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On the Relation which the States and General Government Bear to Each Other

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

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

The great and leading principle is, that the General Government emanated from the people of several States, forming distinct political communities, and acting in their separate sovereign capacity, and not from all the people forming one aggregate political community; that the Constitution of the United States is, in fact, a compact to which each State is a party, in the character already described; and that The several States, or parties, have a right to judge of its infractions; and in the case of deliberate, palpable, and dangerous exercise of power not delegated, they have the right, in the last resort, to use the language of the Virginia Resolutions, "to interpose for arresting the progress of evil, and for maintaining, within their respective limits, the authorities, rights and liberties appertaining to them." This right of interposition, thus solemnly asserted by the State of Virginia, be it called what it may,--State-right, veto, nullification, or by any other name,--I conceive to be the fundamental principle of our system, resting on facts historically as certain as our own revolution itself, and deductions as simple and demonstrative as that of any political or moral truth whatever; and I firmly believe that on its recognition depends the stability and safety of our political institutions.

I am not ignorant that those opposed to the doctrine have always, now and formally, regarded it in a very different light, as anarchical and revolutionary. Could I believe such, in fact, to be its tendency, to me it would be no recommendation. I yield to none, I trust in a deep and sincere attachment to our political institutions and union of the States. I never breathed an opposite sentiment; but, on the contrary, I have ever considered them the great instruments of preserving our liberty and promoting the happiness for our selves and our posterity; and next to these I have held them most dear. Nearly half my life has passed in the service of the Union, and whatever public reputation I have acquired is indissoluble identified with it. To be too national has been considered by many, even of my friends, my greatest political fault.

With strong feelings of attachment, I have examined, with utmost care, the bearing of the doctrine in question; and so far from anarchical or revolutionary, I solemnly believe it to be the only solid foundation of our system, and of the Union itself; and that opposite doctrine, which denies to the States the right of protecting their reserved and would vest in the General Government (it matters not through what department) the right of determining, exclusively and finally the powers delegated to it, is incompatible with the sovereignty of the States, and of the Constitution itself, considered as a basis of a Federal Union. As strong as this language is, it is not stronger than that used by the Illustrious Jefferson, who said, to give to the General Government, the final and exclusive right to judge of its powers, is to make “its discretion, and not the Constitution the measures of its powers;” and that “in all cases of compacts between parties having no common judge, each party has an equal right to judge for itself as well of infraction as of the mode and measure of redress.” Language cannot be more explicit, nor can a higher authority be adduced.

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

It has been said by one of the most sagacious men of antiquity, that the object of a constitution is, to restrain the government, as that of laws is to restrain individuals. The remark is correct; nor is it less true where the government is vested in a majority, than where it is in a single or a few individuals—in a republic, than a monarchy or aristocracy. No one can have a higher respect for maxim that the majority ought to govern than I

have, taken in its proper sense, subject to the restrictions imposed by the Constitution, and confined to objects in which every portion of the community have similar interests; but it is great error to suppose, as many do, that the right of a majority to govern is a natural and not a conventional right, and therefore absolute and unlimited. By nature, every individual has a right to govern himself; and governments, whether founded on majorities or minorities, must derive their right from assent, expressed or implied, of the governed, and be subject to such limitations as they may impose. Where the interest are the same, that is, where the laws that benefit one will benefit all, or the reverse, it is just and proper to place them under the control the majority; but when they are dissimilar, so that the law that may benefit one portion may be ruinous to another, it would be contrary, unjust and absurd to subject them to its will; and such I conceive to be the theory on which our Constitutions rests.

