

MR. PRESTON'S SPEECH.

SPEECH OF THE HON. W. C. PRESTON, OF SOUTH CAROLINA, ON THE VETO POWER, AND IN REPLY TO MR. CLAY OF KENTUCKY, DELIVERED IN THE SENATE OF UNITED STATES, APRIL 1842.

Mr. Preston said: If I consulted my own vanity, Mr. President, I would think from placing myself thus in immediate contrast with my distinguished friend from Kentucky, and shrink from the cold regard of those whose eyes are idly bent upon any one who succeeds him. This self-neglect however, will show how deep and earnest are the convictions which make me dissent, not only from the general conclusions, but from most of the particular views, which have been urged upon us, and against which I seize even so unfavorable an occasion to enter my protest. I shall do so earnestly, but briefly. With his accustomed frankness, my honorable friend placed his proposition, to limit the Executive veto, before the people in the late presidential contest, and pledged himself to move upon it in the way which he has this day redeemed. The subject was therefore fully presented for discussion; and after the matured deliberation I could give to it, not without a strong bias from the high authority of my honorable friend, I was compelled to differ with him, and on all fit occasions, before the public expressed that difference with entire candor. No one is more sensible than I am of the vast augmentation of Executive power during the last ten or twelve years, or has set himself in more constant opposition to it. It was a vivid perception and patriotic apprehension of this increasing power, with the firmness to oppose and the courage to make war upon it, that gave birth to the Whig party, and has kept it together, in spite of many minor differences, until our common efforts resulted in the late most signal victory. I have not changed my opinion, that the Executive power has increased and ought to be diminished, nor abated a whit in my purpose to devote my best efforts to this object. I do not, however, concur with my honorable friend in attributing this increase of Executive power to any undue prerogative conferred upon the President by the Constitution, but to unconstitutional or extra constitutional usurpations. Within the respective limits, assigned by the Constitution, to each of the departments, their action will be safe for the country; but if either transcend those limits, and usurp powers not appropriated to it, the danger at once becomes threatening, no matter what department be guilty of the usurpation. And I do not hesitate to announce it as my deliberate judgment, formed by an attentive observation of our history, that the first and greatest danger results from the usurpation of power by Congress itself. Such usurpation is more insidious and less suspected in large and popular bodies—it has more influences to disguise and protect itself—it has more soothing appliances for the consciences of the agents, to seduce them to assume doubtful powers. The argument of my honorable friend is, that the Executive veto injuriously circumscribes the power of Congress. He does not appear to me to have it sufficiently present to his mind that, from the nature of our institutions, the sphere of Congress itself is, and ought to be, an extremely circumscribed one; that our trusts and duties are rigorously defined and clearly designated; and are, in short, but exceptions from the great residuary mass of power reserved by the States, who created us, and upon whom we have a perpetual tendency to trench. With a natural feeling of self complacency we are apt to imagine that every thing is safe in our own hands, and every thing unsafe which is not in them; each department is inclined to be confident in itself and distrustful of others; while the Constitution, confident in all, but distrusts each. The two Houses especially are prone to think themselves peculiarly near the source of power, and to regard all interference as unnecessary, and every check as impertinent. The course of our long contest against Executive power has tended to strengthen this feeling in the legislative department; and in the moment of victory, we are disposed to overrun a territory upon which we have no claim—to substitute invasion for resistance, and convert defence into conquest.

For many years past, this Government, this whole General Government, has assumed powers and exercised jurisdiction over many matters which were never intended to be subjected to its action. Like all power, wherever lodged, it enhances itself. It is of its essential nature to do so; for, if power be in virtuous hands, it is extended to do good; if in corrupt, it is extended for the purpose of ambition and avarice. "Ampliare jurisdictionem" is the gravitating principle of all organized power. I do not allude to this active principle of our General Government, as exemplified in its whole history, for any other purpose but its direct application to the present proposition. All will see and admit that, as you increase the power of this Government as a whole, you necessarily increase that of the Executive as a part; and it is clear, that the vast accumulation in the Executive has been derived from the pouring into it of streams whose sources are found in the Capitol. An instance or two will illustrate this sufficiently for my present purpose. The General Government assumed the power of internal improvements, which of course sent the Executive agents to dispense favors and expend money in every portion of the country; and, besides the influence thus acquired, in progress of time, the whole system, by an obvious process, concentrated itself in the hands of the President, and became an engine of most dangerous efficacy. This policy is, happily for the country, broken down and abandoned to such an extent that its parents of 1813 now reject their progeny with horror.

