange this fanciful idea of a ten years duration of unchangeable Districts? Will it be contended that Congress in passing the Act of '42 might not have assumed the entire regulation of the State elections, as to manner, time, and place—and thus have actually arranged and set apart the Districts in the several States? If this had been done, will it be denied that Congress might still at the present Session, have changed those Districts, if it had supposed the public good required it in any State? Will it be denied that Congress may, if it see proper, at the present Session, so interfere as to change and rearrange the Districts in all the States, as at present constituted by their several Legislatures? For mind you, the Constitution says "the Congress may at any time alter the State regulations, except as to the places of choosing Senators." Congress can, under the authority conferred by the Constitution, exercise such power only in regard to regulating the manner of elections, as are left to the States in the first instance—and no more. Then if Congress can now re-arrange the Districts, of course the States in the absence of any interference on the subject by Congress can do the very same. As Congress can do no more than the States could have done before the act of '42 was passed—and as Congress has not in that Act chosen to exercise any power in regard to the territorial elements of the Districts, except that requiring contiguity—certainly the States can now do, what Congress might have done, but has not done.

The uniform practice of the States in the appointment of Electors of President, affords an apt and forcible illustration of the positions I have assumed. The second clause of the first section of the second article of the Constitution says that

"Each State shall appoint in such manner as the Legislature thereof may direct, a number of Electors equal to the whole number of Senators and representatives to which the State may be entitled in the Congress."

Here the authority of the State in the manner of appointment is left entirely untrammelled. The only instruction is as to the number. And the number of Electors to which a State is entitled, is as much dependent on every ten years enumeration of its inhabitants, as the number of its Representatives in Congress. Both depend on the apportionment by Congress, under the enumeration. And if the first arrangement by a State, of the Districts for Representatives, after every apportionment, must remain for ten years unaltered, so must of course the arrangement of Electoral Districts—for both depend on the operation of the same principle which is practically felt in the renewal of its exercises only once in ten yeas. If a State regulation in regard to the election of Representatives, must have the binding operation of Medo-Persian law for ten years—so also must such regulation in regard to the appointment of Electors. And on the other hand, if a State regulation as to one, can be at any time altered, so can it be as to the other.—What has been the constant practice of the States in regard to the manner of choosing Electors? In the struggles of political power, States have constantly been altering the mode of appointment. The State of New York just previous to the Presidential election in 1828, altered their system of choosing Electors by Districts, and adopted that of General Ticket. Other States from time to time, have done the same. Our own State in 1803 passed an Act laying off the State into Electoral Districts. In 1811, before the apportionment bill under the census of 1810 had gone into operation, this act was repealed, and another act passed providing for the appointment of Electors by the General Assembly.—And this latter act has since been repealed, and the election by general ticket established. Never have I heard this power of the States to alter the regulations as to the manner of appointing Electors—depending on the same principle as the manner of electing Representatives, questioned in any quarter whatever.

It appears to me that the position assumed by the Committee who reported this bill, of which I had the honor to be Chairman, is unanswerable. It presents the argument *ab absurdum*, in a simple, though brief and forcible manner. The power of the States over the manner of holding elections is the very same as that over the times and places. It is thorough and complete as to all, subject to alterations to be made by Congress.—What is meant by the "manner of holding elections?" Of course it must comprehend all regulations necessary and proper towards the exercise of the power conferred. When these regulations are found to be imperfect, or unsuited to the great purpose for which the apportionment of Representatives among the States, according to federal population, was designed—I mean the just reflection of the popular will—it is not only the unquestionable right, but the absolute duty of the States to alter or amend them, unless prohibited by the Constitution or some act of Congress in pursuance thereof. The Constitution and the apportionment act of '42 being both silent except in the particular referred to—of course State legislation is at any time justifiable and proper.—Neither the Constitution or the act of Congress, say one word as to whether the Districts shall remain unaltered for two, four, six, eight or ten years. If, as stated in the report, the action of the Legislature, when once exercised as to the manner, is exhausted for ten years—so is it also, when exercised as to the times and places; for the power in all these particulars rests on the same authority, and is subject to the very same control by Congress. If the Legislature can not change the manner, in those particulars where Congress has not interposed, oftener than once in ten years, neither can it change the times and places. Yet the power of the Legislature over the times and places of holding elections, at any time, has never been questioned, but is, and ever has been constantly exercised. The admission of this power as to time and place, must imply an application of the power as to the manner also.

