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DEBATE

In the Senate of the United States on the bill further to provide for the collection of duties on imports.

Mr. WEBSTER'S SPEECH CONCLUDED.

The second proposition, sir, which I propose to maintain, is, that no State authority can dissolve the relations subsisting between the Government of the United States and individuals; that nothing can dissolve these relations but revolution; and that, therefore, there can be no such thing as *secession* without revolution. All this follows, as it seems to me, as a just consequence, if it be first proved that the constitution of the United States is a Government proper, owing protection to individuals, and entitled to their obedience.

The people, sir, in every State, live under two Governments. They owe obedience to both. These Governments, though distinct, are not adverse. Each has its separate sphere, and its peculiar powers and duties. It is not a contest between two sovereigns for the same power, like the wars of the rival Houses in England; nor is it a dispute between a government *de facto*, and a government *de jure*. It is the case of a division of powers, between two governments, made by the people, to which both are responsible. Neither can dispense with the duty which individuals owe to the other; neither can call itself master of the other: the people are masters of both. This division of power, it is true, is in a great measure unknown in Europe. It is the peculiar system of America; and, though new and singular, it is not incomprehensible. The State constitutions are established by the people of the States. This constitution is established by the people of all the States. How, then, can a State recede? How can a State undo what the whole people have done? How can she absolve her citizens from their obedience to the laws of the United States? How can she annul their obligations and oaths? How can the members of her legislature renounce their own oaths? Or, secession as a revolutionary right, unintelligible; as a right to be proclaimed in the midst of civil commotions, and asserted at the head of armies, I can understand it. But, as a practical right, existing under the constitution, and in conformity with its provisions, it seems to me to be nothing but a plain absurdity: for it supposes resistance to government, under the authority of Government itself; it supposes dismemberment, without violating the principles of union; it supposes opposition to law, without crime; it supposes the violation of oaths, without responsibility; it supposes the total overthrow of Government, without revolution.

The Constitution, sir, regards itself as perpetual and immortal. It seeks to establish a union among the people of the States, which shall last through all time. Or, if the common fate of things of man must be expected, at some period, to happen to it, yet that catastrophe is not anticipated.

The instrument contains ample provisions for its amendment, at all times; none for its abandonment, at any time. It declares that new States may come into the Union, but it does not declare that old States may go out. The Union is not a temporary partnership of States. It is the association of the people, under a constitution of Government, uniting their power, joining together their highest interests, cementing their present enjoyments, and blending, in one indivisible mass, all their hopes for the future. Whatsoever is steadfast in just political principles—whatsoever is permanent in the structure of human society—whatsoever there is which can derive an enduring character from being founded on deep and principles of constitutional liberty, and on the broad foundations of the public will, all these unite to entitle this instrument to be regarded as a permanent constitution of Government.

In the next place, Mr. President, I contend that there is a supreme law of the land, consisting of the constitution, acts of Congress passed in pursuance of it, and the public treaties. This will not be denied, because such are the very words of the constitution. But I contend further, that it rightfully belongs to Congress, and to the courts of the United States, to settle the construction of this supreme law, in doubtful cases. This is denied; and here arises the great practical question, *Who is to construe finally the Constitution of the United States?* We all agree that the constitution is the supreme law; but who shall interpret that law? In our system of the division of powers between different Governments, controversies will necessarily sometimes arise, respecting the extent of the powers of each. Who shall decide these controversies? Does it rest with the General Government, in all or any of its departments, to exercise the office of final interpreter? Or may each of the States, as well as the General Government, claim this right of ultimate decision? The practical result of this whole debate turns on this point. The gentleman contends that each State may judge for itself of any alleged violation of the constitution, and may finally decide for itself, and may execute its own decisions by its own power. All the recent proceedings in South Carolina are founded on this claim of right. Her convention has pronounced the revenue laws of the United States unconstitutional; and this decision she does not allow any authority of the United States to overrule or reverse. Of course she rejects the authority of Congress, because the very object of the ordinance is to reverse the decision of Congress; and she rejects, too, the authority of the Courts of the United States, because she expressly prohibits all appeal to those courts. It is in order to sustain this asserted right of being her own judge, that she pronounces the constitution of the United States to be but a compact, to which she is a party, and a sovereign party. If this be established, then the inference is supposed to follow, that, being sovereign, there is no power to control her decison, and her own judgment on her own compact is and must be conclusive.