A poor Irishman living in my neighborhood, eight or nine years ago, had one of the most wretched Canadian mares, about 13 hands 3 inches high, slab sided, straight-shouldered, leggy, steep-rumped, and with a corresponding slope downwards from where withers should have been, to her lop ears; lazy, awkward, and useless but to draw with oxen. She could never have been worth more than \$25. This creature was put to a broad lump of a horse perhaps 141-2 hands high, with strength and spirit, but awkward enough to overreach in his trot. When I knew of their being bred together, I made up my mind, if there should be any merit in the foal, to attribute it to the cross, as there was little to be deprived from either sire or dam. My neighbor removed to a distance, and I saw no more of him, until two years ago, when he cost me, wishing to sell a fine young horse for \$100. I declined purchasing, and did not see his horse until the following winter, when by being very scarce, he left him with me for several weeks, with the privilege of using him. A better animal I never knew; a more perfect work horse could not be; and a nag to trot or travel with him I never found, when I had him on the road. This was the foal from his miserable mare; and though but 14 hands 3 inches high, he would have been cheap at almost any price, had he not been injured by hard work when only three years old. From that time I determined to delay no more for investigation, but adopt in breeding, the system which had always shewn such favorable results. Still a month does not pass without my hearing of some fresh instance of the remarkable success of crossing the common American mare with the Canadian stallion.

G. B.

Of a similar character was the high protective policy, which eventually terminated, also, in the hands of the Executive, by giving him control over that most important, and, as experience has proved, most dangerous subject. A prime source, therefore, of Executive influence is found in the assumption by Congress of doubtful powers. I will not assert that the extra-constitutional assumptions by the two departments have accompanied each other in a direct ratio, but I do affirm that they have, and must necessarily bear, a certain proportion to each other; and if the Constitution be practically abrogated, and Congress reduce this federative Government to a consolidation, the Executive will be the paramount department; and as this progress towards consolidation is made, the controlling influence of the Executive will be perceived. The present proposition contemplates the liberation of Congress from the check of the Executive veto, but I am unwilling to see any restraint upon its manifest tendency to assume undelegated powers withdrawn; for, while I dread the Executive, I have not less serious apprehensions of Congress. If we exceed our powers, the veto may be of service; if we confine ourselves with them, it is harmless.

The organic law, as it came to us from our ancestors, has not conferred a more dangerous power on one department than on another of this Government. They were jealous of all, but more especially and conspicuously so of the Executive; and hence they circumscribed and fenced him round with restrictions, and cautiously allowed him only what could not be withheld.

The prophetic dread of Mr. Henry was the "union of the purse and sword" in the hands of this whole Government. The Constitution does not give them to the President, or endow him with any prerogative by which he may assume them. He may usurp them. He may trample on the Constitution, or overlap it, to seize upon them, but he does so not by virtue, but in spite of the instrument; and if you have a daring and reckless President, backed by a supple Congress, a bit of paper, more or less, will not stand in his way. It is not he, but his majorities, that constitute the danger, or rather his power to make majorities; and, when it comes to this, the only safety is where we have just now found it—in the appeal which the Constitution gives us every four years to the people. If that fail, vain are amendments to the Constitution—the very foundation of your institutions is rottenness.