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

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

Happily for us, we have no artificial and separate class of society. We have wisely exploded all such distinctions; but we are not, on account exempt from distinctions; but

we are not, on that account, exempt from all contrariety of interests, as the present distracted and dangerous condition of our country, unfortunately, but too clearly proves. With us they are almost exclusively geographical, resulting mainly from difference of climate, soil, situation, industry and production; but are not, therefore, less necessary to be protected by an adequate constitutional provision, then where is the distinct exist in separate classes. The necessity is, in truth, greater, as separate and dissimilar geographical interests are more liable to come into conflict, and more dangerous, when in that state, than those of any other description: so much so, that ours is the first instance on record where they have not formed, in an extensive territory, separate and independent communities, or subjected the whole to despotic sway. That such may not be our unhappy fate also, must be the sincere prayer of every lover of his country.

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

To realize its perfection, we must view the General Government and those of the States as a whole, each in its sphere independent; each perfectly adapted to its respective objects; the States acting separately, representing and protecting the local and peculiar interests; acting jointly through one General Government, with the weight respectfully assigned to each by the Constitution, of our Union, and, in all probability, our liberty depends. How is this to be effected? The question is new, when applied to our peculiar political organization, where the separate and conflicting interests of society are represented by distinct but connected governments; but it is, in reality, an old question under a new form, long since perfectly solved. Whenever separate and dissimilar interests have been separately represented in any government; whenever the sovereign power has been divided in its exercise, the experience and wisdom of the ages has devised but one mode by which such political organization can be preserved,--the mode adopted in England, and by all governments ancient and modern, blessed with constitutions deserving to be called free,--to give to each co-estate the right to judge of its powers, with a negative or veto on the acts of others, in order to protect against encroachments the interest it particularly represents: a principle which all our

constitutions recognize in the distribution of powers between the General and State Governments.

So essential is the principle, that, to withhold the right from either, where the sovereign power is divided is, in fact, to annul the division itself, and to consolidate, in the one left in exclusive possession of the right, all powers of government; for it is not possible to distinguish, practically, between a government having all power, and one having the right to take whatever it pleases, Nor does it in the very least vary the principle, whether the distribution of power be between co-estates, as in England, or between distinctly organized but connected governments, as with us. The reason is the same in both cases, while the necessity is greater in our case, As the danger of conflict is greater where the interests of society are divided geographically then in any other, as has already been shown.

These truths to me do not seem to be incontrovertible; and I am at a loss to understand how one, who has maturely reflected on the nature of our institutions, or has read history or studied the principles of free government to any purpose, can call them in question. The explanation must, it appears to me, be sought in the fact that, in every free State there are those who look more to the necessity of maintaining power than guarding against its abuses. I do not intend to reproach, but simply to state a fact apparently necessary to explain the contrariety of opinions among the intelligent, where the abstract consideration of the subject would scarcely to admit to doubt.

If such be the true cause, I must think the fear of weakening the government too much, in this case, to be in a great measure unfounded, or at least, that the danger is much less from that than the opposite side. I do not deny that power of so high a nature may be abused by a State; but when I reflect that the States unanimously called the General Government into existence with all its powers, which they freely delegated on their part, under the conviction that their common peace, safety and prosperity required it; they are bound together by a common origin, and the recollection of common suffering and common triumph in the great and splendid achievement of their independence; and that the strongest feelings of our nature, among them love of national power and distinction, are on the side of the Union, it does seem to me that the fear which would strip the States of their sovereignty, and degrade them, in fact into mere dependent corporations, lest they should abuse a right indispensable to the peaceable protection of those interests which they reserved under their own peculiar guardianship when they created the General Government, is unnatural and unreasonable. If those, who voluntarily created a system cannot be trusted to preserve it, who can?

So far from extreme danger, I hold that there never was a free State in which this greater conservative principle, indispensable to all, was ever so safely lodged. In others when the co-estates representing the dissimilar and conflicting interests of the community came into contact, the only alternative was compromise submission or force. Not so in ours. Should the General Government and a State come into conflict, we have the higher remedy: the power which called the General Government into existence, which gives it all its authority, and can enlarge, contract or abolish its powers at its pleasure, may be

invoked. The States themselves may be appealed to,--three fourths of which, in fact form a power, whose decrees are the Constitution itself, and whose voice can silence all discontent.