I have already endeavored, sir, to point out the practical consequences of this doctrine, and to show how utterly inconsistent it is, with all ideas of regular government, and how soon its adoption would involve the whole country in revolution and absolute anarchy. I hope it is easy now to show, sir, that a doctrine, bringing such consequences with it, is not well founded; that it has nothing to stand upon but theory and assumption; and that it is refuted by plain and express constitutional provisions. I think the Government of the United States does possess, in its appropriate departments, the authority of final decision on questions of disputed power. I think it possesses this authority, both by necessary implication, and by express grant.

It will not be denied, sir, that this authority naturally belongs to all Governments. They all exercise it from necessity, and as a consequence of the exercise of other powers. The State Governments themselves possess it, except in that class of questions which may arise between them and the General Government, and in regard to which they have surrendered it, as well by the nature of the case, as by clear constitutional provisions. In other and ordinary cases, whether a particular law be in conformity to the constitution of the State, is a question which the State Legislature or the State Judiciary must determine. We all know that these questions arise daily in the State Governments, and are decided by those Governments; and I know no Government which does not exercise a similar power.

Upon general principles, then, the Government of the United States possesses this authority; and this would hardly be denied, were it not that there are other Governments. But since there are State Governments, and since these, like other Governments, ordinarily construe their own powers, if the Government of the United States construes its own powers also, which construction is to prevail, in the case of opposite constructions? And again, as in the case now actually before us, the State Governments may undertake, not only to construe their own powers, but to decide directly on the extent of the powers of Congress. Congress has passed a law as being within its just powers; South Carolina denies that this law is within its just powers, and insists that she has the right so to decide this point, and that her decision is final. How are these questions to be settled?

In my opinion, sir, even if the constitution of the United States had made no express provision for such cases, it would yet be difficult to maintain that, in a constitution existing over four and twenty States, with equal authority over all, *one* could claim a right of construing it for the whole. This would seem a manifest impropriety—indeed, an absurdity. If the constitution is a government existing over all the States, though with limited powers, it necessarily follows that, to the extent of those powers, it must be supreme. If it be not superior to the authority of a particular State, it is not a national Government. But as it is a Government, as it has a legislative power of its own, and a judicial power co-extensive with the legislative, the inference is irresistible, that this Government, thus created *by* the whole, and *for* the whole, must have an authority superior to that of the particular Government of any one part. Congress is the Legislature of all the people of the United States; the Judiciary and the General Government is the Judiciary of all the people of the United States. To hold, therefore, that this Legislature and this Judiciary are subordinate in authority to the Legislature and Judiciary of a single State, is doing violence to all common sense, and overturning all established principles. Congress must judge of the extent of its own powers so often as it is called on to exercise them, or it cannot act at all; and it must also act independent of State control, or it cannot act at all.

The right of State interposition strikes at the very foundation of the legislative power of Congress. It possesses no effective legislative power, if such right of State interposition exists; because it can pass no law not subject to abrogation. It cannot make laws for the Union, if any part of the Union may pronounce its enactments void and of no effect. Its forms of legislation would be an idle ceremony, if, after all, any one of four and twenty States might bid defiance to its authority. Without express provision in the Constitution, therefore, sir, this whole question is necessarily decided by those provisions which create a legislative power and a judicial power. If these exist, in a Government intended for the whole, the inevitable consequence is, that the laws of this legislative power, and the decisions of this judicial power, must be binding on and over the whole. No man can form the conception of a Government existing over four & twenty States, with a regular legislative & judicial power, and of the existence, at the same time, of an authority, residing elsewhere, to resist, at pleasure or discretion, the enactments and the decisions of such a Government. I maintain, therefore, sir, that, from the nature of the case, and as an inference wholly unavoidable, the acts of Congress, and the decisions of the national courts, must be of higher authority than State laws and State decisions. If this be not so, there is, there can be, no General Government.

But, Mr. President, the constitution has not left this cardinal point without full and explicit provisions. First, as to the authority of Congress. Having enumerated the specific powers conferred on Congress, the constitution adds, as a distinct and substantive clause, the following, viz: *To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.*" If this means any thing, it means that Congress may judge of the true extent and just interpretation of the specific powers granted to it; and may judge also of what is necessary and proper for executing those powers. If Congress is to judge of what is necessary for the execution of its powers, it must, of necessity, judge of the extent and interpretation of those powers.