Mr. President, I am sure the candor of the Senate; and I hope even the smartness of debate, will not suspect me of defending or vindicating the rash and usurping course of any Executive which has heretofore trampled upon the powers of Congress, and endangered our institutions I am defending the Constitution. I am vindicating that great monument of wisdom and patriotism from objections which lie not against it, but against its abuse and violation—not against the text of the holy writing, but against the interpolated glosses and perversions. I confess, sir, that I do entertain and cultivate a very profound reverence for this instrument. It is the production of a remarkable race of men—cool, virtuous, self-sacrificing, and heroic. At the foundation of their character were those deep and solid sentiments in which wise thoughts and acts find their remote sources and slowly well forth, purified and cool, to gladden and fructify the world. Our generation may perhaps be as intellectual, or even of more active and searching habits of thought; but we are less schooled by great events—less disciplined by habitual converse with those grave and elevated principles which walked with them through the Revolution, up to its great consummation, in the instrument we are now called upon to change. I am inclined to look elsewhere and beyond the Constitution for the evils we feel, and which have been so glowingly depicted; nor do I believe there is much difficulty in finding their true origin. I have already indicated one source, and, in my judgment, a very abundant one, viz: the legislative assumption of unauthorized power. Another abundant source of Executive power is to be found in the increased expenditures of this Government, and in the multiplication of offices; another in the construction power of unrestrained dismissal from office; another in the law providing a four years' tenure of very many of the offices, which enables the Executive to dismiss an officer without the responsibility of an open exercise of his power, and makes him every day the object of the wishes, hopes, and fears of the incumbent. Another, and perhaps the greatest, cause of the augmentation of Executive power is to be found in the personal character of a late President, coupled with that of the party which sustained him, whose levelling and disorganizing principles always tend to absolutism in the hands of the favorite of the moment.

And this observation, Mr. President, the truth of which will be admitted by my honorable friend from Kentucky, appears to me entirely subversive of that point in his argument which he mainly rests upon, and has so much amplified and illustrated. He urges that the veto power of the President with the democratic spirit of our institutions, subversive of the fundamental maxim that the majority should govern, and an obstruction of the free sway of the will of the people. Of all this we are supposed by the argument to be the depository or the exponent. Not so, Mr. President. The reverse is true. My deepest apprehensions of an Executive influence absorbing all power, and destroying this Government, have resulted from the teaching of experience, that the Executive, of all the departments of Government, is the most democratic, most acted upon

by popular influences, and most reacting upon popular masses. The position assumed is, that the Constitution should be so amended as to give additional energy to the popular will, and additional efficacy to the decisions of a majority of the people. If this be what is desired, the true plan is to increase the power of the President, he being the most direct representative, in the practical operations of our Government, of the democratic principle. In the memorable instance of General Jackson, whose present dominant power so long subjugated us, where was its source? whence was he armed with strength to make his will the law? With an array of talent and energy in his Senate, surpassed at no former period, with a decided majority in the opposition, containing in its ranks as much industry, ardor, experience, and eloquence as has ever been brought against a Chief Magistrate, the President was arraigned before the people, and subjected to their verdict. What was it? His acquittal, and your condemnation. Whenever you throw him upon the masses, he came back reinvigorated from the maternal embrace, and armed, not with the negative powers of the Constitution, but with the burning of popular passion, to override all the checks and balances of the Constitution. The danger, therefore, is not that the President may check the popular will, on the assumption of which the Senator's argument proceeds, but rather that it may confer upon him an undue and disorganizing energy. This, it may be said, is an argument for limiting his power, but, at least, it is not the argument of the distinguished Senator, and reverses it. While I am clear that the greatest portion of that power which results from representing the popular will, on very exciting topics, independent of and beyond the Constitution, is in the President, still, it does not follow that the checks and balances of the Constitution are not wisely devised. Indeed, the wisdom of that instrument is most conspicuous in this; and when the honorable Senator complains that the veto power puts a check upon the decision of majorities and the prompt execution of the public will, he complains of what I consider the chief beauty and glory of our Government—those curious, complex, and multifarious contrivances inserted into every portion of the Constitution, which, like antagonist muscles, disposed throughout the animal economy, serve, by their continual play, to keep all in position. If it be true, as I have stated, that the popular principle is most energetically represented by the President, then the argument of my friend fails, and the Senate is the check upon its overaction in his hand—if however, we represent it most strongly, than the veto of the President is a check upon its overaction in our hands.