The utmost extent, then, of power is, that a State, acting in its sovereign capacity as one of the parties to the constitutional compact, may compel the Government created by that compact, to submit a question touching on its infraction, to the parties who created it; to avoid the supposed dangers of which, it is proposed to resort to the novel, the hazardous, and, I might add, the fatal project of giving the General Government the sole and final right of interpreting the Constitution;--thereby reversing the whole system, making that instrument the creature of its will, instead of rule of action impressed on it at its creation, and annihilating, in fact, the authority which imposed it, and from which the Government itself derives its existence.

That such would be the result, were the right question vested in The Legislative or Executive Branch of the Government is conceded by all. No one has been so hardy as to assert that Congress or the President ought to have that right, or deny that, if vested finally and exclusively in either, the consequences which I have stated would necessarily follow; but its advocates have been reconciled to the doctrine, on the supposition that there is one department of the General Government which, from its peculiar organization, affords an independent tribunal, through which the Government may exercise the high authority which is the subject of consideration with perfect safety to all.

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

Its powers are judicial, and are not political; and are expressly confined by the Constitution "to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under its authority" and which I have high authority in asserting excludes political questions and comprehends those only where there are parties amenable to the process of the court. Nor is its incompetency less clear than its want of constitutional. There may be many, and the most dangerous infractions on the part of Congress, of which, it is conceded by all, as a judicial tribunal, cannot from its nature, take cognizance. The Tariff itself is a strong case in point; and reason applies equally to all others where Congress perverts a power from an object intended, to no one intended, the most insidious and dangerous of all infraction; and which may be extended to all its powers, more especially to the taxing and appropriating. But, supposing it competent to take cognizance of all infractions of every description, the insuperable objection still remains, that it would not be a safe tribunal to exercise the power in question.

It is a universal and fundamental political principle, that the power to protect can safely be confided only to those interested in protecting, or their responsible agents,--a maxim

not less true in private than public affairs. The danger in our system is, that the General Government, which represents the interests of the whole, may encroach on the States, which represents the peculiar and local interests, or that the latter may encroach on the former.

In examining this point, we ought not to forget that the Government, through all its departments, judicial as well as others, is administered by delegated responsible agents; and that the power which really controls, ultimately, all the movements, is not in the agents, but those who elect or appoint them. To understand, then, its real character, and what would be the action of the system in any supposable case, we must raise our view from mere agents to this high controlling power, which finally impels every movement of the machine. By doing so, we shall find all under the will of the majority, compounded of the majority of the States taken as political bodies, and a majority of the people of the States, estimated in federal numbers. These, united, constitute the real final power which impels and directs the movements of the General Government. The majority of States elect the majority of the Senate; of the people of the States the House of Representatives: the two united elect the President; and the President with a majority of the Senate appoint judges; a majority of whom, and a majority of the Senate and the House, with one President, really exercise all the power of Government, with the exception of cases where the Constitution requires a greater number than a majority.

The judges are in fact, as truly the judicial representatives of this united majority, as the majority of Congress itself, or the President is its legislative or executive representative; and to confide that power to the Judiciary to determine finally and conclusively what powers are delegated and what reserved, would be in reality, to confide it to the majority, whose agents they are, and by whom they can be controlled in various ways; and of course to subject (against the fundamental principle of our system and all for sound political reasoning) the reserved powers of the States, with all the local and peculiar interests they were intended to protect, to the will of the very majority against which protection was intended. Nor will the tenure by which the judges hold their office, however valuable the provision in many other respects, materially vary the case. Its highest possible effect would be to retard, and not finally to resist, the dominant majority.

