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"THE LIBERTY OF THE PRESS—THE SHIELD OF FREEDOM—THE SCOURGE OF TYRANTS"

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SPEECH OF MR. RIVES,

IN THE SENATE OF THE UNITED STATES, ON THE JUDICIARY BILL.

MR. PRESIDENT: Strange as I am in this country, and now almost a stranger in my own country, though in spirit and affection never separated from it, I feel that I owe an apology to the Senate for obtruding myself at all upon its attention. Sir, I do it with great reluctance, and with a deep sense of the disadvantages under which I labour.—Most of the questions involved in the discussion of the bill now under consideration have sprung up during the period of my absence from the country, and the short interval which has elapsed since my return, has afforded me neither the time nor the opportunity for a detailed examination of them. I bring to them, therefore, no other resources of arguments or illustration than those settled principles and fundamental notions which are rooted in the mind of every American citizen, in regard to the Constitution to his country.

Sir, the questions now to be settled are of the deepest import to the destinies of this country. They touch not the construction of this or that clause of the Constitution only; they go to the whole frame and structure of the Government, and the vital principle of its existence. Sir, I should be recreant to my duty on this floor as the representative of a State, which under Providence, had chief agency in the establishment of this happy system of government, if I did not attempt, however feebly, the expression of my views on such an occasion.

I am impelled to this expression, Mr. President, by another consideration. It is my misfortune to differ from my worthy and honorable colleague, as well as from other honorable Senators coming from the same quarter of the Union as myself, in several of the views I have taken of this subject. It is due to them as well as to myself, and those whom we represent, that the grounds of this difference of opinion should be stated and explained. And, in order to preclude all misapprehension, I beg leave to say, in the outset, that no one is or has been, more thoroughly opposed to that whole system of policy, usually denominated the *American* system, than I have been, and still am. My voice, sir, has been often and strenuously, however ineffectually, raised against it in another division of this Capitol. I consider it unjust in principle, inexpedient in practice, oppressive and unequal in its operation—in short, an abuse of power contrary to the true genius of our institutions.

But, sir, what is entitled to far more consideration, the State which I have the honor in part to represent has repeatedly and strongly protested against this system; and it is but yesterday that her legislature earnestly renewed her appeal to the councils of the nation so to modify the system as to remove the just cause of complaint which had arisen against it. Sir, this appeal, and similar appeals which have emanated from the legislatures of other States, fortified by all those high considerations of patriotism, policy and justice, which the crisis suggests, cannot fail to have their proper effect. There is every reason to believe that this distracting question will be settled, & speedily & satisfactorily settled, as it ought to be. But notwithstanding these grounds of hope, one of the States of the Union has rashly undertaken to redress her grievances by a formal abrogation of the laws of the United States within her limits. She has declared the whole series of revenue laws, from the origin of the Government to the present day, to be null and void; has prohibited their execution within her borders, under high penalties, and has ordained various other measures with the express view of defeating and arresting their operation. In this state of things, we are called upon to say if the Government of the United States shall acquiesce in this open defiance and violation of the laws of the Union, without taking any step whatever for their enforcement? For myself, I am free to say that I do not thus read my oath to support the Constitution of the United States. I do not thus understand my duty to my country, to the interest and honor of my own State. What, sir, will be the consequence if South Carolina be permitted, without opposition, to nullify the revenue laws of the Union? Will not that uniformity of impost, and that equality in the fiscal and commercial regulations of the Union, which are guaranteed by the Constitution, be at once abolished by the arbitrary act of South Carolina, to her own advantage, and to the detriment of other States? Sir, as a representative of Virginia, I am not willing that South Carolina, by her own illegal and unconstitutional action, is suffered to go quit of them. Yes, this must be the unjust consequence of acquiescence in nullification, or otherwise, a result more distressing to the whole country will ensue—the entire commerce of the country will be drawn to the free ports of South Carolina; the ports of the other States, with all the important branches of industry connected with them, will be consigned to ruin; and at the same time the whole revenue of the nation will be cut off and destroyed.

Bad as these consequences, or any of them,

may be, there is yet another view of the subject of still higher importance.—The example would reflect a mortal wound on the Constitution. The government would be thenceforward virtually dissolved, and we should inevitably fall back into the anarchy and confusion of the *articles of confederation*; if indeed, after such an example of weakness, the States should continue connected by any tie whatever.