And in regard, sir, to the judiciary, the Constitution is still more express and emphatic. It declares that the judicial power shall extend to all *cases* in law or equity arising under the Constitution, laws of the United States, and treaties; that there shall be *one* Supreme Court, and that this Supreme Court shall have appellate jurisdiction of all these cases, subject to such exceptions as Congress may make. It is impossible to escape from the generality of these words. If a case arises under the Constitution, that is, if a case arises depending on the construction of the Constitution, the judicial power of the United States extends to it. It reaches the *case, the question;* it attaches the power of the national judicature to the *case* itself, in whatever court it may arise or exist; and in this *case* the Supreme Court has appellate jurisdiction over all courts whatever.—No language could provide with more effect and precision, than is here done, for subjecting constitutional questions to the ultimate decision of the Supreme Court. And, sir, this is exactly what the Convention found it necessary to provide for, and intended to provide for. It is, too, exactly what the people were universally told was done when they adopted the Constitution. One of the first resolutions adopted by the Convention was, in these words, viz. "that the jurisdiction of the national judiciary shall extend to cases which respect *the collection of the national revenue,* and questions which involve the national peace and harmony." Now, sir, this either had no sensible meaning at all, or else it meant that the jurisdiction of the national judiciary should extend to these questions *with a paramount authority.* It is not to be supposed that the Convention intended that the power of the national judiciary should extend to these questions, and that the judicatures of the States should also extend to them, *with equal power of final decision.* This would be to defeat the whole object of the provision. There were thirteen judicatures already in existence. The evil complained of, or the danger to be guarded against was contradiction and repugnance in the decisions of these judicatures. If the framers of the constitution meant to create a fourteenth, and yet not to give it power to revise and control the decisions of the existing thirteen, then they only intended to augment the existing evil, and the apprehended danger, by increasing, still further, the chances of discordant judgments.—Why, sir, has it become a settled axiom in politics, that every Government must have a judicial power co extensive with its legislative power? Certainly, there is only this reason, viz: that the laws may receive a uniform interpretation, and a uniform execution. This object can be no otherwise attained. A statute is what it is judiciously interpreted to be; and if it be construed one way in New Hampshire, and another way in Georgia, there is no uniform law. One Supreme Court, with appellate and final jurisdiction, is the natural and only adequate means, in any Government, to secure this uniformity. The convention saw all this clearly; and the resolution which I have quoted, never afterwards rescinded, passed through various modifications, till it finally received the form which the article now wears in the constitution. It is undeniably true, then, that the framers of the constitution intended to create a national judicial power, which should be permanent, on national subjects? And after the constitution was framed, and while the whole country was engaged in discussing its merits, one of its most distinguished advocates, [Mr. Madison] told the people that it *was true that, in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide is to be established under the General Government.* Mr. Martin, who had been a member of the convention, asserted the same thing to the Legislature of Maryland, and urged it as a reason for rejecting the constitution. Mr. Pinckney, himself also a leading member of the convention, declared it to the people of South Carolina. Every where, it was admitted, by friends and foes, that this power was in the constitution. By some it was thought dangerous, by most it was thought necessary; but, by all, it was agreed to be a power actually contained in the instrument. The convention saw the absolute necessity of some control in the National Government over State laws. Different modes of establishing this control were suggested and considered. At one time it was proposed that the laws of the States should, from time to time, be laid before Congress, and that Congress should possess a negative over them. But this was thought inexpedient and inadmissible; and in its place, and expressly as a substitute for it, the existing provision was introduced: that is to say, a provision by which the federal Courts should have authority to overrule such State laws as might be in manifest contravention of the constitution. The writers of the Federalist, in explaining the Constitution, while it was yet pending before the people, and still unadopted, give this account of the matter in terms, and assign this reason for the article as it now stands. By this provision Congress escaped from the necessity of any revision of State laws, left the whole sphere of State legislation quite untouched, and yet obtained a security against any infringement of the constitutional power of the General Government. Indeed, sir, allow me to ask again, if the national judiciary was not to exercise a power of revision, on constitutional questions, over the judicatures of the States, why was any national judicature erected at all? Can any man give a sensible reason for having a judicial power in this Government, unless it be for the sake of maintaining a uniformity of decision, on questions arising under the Constitution and laws of Congress, and ensuring its execution? And does not this very idea of uniformity necessarily imply that the construction given by the national courts is to be the prevailing construction?—How else, sir, is it possible that uniformity can be preserved?