But it is useless to multiply arguments. Were it possible that reason could settle a question where the passions and interests of men are concerned, this point would have long been settled for ever by the State of Virginia. The report of her legislature, to which I have already referred, has really in my opinion, placed it beyond controversy. Speaking in reference to this subject, it says; "It has been objected" (to the right of a State to interpose for the protection of her reserved rights) "that the judiciary is to be regarded as the sole expositor of the Constitution. On this objection it might be observed, that first there may be instances of usurped powers which the Constitution could never draw within the control of the Justice Department; secondly, that if the decision of the judiciary be raised above the sovereign parties to the Constitution, the decisions of other departments not carried by the forms of the Constitution before the Judiciary, must be equally authoritative and final with the decision of that department. But the proper answer to the objection is, that the resolution of the General Assembly relates to those

great and extraordinary cases, in which all the forms of the Constitution may prove ineffectual against infractions dangerous powers, not delegated, may only be usurped and executed by other departments, but that the Judicial Department may exercise or sanction dangerous beyond the grant of the Constitution, and consequently, that the ultimate right of the parties to the Constitution to judge whether the compact has been dangerously violated, must extend that to violations by one delegated authority, as well as another,--by the judiciary as well as by the executive or legislative.

Against these conclusive arguments, as they seem to me, it is objected that, if one of the parties has the right to judge of infractions of the Constitution, so has the others; and that consequently, in cases of contested powers between a State and the General Government, each would have a right to maintain its opinion, as is the case when sovereign foreign powers differ in the construction of treaties or compacts; and that, of course, it would become a matter of force.

The error is in the assumption that the General Government is a party to the constitutional compact. The States, it has been shown, formed the compact, acting as sovereign and independent communities. The General Government is but its creature; and though, in reality, a government, with all the rights and authority which belong to any other government, within the orbit of its powers, it is nevertheless a government emanating from a compact between sovereigns and partaking, in its nature and object, of the character of a joint commission, appointed to superintend and administer the interests in which all are jointly concerned; but having. Beyond its proper sphere, no more power than if it did not exist.

To deny this would be to deny the most incontestable facts and clearest conclusions; while to acknowledge its truths is to destroy utterly the objection that the appeal would be to force, in the case supposed. For, if each party has a right to judge, then, under our system of government, the final cognizance of a question of contested power would be the States, and not in the General Government. It would be the duty of the latter, as in all similar cases of contest between one or more principles and a joint commission or agency to refer the contest to the principles themselves. Such are the plain dictates of reason and analogy, On no sound principle can agents have a right to a final cognizance, as against principles, much less use against them to maintain their construction of powers. Such a right would be monstrous, and has never, heretofore, been claimed in similar cases.

That the doctrine is applicable to the case of a contested power between the States and the General Government, we have the authority, not only of reason and analogy, but of the distinguished statesman already referred to. Mr. Jefferson, at a late of his life, after long experience and mature reflection says "With respect to our State and Federal Governments, I do not think their relations are correctly understood by foreigners. They suppose the former are subordinate to the latter. This is not the case. They are co-ordinate departments of one simple and integral whole. But you might ask, if two departments should claim each the same subject of power, where is the umpire to decide between them? In cases of little urgency or importance, the prudence of both parties will keep the aloof from questionable ground; but, if it can neither avoided or compromised, a

convention of the States must be called to ascribe the doubtful power to that department they think best”

It is thus our Constitution, by authorizing amendments, and by prescribing the authority and the mode of making them, has by a simple contrivance, with its characteristic wisdom, provided a power which, in the last resort, supersedes effectually the necessity and even pretext of force; a power to which none can fairly object; with which the interests of all are safe; which can definitively close all controversies in the only effectual mode, by freeing the compact of every defect and uncertainty, by an amendment of the instrument itself. It is impossible for human wisdom in a system like ours, to devise another mode shall be safe and effectual, and at the same time, consistent with what our relations and acknowledged powers of two great departments of our government. It gives beauty and security peculiar to our system, which if duly appreciated, will transmit its blessings to the remotest generations; but, if not, our splendid anticipations of the future will be proven an empty dream.