For one, therefore, I feel myself constrained, by the highest considerations of duty, to give my assent to such measures as may be necessary and proper to provide for the execution of the laws, while they remain un repealed. There are some provisions in the bill now under consideration, of which I do not approve, as I shall have occasion to say more fully, when I come to explain my own ideas of the legislation best adapted to meet the crisis. But we are met at the threshold with preliminary denial of the right of the Government to adopt any measures whatever, for the execution of a law of the United States, which shall have been nullified by the authorities of a State. This position has been maintained by both of the honorable Senators from South Carolina, & especially by the honorable Senator who spoke first, (Mr. Calhoun,) in the remark made by him at the time of submitting his resolutions, which are now lying on your table.

How, sir, has this extraordinary position been attempted to be sustained? One would have supposed that a power, so radically affecting the whole operation of our system, as an absolute State veto on the laws of the Union, would have been in some form or other expressed in the Constitution. Instead of this, we find an express declaration that the constitution and laws of the United States shall control, and be supreme over, the constitution and laws of the respective States. Yet the honorable Senator (Mr. Calhoun) seeks to do away all this, by setting up the metaphysical deductions, and ingenious creations of his own mind, in the place of the positive terms of the instrument itself. Sir, I propose to follow the honorable Senator, step by step, in the process of reasoning by which he has attained so singular a result. And as I am anxious to deal with his argument in all possible fairness, I will state what I understand that argument to be, in order that, if I shall have fallen into a misapprehension of any part of it, the honorable Senator may set me right.

I understand the honorable Senator, then, thus—after stating that the problem is to ascertain where the paramount power of the system is, and that that power must be where the sovereignty is, he proceeds by saying that the Constitution of the United States is a compact between the several States—that these States only are sovereign—that the Government of the United States is not sovereign, because, according to principles of modern political science, sovereignty is not the attribute of any Government—that it resides in the people—that the only people known to the true theory of our institutions, is the people of the several States distinctly—that if the people of any one State in the Union, therefore, shall in its sovereign capacity interpose between its citizens and the Government of the United States, the act of a sovereign being always binding on its citizens, the citizens of that State can no longer owe obedience to the Government of the United States, or be properly subject to its action; but that if the act of the State, so absolving its citizens from obedience to the United States, be a violation of the compact with the other States, it is the State only as a political community that is responsible. I hope, sir, I have stated the reasoning of the Senator fairly, as I have wished and intended to do.

Now, Sir, in regard to the first proposition laid down by the honorable Senator from South Carolina, Mr. Calhoun, it gives me pleasure to say that I am entirely of accord with him. Here we draw our principles from the same pure fountain—the republican doctrines of '98 and '99, as asserted at that time, by the legislature of my own State. If there be any thing in politics or history resting on grounds of incontrovertible evidence and conclusive demonstration, it is that the Constitution of the United States was adopted by the people of the United States not as an aggregate mass of individuals, but as separate and independent communities. This, sir, is the foundation stone of our federal system, and every attempt to displace it has resulted in acknowledged failure, and has only served to establish it the more firmly.

But, sir, are the other propositions of the honorable senator (Mr. Calhoun) equally true? Is it true that there is no other sovereignty, known to our political system, than that which resides in the people of each State distinctly? And here, sir, as the chief source of difficulty in all discussions of this sort is in the vague use of terms, let us fix what we mean by sovereignty. The elementary idea of sovereignty is that of supreme uncontrolled power; and when applied to political organization, I agree with the honorable senator from South Carolina (Mr. Calhoun) that it can not, with propriety, be predicated of Government which is a delegated and limited trust, but that it resides exclusively in the body of the community, which creates and establishes the Government. I readily grant, then, that the Government of the United States possesses no sovereignty. The honorable senator (Mr. Calhoun) seems to have supposed that this being admitted, it would necessarily follow that the only sovereignty known to our political system, is in the people of each State distinctly, there being, as he contends, no other people, according to its true theory, than the people of the several