I utterly reject the dreadful doctrine of the unchecked government of majorities. I dissent from the proposition that this, or any other Government is intended to assert the will of majorities, in all cases, whenever or however ascertained—a doctrine inconsistent with regular government, subversive of social order, and repugnant to any settled notions of morality or fixed principles of right. Morality and pre-existence and permanent—the very antagonists of will and passion; and forms of government are instituted to control, by organized power, the wild and dangerous force, not only of individuals, but of masses. As laws are enacted to protect the weak against the strong, so constitutions are made to protect minorities against majorities, and to preserve the fixed and far-sighted purposes of the community against the tumultuous and fluctuating domination of its own passions, caprices, or impulses. This is true of all Governments, but most especially and emphatically true of this Federal Government, which, neither in its theory nor in its ordinary action, is, or is intended to be, controlled by, or to represent, numerical majorities. It may be that the ultimate sanction and guaranty of all government is force, and that a majority is the depository or exponent of this force; but this is no more true of one form of government than of another—of an Athenian democracy than of a Turkish despotism. The difference between a good and a bad Government consists in the wise and judicious modification, control, and direction of this force, which is more tyrannical in an unbridled majority, acting more from the unrestrained impulse of its own fiery will, than in any form of absolutism. The two extremes are anarchy and despotism; and the latter, by the experience of all ages, has been found most tolerable. National existence and social order are compatible with the latter; not at all with the former. While, in our American constitutions of government, we recognize a more expansive energy in the will of a majority, and a less remote and more certain triumph for it in public affairs, yet we have most elaborately instituted a vast variety of means of checking and suspending it—of allowing it time for cool deliberation—of ascertaining it by various tests—of letting off any undue accumulation of steam, retaining only enough for the purposes of the engine. The very meaning and intent of a constitution is a restraint upon the majority. It is the deliberate declaration of the majority itself, that majorities shall not hereafter govern, but in a defined mode, and under specified restrictions. This is the first, the great, and all pervading check. The House of Representatives, which, by the theory of the Constitution, most immediately of all departments of the Government, reflects the popular will, is checked, in the first instance, by its own

internal regulations, which frequently confer upon a minority an absolute check upon the majority—as, in all cases where two thirds are required to carry a measure; then, the Senate is a check upon the whole body; then, the President upon both branches; then, the judges upon all three; then, the House and the Senate, by the power of impeachment, back again upon the judges; and all, except the judges, are, at stated periods, checked by the people in the elections.

In the application of each of these checks, it may happen that, "the one-man power," spoken of by the Senator, may be as conspicuously efficacious as he represents it to be in the hands of the President. No safe conclusion can be drawn from extreme cases, for they can always be answered by extreme cases. The Senator from Kentucky says that, by possibility, the President's will may control that of very many men as wise and good as himself. This is also true of a single member of either House, or of the Supreme Court. A measure may be carried unopposed by the House of Representatives—the immediate organ of the people—and may fail by a tie in the Senate, or may obtain, out of 51 Senators, 25 votes, with 23 against it. The majority of one is fatal: that one voice is as potential as that of 249 members. It is a one-man power against the whole House of Representatives—it is the voice of one man, not elected by the people, but by a State Legislature, not responsible to his Legislature, perchance, until six years have elapsed, and that Legislature (it may be) unanimously against him at the moment. Most of these conditions have been, to a great extent, recently fulfilled, in the rejection of the bill for the repeal of the bankrupt law, by the casting vote of the distinguished Senator himself.