Gentlemen appear to me, sir, to look at but one side of the question. They regard only the supposed danger of trusting a Government with the interpretation of its own powers. But will they view the question in its other aspect; will they show us how it is possible for a Government to get along with four and twenty interpreters of its laws and powers? Gentlemen argue, too, as if, in these cases, the State would be always right, and the General Government always wrong.—But, suppose the reverse; suppose the State wrong, and, since they differ, some of them must be wrong, are the most important and essential operations of the Government to be embarrassed and arrested, because one State holds a contrary opinion? Mr. President, every argument which refers the constitutionality of acts of Congress to State decision, appeals from the majority to the minority; it appeals from the common interest to a particular interest; from the councils of all to the council of one; and endeavors to supersede the judgment of the whole by the judgment of a part.

I think it is clear, sir, that the Constitution, by express provision, by definite and unequivocal words, as well as by necessary implication, has constituted the Supreme Court of the United States the appellate tribunal in all cases, of a constitutional nature which assume the shape of a suit, in law or equity. And I think I cannot do better than to leave this part of the subject by reading the remarks made upon it by Mr. Ellsworth, in the Convention of Connecticut; a gentleman, sir, who has left behind him, on the records of the Government of his country, proofs of the clearest intelligence and of the deepest sagacity, as well as of the utmost purity and integrity of character. "This Constitution," says he, "defines the extent of the powers of the General Government. If the General Legislature should, at any time, overleap their limits, the judicial department is a constitutional check. If the United States go beyond their powers; if they make a law which the Constitution does not authorize, it is void; and the judiciary power, the national judges, who, to secure their impartiality, are to be made independent, will declare it to be void. On the other hand, if the States go beyond their limits; if they make a law which is an usurpation upon the General Government, the law is void, and upright, independent judges, will declare it to be so."

And let me only add, sir, that, in the very first session of the first Congress, with all their well known objects, both of the Convention and the people, full and fresh in his mind, Mr. Ellsworth reported the bill, as is generally understood, for the organization of the judicial department, and, in that bill, made provision for the exercise of this appellate power of the Supreme Court, in all the proper cases, in whatsoever court arising; and that this appellate power has now been exercised for more than forty years, without interruption, and without doubt.

As to the cases, sir, which do not come before the courts, those political questions which terminate with the enactments of Congress, it is of necessity that these should be ultimately decided by Congress itself. Like other Legislatures, it must be trusted with this power. The members of Congress are chosen by the people, and they are answerable to the people; like other public agents, they are bound by oath to support the Constitution.—These are the securities that they will not violate their duty, nor transcend their powers. They are the same securities as prevail in other popular governments; nor is it easy to see how grants of power can be more safely guarded, without rendering them nugatory. If the case cannot come before the courts, and if Congress be not trusted with its decision, who shall decide it? The gentleman says each State is to decide it for herself. If so, then, as I have already urged, what is law in one State is not law in the other. Or, if the resistance of one State compels an entire repeal of the law, then a minority, and that a small one, governs the whole country.

Sir, those who espouse the doctrines of nullification, reject, as it seems to me, the first great principle of all republican liberty; that is, that the majority *must* govern. In matters of common concern, the judgment of a majority *must* stand as the judgment of the whole. This is a law imposed on us by the absolute necessity of the case; and if we do not act upon it, there is no possibility of maintaining any government but despotism. We hear loud and repeated denunciations against what is called *majority government.* It is declared, with much warmth, that a majority government cannot be maintained in the United States. What, then, do gentlemen wish? Do they wish to establish a *minority* government? Do they wish to subject the will of the many to the will of the few? The honorable gentleman from South Carolina has spoken of absolute majorities, and majorities concurrent; language wholly unknown to our Constitution, and to which it is not easy to affix definite ideas. As far as I understand it, it would teach us that, the *absolute majority* may be found in Congress, but the *majority concurrent* must be looked for in the States. That is to say, sir, stripping the matter of this novelty of phrase, that the dissent of one or more States as States, renders void the decision of a majority of Congress, so far as that State is concerned. And so this doctrine, running but a short career, like other dogmas of the day, terminates in nullification.