States separately considered. But this argument obviously overlooks the peculiar nature of our complex organization which embraces two distinct species of communities,—the States, formed by the individuals who compose those States respectively, and the general community called the United States, formed by the association of all the States into a political Union. There is one body politic or community as clearly resulting from the association of States, in the one case, as there is such body politic or community resulting from the association of individuals in the other. In the body of the community, the sovereignty of each system resides—that of the federal system, in the community called the U. States, that of the State systems in the body of the community called the State. You will remark, Mr. President, that I here speak of the United States, as contradistinguished from the Government of the United States; & I contend that the term United States, as used in our political nomenclature, designates one body politic, one integral community, (although a community composed of States,) in which sovereignty resides, as to certain purposes, as truly as it resides in the States, or several communities composed of individuals, for the purpose of their organization.

I should not think it necessary, Mr. President, to dwell on an idea, which, to my mind, is so obvious, if I did not know that the suggestion of any unity in our federal organization had recently given rise to much dissatisfaction, and if we did not live in times when the best settled principles have been boldly called in question. I may not be amiss, therefore, to bring a few proofs to the support of what I have ventured to assert—that the United States do form, to certain purposes, one community—one integral political body. We are all agreed that the United States form a confederate republic. Now, Sir, what is the definition of a confederate republic by that writer, who, among the political philosophers of modern times, seems to have best understood its characteristics, and to have most justly appreciated its advantages? Montesquieu says, "a confederate republic is a convention by which several smaller States agree to become members of a large one, which they intend to form. It is a kind of assemblage of societies, that constitute a new one." &c. The writers of the *Federalist*, in 9th No., referring to what Montesquieu says on this subject, add: "The definition of a confederate republic seems simply to be an assemblage of societies, or an association of two or more States into one State."

But, sir, let us append to a distinguished authority which is often invoked by the politicians of South Carolina, and for which I challenge a portion of their respect on the present occasion. Mr. Jefferson, sir, in a letter to Mr. Edmund Randolph, which will be found in the 3d volume of his published correspondence, written on the 18th August, 1799, in the very crisis of that great struggle for constitutional principles which terminated in the "civil revolution" of 1801, and when he must be supposed to have weighed well all the bearings of his words, uses the following language: "Before the revolution there existed no such nation as the United States, they then first associated as a nation, but for special purposes only. They had all their laws to make as Virginia had on her first establishment as a nation. But they did not, as Virginia had done, proceed to adopt a whole system of laws ready made to their hands; as their association as a nation was only for special purposes, &c."

Sir, it would be easy to show, if the time of the Senate were not too precious to be consumed in unnecessary discussion, that the recognition here made of the United States as forming one nation for certain purposes, is of particular weight, from the nature of the question which Mr. Jefferson was then discussing, and which would have rendered his course of argument much shorter and simpler, if he could have denied altogether the existence of any national individuality in the United States.

But, sir, without insisting on the particular weight of Mr. Jefferson's authority, in this view of it, I would ask if the same language has not been habitually used by all of our great men who were contemporary with the formation of the Constitution, and with the vital questions of construction to which the first ten years of its operation gave rise? We all remember, Mr. President, that Gen. Washington, in that noble monument of patriotism and wisdom, his farewell address, speaks of the "unity of government which constitutes us one people," and of the States as bound together by an "indissoluble community of interest as one nation." Mr. Madison, than whom certainly no higher authority can be appealed to, in regard to that Constitution which is the workmanship of his own hands, thus writes in his letter to the editor of the *North American Review*: "The Constitution of the U. S. being a compact among the States in their highest sovereign capacity, and constituting the people thereof one people for certain purposes, cannot be altered or amended at the will of the States individually, as the Constitution of a State may be at its individual will."

But why add to this list of distinguished authorities, farther than to cite the authority of the honorable Senator from South Carolina himself. In his letter to Governor Hamilton, published during the last summer, I find the following passage: "The General Government is the joint organ of all the States confederated into one general community." And again: "In the execution of the delegated powers, the Union is no longer regarded in reference to its parts, but as forming one great community, to be governed by a common will, &c."