Stripped of all its covering, the naked question is, whether ours is a federal or a consolidated government; a constitutional or an absolute one; a government resting ultimately on the solid basis of the sovereignty of the States or on an unrestrained will of the majority; a form of government, as in all other unlimited ones, in which injustice, and violence and force must prevail. Let it never be forgotten, that where a majority rules without restriction, the minority is the subject; and that, if we should absurdly attribute to the former the exclusive right of construing the Constitution, there would be, in fact between sovereign and subject, under such a government, no Constitution, or at least nothing deserving the name or serving the legitimate object of so sacred an instrument.

How the States are to exercise the high power interposition, which constitute so essential a portion of their reserved rights that it cannot be delegated without an entire surrender of their sovereignty, and converting our system from a federal into a consolidated Government, is a question that the States only are competent to determine. The arguments which prove that they possess the power, equally prove they are, in the language of Jefferson “the rightful judges of the mode and measure of redress,” But the spirit of forbearance, as well as nature of the right itself, forbids a recourse to it, except in cases of dangerous infractions of the Constitution; and then only as a last resort, when all reasonable hope of relief from ordinary action of the Government has failed; when, if the right to interpose did not exist, the alternative would be submission and oppression on one side, or resistance by force on the other, That our system should afford, in such extreme cases, an intermediate point between these dire alternatives by which the Government may be brought to a pause, and thereby an interval obtained to compromise differences, or, if impracticable, be compelled to submit the question to a constitutional adjustment, through an appeal to the states themselves, is an evidence of high wisdom: an element not, as supposed by some, of weakness, but strength; not of anarchy or revolution, but of peace and safety Its general recognition would of itself, in great measure, if not altogether, supersede the necessity of its exercise, by impressing on the movements of Government that moderation and justice so essential to harmony and peace, in a country of such vast extent and diversity of interests as ours; and would, if

controversy should come, turn the resentment of the aggrieved from the system to those who abused its powers (a point all-important), and cause them to seek redress, not in revolution or overthrow, but in reformation. It is, in fact, properly understood, a substitute—where the alternative would be force—tending to prevent and if that fails, to correct peaceably the aberrations to which all systems are liable, and which, if permitted to accumulate without correction, must finally end in a general catastrophe.

NOTE: at this point in a portion of his address here omitted, Mr. Calhoun expounded on his opposition to the Federal Tariffs then in effect. He however returned to his main subject.

In thus placing my opinions before the public, I have not been actuated by the expectation of changing public sentiment. Such a motive, on a question so long agitated, and so beset with feelings of prejudice and interest, would argue, on my part, an insufferable vanity, and profound ignorance of the human heart. To avoid, as far as possible, the imputation of either, I have confined my statement, on the many and important points on which I have been compelled to touch, to a simple declaration of my opinion without advancing any other reason to sustain them than what appeared to me to be indispensable to the full understanding of my views; and if they should, on any point, be thought not to clearly and explicitly developed, it will I trust, be attributed to my solicitude to avoid imputations to which I have alluded, and not from any desire to disguise my sentiments, nor the want of arguments and illustrations to maintain positions, which so abound in both, that it would require a volume to do them anything like justice. I can only hope the truths which I feel assured are essentially connected with all we hold most dear, may not be weakened in public estimation by the imperfect manner in which I have been, by the object in view compelled to present them.

With every caution on my part, I dare not hope, in taking the step I have, to escape the imputation of proper motives; though I have, without reserve, freely expressed my opinions, not regarding whether they might or might not be popular. I have no reason to believe that such as will conciliate public favor, but opposite, which I greatly regret, as I have ever placed a high estimate on the good opinion of my fellow citizens.

But, as it may, I shall at least be sustained by feelings of Conscious rectitude. I formed my opinions after careful and deliberate examination, with all the aids which my reason and experience could furnish; I have expressed them honestly and fearlessly, regardless of their effects personally, which, however interesting to me individually, are of too little importance to be taken into the estimate, where the liberty and happiness of our country are so vitally involved.

Delivered on July 26th 1831, By John C. Calhoun, US Senator from South Carolina