What is meant by the "regulations" as to the times, places, and manner of holding elections, mentioned in the Constitution, that are left to the entire control of the Legislatures, except interfered with by Congress? A legislative regulation is a law to all intents and purposes, and nothing but a law. It will readily be admitted, that the power which makes, can also modify, amend, or repeal a law—except in those cases where rights become vested, an interference with which would impair the obligation of contract. And it is right it should be so, especially in a country of such expansive growth, conflicting interest, and changing policy as ours.—Otherwise, how are the wrongs of the injured to be redressed; how is the enterprise of the industrious and public spirited to be encouraged; how are the conflicting claims of sectional interests to be harmonized? And if it is right and proper to redress wrongs and to repair error in one particular—why not in regard to the elective franchise, the great political inheritance of the American citizen, and the great corner stone of our republican fabric?

This brings me to the consideration of the second branch of the subject—I mean the expediency and propriety of passing the Bill now before the House. Let us look at the object contemplated by the Constitution, in apportioning Representatives to the respective States, according to their population. It was to secure in the House of Representatives of the United States, a fair expression of the popular will. Whilst guarding against tumult and faction, by a Senate, the members of which were to be elected by one remove from popular force, and who were to hold their seats for six years—the framers of the Constitution provided for another branch which should give utterance to the wishes of the popular mind; which should give full scope to public feeling; which should reflect the impulse, the passions, the very anarchy, if you choose, of the spirit of liberty—that such a compromise might be effected between the conservative and popular branches of the Government, as would most redound to the public good. Whilst the Senate represents the people in their relation of separately organized communities, as States—the House of Representatives represents them in their numerical force. The great principle which lies at the foundation of our republican system is, that the people are capable of self government—that all power is derived from them—and that their will when constitutionally expressed, is and must be the supreme law. By the people as constituting the body politic, I mean those endowed with the right of suffrage, whose voices and wishes ought to exercise a controlling influence over the governing power. The only practical, and in fact, possible way of making this controlling influence peacefully available, is by giving to majorities, in the various relations in which the people are called on to act, the power of expressing the sense of the whole. That "a majority ought to rule," has become so true a maxim, especially with that political party from whom I may expect opposition to the bill now before the House, that I need not further attempt to enforce it. Although I do not adopt that theory to the extent urged by the Democratic party, yet I insist that when the people act in pursuance of the forms, and in conformity to the provisions of the Constitution, the majority should prevail. Consequently, any system of legislation which is calculated to deprive the majority of their rightful power, and to give to a minority the means of speaking and deciding in the name of the whole—must be in conflict with the very principles on which our free institutions are founded. It is utterly subversive of the great fundamental law of all popular government—and if followed out, must end in subjecting the many to the tyranny and caprice of the designing few. Especially when we see this course pursued by a party who have the love of the people and a regard for popular rights constantly on their lips, we are warranted in concluding, we are compelled to believe, that their leading object in the Districting Act of '43, was to gain undue political power to a party in a decided minority in the State; and to stifle the voices of thousands of freemen, through an accidental ascendancy in authority. Let us examine the present arrangement of the Districts, under the Act of the General Assembly of '43, in accordance with the principles I have laid down.

In looking at the details of an arrangement of the Districts, it will be recollected that the apportionment act of Congress of '42 requires, that the districts shall be composed of contiguous territory. According to every fair principle of construction,