If, then, the United States do form "one

community, governed by a common will," sovereignty may and does exist in the body of that community, for the special purposes of the Union, just as effectually and unquestionably as sovereignty exists in the people of an individual State for State purposes. My answer then, and I utter myself a conclusive one, to the argument of the honorable Senator is, that the sovereignty of our federal system is neither in the government of the United States, nor in the people of the individual States separately considered, but in that great community or body politic, called the United States, resulting from the association of all the States, for special purposes. Mr. Jefferson, in a letter to Mr. Randolph, from which I read the extract cited a few moments ago, says, very properly, that "the whole body of the nation, or community, is the sovereign power for itself."

There is a practical criterion, of very easy application in our American institutions, for determining where sovereignty resides. Sovereignty resides where the power of amending the Constitution or fundamental law resides. In a single State, this power resides in the people of the State, and of course the sovereignty resides in them also. In the Union this power resides in the federal community composed of all the States, and according to an express provision in the Constitution, requires for its exercise the concurrence of three-fourths of the States. According to this plain, practical test, then, the actual sovereignty of the Union is in three-fourths of the States.

Here, again, I am happy to fortify myself by an authority, which, if not that of the honorable Senator himself, is at least generally understood to be, must, at least command his very high respect. I allude to the report and exposition adopted by the legislature of South Carolina, in December 1828. From that document I beg leave to read to the Senate the following extract:

"Our system, then, consists of two distinct and independent sovereignties. The general powers conferred on the General Government are subject to its sole and exclusive control; and the States cannot, without violating the Constitution interpose their authority to check, or in any manner counteract its movements, so long as they are confined to its proper sphere; so also the peculiar and local powers, reserved to the States, are subjected to their exclusive control, nor can the General Government interfere with them, without, on its part, also violating the Constitution. In order to have a full and clear conception of our institutions it will be proper to remark that there is, in our system, a striking distinction between the government and the sovereign power. Whatever may be the true doctrine in regard to the sovereignty of the States individually, it is unquestionably clear, that while the government of the Union is vested in its legislative, executive and political department, the actual sovereign power resides in the several States who created it, in their separate and distinct political character.—But by an express provision of the Constitution, it may be amended or changed by three-fourths of the States; and each State, by assenting to the Constitution with this provision, has surrendered its original rights as a sovereign, which made its individual consent necessary to any change in its political condition, and has placed this important power in the hands of three-fourths of the States, in which the sovereignty of the Union under the Constitution does now actually reside."

Here, then, Mr. President, we have a distinct acknowledgment, in accordance with the principles I have laid down, that the sovereignty of the federal system is not in the people of any one of the States, acting separately, as the honorable Senator now contends, but in three-fourths of the States acting concurrently. The honorable Senator has told us that the paramount power of controlling the General Government must reside where the sovereignty of the system resides. The problem stated by him was to ascertain where that power does reside, and is here conclusively solved by his own State, in a solemn exposition drawn up by himself. The plain result is, that the paramount or sovereign power is not in the people of any one State, but in three-fourths of all the States.

This important document, also, in acknowledging that there "are two distinct and independent sovereignties" in our complex organization, recognizes the correctness of another of the positions I have laid down—that there is sovereignty in the United States, in regard to the purposes of the Union, as well as sovereignty in the several States, for State purposes. It has become fashionable, of late, to deny that there is any sovereignty in the United States, (I speak, of course, of the United States as a political community, and not of the Government of the United States,) and to claim for the States separately, an absolute, complete, and unqualified sovereignty to all intents and purposes whatever. Sir, this is a novelty unknown to the founders of the Constitution, and has sprung up in the hot bed of excited local politics. At the period of the adoption of the Constitution, it was distinctly made known and universally understood, that the extent to which sovereignty was vested in the Union, that of the States severally was relinquished and diminished. What is said, sir, by the convention which framed the Constitution, in communicating their work to Congress to be submitted to the people? The following unequivocal language is held in the letter addressed by the Convention to Congress. "It is obviously impracticable in the Federal Government of these States to secure all the rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty to preserve the rest," &c. Let not any attempt