But you may suppose a case where a measure has passed both Houses unanimously, and been approved by the President, and yet one single member of the Supreme Court may strike it dead upon your statute book, and (his intention being honest) you, nor any, nor all the departments of the Government, nor the States, nor the people, can reach him, or infuse one spark of life into the dead law. Such results must be possible under every system of checks and balances. No doubt, when either of the departments is checked by another, it frets and chafes under the restraint, and is naturally disposed to make war against the opposing department. In general, that feeling is chiefly exhibited by the most popular branch. The French Assembly could not brook the restraint of a co-ordinate body, nor of a strong separate Executive, but took all power into its own hands, and through blood and hor or terminated in the empire. In England, the King was hehated, the House of Lords voted a nuisance, and the long Parliament ran into the protectorate. The present occasion is the first time that a Senate, a small and powerful body, more remote from the people than the President or the House—itsself a check in every direction—has begun a war upon checks. We are elected for six years—one-third longer than the term of the President; we are elected by State Legislatures—by the people of the States; we have legislative, executive, and judicial powers—the, executive only, and a qualified veto. The two Senators from New York, representing a population of two millions, are checked by the two Senators from Rhode Island, with a constituency of but one hundred thousand. If it be true that we ought to remove all obstructions to the free course of popular will—if, on the contrary, it be not the object of your Government to place checks upon it—why this small, irresponsible, powerful body, thrust into the very centre of the machinery, not only checking, in turn, the House of Representatives and the Executive, both of which are nearer the people than it is, but effecting, also, what is of more consequence and of more frequent occurrence, a check upon both united; for, in the history of our Government, it has been found that the House and the President are more frequently opposed to the Senate than the President and the Senate to the House? But if you provoke such enquiries, and push such principles, what is to become of that quiet and noiseless body closeted below there, in your vaults, whose mid-day deliberations are conducted by lamp-light, and from whose lips one whisper silences the voice of legislation, obliterates the statutes of this and the State Legislatures, crumbles into atoms the decisions of twenty-six judicatures, and calmly rebukes the tempestuous sea of popular opinion? If you enter upon this course, will you be able to halt before you reach that shrine? If you get up this storm, can you direct it so that it shall not burst in this hall, and sweep through the Supreme Court? Neither the Senate nor the Supreme Court have heretofore escaped menace on the same principles on which the veto is now attacked; and these, in my judgment, are the two institutions most valuable in our form of Government, and least able to protect themselves, but by the constitution. I will not quarrel with any degree of democracy in the State Governments, or with any diminution of restraint upon the ascendancy of the popular will, in the daily actions of their Legislatures. I am content with the Constitution of my own State, and have no right to censure here that of others. But here, as a functionary of this federal

Government, and as a Senator from a small State, I do object to any additional infusion of a spirit which would tend to consolidate our institutions and give a predominance of numbers over the separate influence of the States.

How cautiously, and, as we all admit, how properly, the power of majorities in Congress is checked by the Constitution, is seen in the requirements of two-thirds of this body to make a treaty; and there, where, if ever, a majority would be entitled to a predominant control—in the amendment of the fundamental law—it is most checked and circumscribed. To carry the measure proposed by my distinguished friend, two-thirds of both branches of Congress are requisite, and besides that, the concurrence of three-fourths of the States, amongst which Rhode Island is entitled to the same weight with New York; thus establishing, as a fundamental principle of Government, that a mere majority cannot change it, and that no change can be effected but by tedious, cautious, and complex proceedings, to overleap which would be revolution.

I will not assert the proposition, but I will not deny it, that it would be well to require a majority of two-thirds for the passage of every important law—for every money bill and every appropriation bill. I do not know that the country would suffer by it. That law of an ancient republic which provided that he who proposed a new law should do so with a rope about his neck, was not altogether without reason. There is no fear that any Government will have too few laws—he danger is on the other side. An over-accelerated action is the danger of free institutions; it is the character of the age, and the vice of our legislation. Whatever is conservative, therefore, in the Constitution, should be preserved and invigorated. All that the veto can effect, or any other of the constitutional checks, is to keep things in statu quo. It is purely conservative. The veto is less so—less positive than any of the other checks, for it is but qualified; while the checks of the two Houses upon each other, and of the two Houses upon the whole House of Representatives, voting unanimously, cannot reverse a majority of one in the Senate; nor can both, unanimously agreeing, shake a decision of the Supreme Court. The veto of the President has not this efficacy, and surely, if any measure vital to the public interest, or involving a leading principle of liberty, be subjected to the veto, he will be virtuous as high in the two Houses to carry it by two-thirds. On the other hand, it may fairly be presumed that, if a measure be opposed by more than one-third of each branch, and by the Executive, it is not of so obvious and pressing good that its failure will seriously affect the country. Of such a state of things, at least we have no experience; for no measure of such character (sufficiently remote from present passions as excitement to be judged of calmly) has yet occurred.