If this vehement invective against *majorities* meant no more than that, in the construction of government, it is wise to provide checks and balances, so that there should be various limitations on the power of the mere majority, it would only mean what the Constitution of the United States has already abundantly provided. It is full of such checks and balances. In its very organization, it adopts a broad and most effectual principle in restraint of the power of mere majorities. A majority of the people elects the House of Representatives, but it does not elect the Senate. The Senate is elected by the States, each State having, in this respect, an equal power. No law, therefore, can pass without the assent of a majority of the Representatives of the people, and a majority of the Representatives of the States also. A majority of the Representatives of the people must concur, and a majority of the States must concur, in every act of Congress; and the President is elected on a plan compounded of both these principles. But, having composed one House of Representatives chosen by the people in each State, according to its numbers, and the other of an equal number of members from every State, whether larger or smaller, the Constitution gives to majorities in these Houses, thus constituted, the full and entire power of passing laws, subject always to the constitutional restrictions, and to the approval of the President. To subject them to any other power is clear usurpation. The majority of one House may be controlled by the majority of the other; and both may be restrained by the President's negative. These are checks and balances provided by the Constitution, existing in the Government itself, and wisely intended to secure deliberation and caution in legislative proceedings. But to resist the will of the majority in both Houses, thus constitutionally exercised; to insist on the lawfulness of interposition by an extraneous power; to claim the right of defeating the will of Congress, by setting up against it the will of a single State, is neither more nor less, as it strikes me, than a plain attempt to overthrow the Government. The constituted authorities of the United States are no longer a Government, if they be not masters of their own will; they are no longer a Government, if an external power may arrest their proceedings; they are no longer a Government, if acts passed by both Houses, and approved by the President, may be nullified by State vetoes or State ordinances. Does any one suppose it could make any difference, as to the binding authority of an act of Congress, and of the duty of a State to respect it, whether it passed by a mere majority of both Houses, or by three fourth of each, or the unanimous vote of each? Within the limits and restrictions of the Constitution, the Government of the United States, like all other popular Governments, acts by majorities. It can act no otherwise. Whoever, therefore, denounces the Government of majorities, denounces the Government of his own country, and denounces all free Governments. And whoever would restrain these majorities, while acting within their constitutional limits, by an external power, whatever he may intend, asserts principles which, if adopted, can lead to nothing else than the destruction of the Government itself.

Does not the gentleman perceive, sir, how his argument against majorities might here be retorted upon him? Does he not see how cogently he might be asked, whether it be the character of nullification to practise what it preaches? Look to South Carolina, at the present moment. How far are the rights of minorities there respected? I confess, sir, I have not known, in peaceable times, the power of the majority carried with a higher hand, or upheld with more relentless disregard of the rights, feelings, and principles of the minority: a minority embracing, as the gentleman himself will admit, a large portion of the worth and respectability of the State; a minority, comprehending, in its numbers, men who have been associated with him, and with us, in these halls of legislation; men who have served their country at home, and honored it abroad, men who would cheerfully lay down their lives for their native State, in any cause which they could regard as the cause of honor and duty; men above fear, and above reproach; whose deepest grief and distress spring from the conviction that the present proceeding of the State must ultimately reflect discredit upon her: how is this minority, how are these men regarded? They are enthralled and disfranchised by ordinances and acts of legislation, subject to tests and oaths, incompatible, as they conscientiously think, with oaths already taken, and obligations already assumed; they are proscribed and denounced as recreants to duty and patriotism, and slaves to a foreign power; both the spirit which pursues them, and the positive measures which emanate from that spirit, are harsh and proscriptive beyond all precedent within my knowledge, except in periods of professed revolution.

It is not, sir, one would think, for those who approve these proceedings, to complain of the power of majorities.

Mr. President, all popular governments rest on two principles, or two assumptions:

First, That there is, so far, a common interest among those over whom the Government extends, as that it may provide for the defence, protection, and good government of the whole, without injustice or oppression to parts.

Second, That the representatives of the people, and especially the people themselves, are secure against general corruption, and may be trusted, therefore, with the exercise of power. Whoever argues against these principles, argues against the practicability of all free governments. And whoever admits these, must admit, or cannot deny, that power is as safe in the hands of Congress as in those of other representative bodies. Congress is not irresponsible. Its members are agents of the people, elected by them, answerable to them, and liable to be displaced or superseded at their pleasure; and they possess as fair a claim to the confidence of the people, while they continue to deserve it, as any other public political agents.

If, then, sir, the plain intention of the Convention, and the cotemporary admission of both friends and foes,