be made to lessen the weight of this declaration by representing it as the expression of the individual sentiment of General Washington, by whom the letter was signed. The draft of the letter was carefully prepared, under the orders of the convention, by the same committee, which was charged with giving the final shape to the Constitution itself, and both were sanctioned and adopted by the Convention at the same time. It was then the solemn explanation of their own act by the convention themselves, made known to the people, and understood by them, when the States ratified and adopted the Constitution. But, sir, let us trace this matter a little further. Among the contemporary publications, explaining and recommending the new Constitution, the essays of the *Federalist*, as well for the distinguished ability with which they were written, as for the high character of the authors, two of whom were members of the Convention which framed the Constitution, were universally read, and profoundly considered. In the letter of Mr. Jefferson to Mr. Gerry, an extract of which was read the other day, by the honorable Senator from Pennsylvania, (Mr. Dallas,) it is said with great force and propriety, that the Constitution should be always understood "in the sense in which it was advocated by its friends, and adopted by the States." Now, sir, let us see in what light it was presented to the people, in reference to this question of State sovereignty, by its distinguished advocates and expounders, the writers of the *Federalist*. Nothing would have been better calculated to procure its ready adoption by the States, than to have told them that it left their sovereignty entirely unimpaired. But, sir, its honest and enlightened advocates, the writers of the *Federalist*, attempted no such imposition on the good sense of the people. They told them distinctly, that "sovereignty in the Union, and complete independence in the members, are things repugnant and irreconcilable." [Federalist, No. 155.]

In the 45th number of that publication, where Mr. Madison is noticing the objection that the new constitution would curtail the States of some important attributes of their sovereignty, instead of denying the charge, as it might have been politic to do, in order to appease the jealousy of state pride, he boldly admits and justifies the fact. He tells the people of America, that if it be demonstrated that the Union is necessary to secure their happiness, necessary to secure them against foreign war and contention among the States, against violent and oppressive factions, against overgrown military establishments, and against all the other needless disorders that would be the inevitable consequence of separation, it is idle to object to a Constitution, without which that Union cannot be maintained, that it would curtail the States of a portion of their sovereignty. On the contrary, he adds, that so far as the sacrifice of a portion of state sovereignty shall be necessary to the object of the Union, thus shown to be indispensable to the happiness of the people, the voice of every good citizen must be, let the sacrifice be made. Sir, the sacrifice was freely made, to the extent required by the great objects of the Union; but all that portion of sovereignty not necessary to be vested in the Union, for those high purposes, still remains unimpaired in the respective States.

In pursuance of this leading truth, the language habitually used in the *Federalist*, to characterize the sovereignty of the States, is the "residuary sovereignty of the States," or "the portion of sovereignty remaining in the States" after that which is surrendered to the Union. In rapidly glancing over this celebrated collection, I find the expression, "residuary sovereignty of the States," as distinguished from a complete and undiminished sovereignty, used in the three several numbers, (No. 39, 43, 62) all written by Mr. Madison, whose guidance, I confess I always follow with peculiar confidence, for no man, from the relation in which he stands to the Constitution, can be supposed to be more thoroughly imbued with its true philosophy. It is a remarkable circumstance, as evincing the unvarying fidelity of Mr. Madison's mind to this fundamental truth of a partial surrender of sovereignty by the States, that, at the distance of more than ten years from the publication of the *Federalist* in his celebrated Report to the Virginia Legislature of '99 he again used the same form of expression—"the residuary sovereignty of the States."

Sir, that report, in recognizing, as it does, in express terms, "the sovereignty of the United States," as well as in attributing to the several States a residuary sovereignty only, shows that the idea of an absolute and undiminished sovereignty still remaining in the States, was as little entertained by the fathers of the political church from which the senator from South Carolina professes to derive his tenets, as by the founders & original advocates of the Constitution. In further illustration of this point, since Virginia authority has grown very much into vogue, I may be permitted to refer to the address of the Legislature of Virginia to the people of the State, which accompanied the famous resolutions of '98. In that address, generally supposed to be the production of John Taylor of Caroline, as thorough-going a champion of state rights as the Senator from South Carolina could desire, we find the following declaration—"It was then admitted that the State sovereignties were only diminished by powers specifically enumerated, or necessary to carry the specified powers into effect," thus acknowledging, of course, that, to that extent, the State sovereignties had been diminished. Sir, I claim myself to be an humble but devoted disciple of this good old school of '98 and '99, and I might speak, if it were proper to do