Of the late vetoes by the President, we are not yet in a mood of mind sufficiently calm to pronounce the judgment of posterity. It would be overweening self-conscience now, in the ardor and pugnacity of our passions, to say that this recent veto, upon a measure passed by a majority of two, is of such a revolting and dangerous character as to warrant us in tearing the power from the Constitution. Even if this conviction passed upon us, it would be the part of common prudence to distrust ourselves, and postpone so grave an action until there could be no doubt that we were in a fit state of mind to examine into and pronounce against the deliberate wisdom of our ancestors. It will not be regarded as a superstitious reverence if I avow my determination to change no part of the Constitution, by however plausible theories assailed, unless it be also shown that its actual working has been so injurious and oppressive as to demand amendment. I do not consider the Constitution as a subject for mere speculative reasoning. It should not be lightly touched, or approached in an arrogant spirit of reform; but having been approved by the judgment of our ancestors, and by two generations since, I am pleased to think that it begins to find support and anchorage in our sentiments and affections. If there were some defects in its framing, some omissions in carrying out its proportions, or some rugged projection from its surface, I rejoice to believe they are now or shortly will be covered over and hid by all the associations of deep love, solemn reverence, and pride and glory, which the human heart unites for time honored institutions. Let us not disturb the growth of these associations, which at once strengthen and adorn the noble fabric, by useless repairs, or mar the tone with which time begins to harmonize its aspect, by fantastic patchwork or audacious reconstruction.

I put the question, with a certain degree of confidence: Has the veto power worked a practical injury upon our legislation of such a magnitude as to demand an amendment of the Constitution? Are we urged to the adoption of the Senator's proposition by an overbearing necessity; by the pressure of great suffering; by any serious and obvious inconvenience in the action of the veto? I have said that I place out of view the vetoes of the present President; but, in regard to them, I will take leave to say that, in each instance, they were applied to measures which the change of a single vote in this Senate, would have prevented from going to him. The President on these occasions was equal to but one vote, and surely, however much I may regret his course, I cannot consider it so flagrant an instance of the tyrannical power of the veto as to wish therefore to abolish it. I do not propose to examine whether the vetoes heretofore interposed have been right or wrong, but whether their practical effect has been so deleterious as to amount to a grievance. What injury, then, practical and permanent, has resulted from the exercise of this power by the President? Who will point it out? The honorable Senator has not. Who remembers the number of vetoes, the measures to which they were applied, or the injury which they have wrought to any man's person, property, or franchises, or to the general welfare? Our Government has now been in operation a half a century—exposed to all the trials incident to the working of a new machine; agitated by violent party dissensions; subject to the vicissitudes of prosperity and adversity, of war and peace; shaken by the alternate triumph and defeat of opposing parties; administered by nine Presidents. Amidst all these chances, and changes, will any gentleman rise in his place and say that an impression, deep enough to be remembered a year, has ever been made by the veto? Instead of damming up and rolling back the current of our legislation, it has scarcely rippled its surface. Most of the Senators who bear me, learned as they are in our short history, will be surprised when I tell them, what I was surprised to ascertain in my preparation for this discussion, that there have been 14 cases of veto. Who remembers them? Are the wounds which they inflicted upon the country still bleeding? Do the scars remain? Or have all of them except those immediately under our eyes passed away and left no trace behind? Doubtless, some of them, at the time, chafed the zealous promoters of the measures vetoed, and excited momentary doubts of the correctness of that power under whose operation they smarted; but the irritation pas-