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MR. PLAYER'S SPEECH,

Delivered in the House of Representatives of South Carolina, in December 1828, before the committee of the whole, on sundry resolutions, proposing means of relief against the Tariff laws.

Mr. Player said:

Mr. CHAIRMAN—My purpose in detaining the committee at the eleventh hour of this very protracted debate, is not to detail facts, but to settle principles. To trammel the discussion with statements of what should be presumed to be trite and common place to the members of the committee, is, I conceive, the most effectual way to embarrass, if not to frustrate their deliberations. When the question concerns rather the nature than the extent of the injury sustained, an endless accumulation of documents could but bewilder the mind, in tracing out and settling the responsible inquiry, what is the mode and measure of *relief?* If, Mr. Chairman, I were so far to forget myself as to become an advocate for retributive justice, instead of the word *relief*, I should have used the word *redress*, as alone fit to explain the measure of satisfaction to which we are entitled in return for our reiterated wrongs. But sir, it is impossible that I should forget the attitude proper to the emergency, when the tone of our deliberations perpetually remind me that this is a tribunal organised for *relief*, not for *reprisal*, and that the utmost scope which our views can embrace, would be defence against future, and not satisfaction for past aggressions.

I will not stop sir, formally to inquire whether the delicate and perplexing relation which it is our almost peculiar hardship at this time to occupy to the federal government, is properly referable to an abuse or usurpation of constitutional power; or, if to usurpation of power, whether it be "deliberate, palpable and dangerous." After the flood of light which has been incessantly shed upon these topics, throughout the able and convincing argument of the Hon. Speaker (Mr. Harper,) to attempt to tread in his footsteps, would be like following the sun with a taper to increase his effulgence; a pitiful effort of conceit and vanity, as foreign from every sense of propriety, as insulting to the judgment of the committee. If gentlemen still remain uninstructed on these points, revelation and not reason must inform them. Indeed sir, I do not deem it material to a concerted plan of resistance, or to its correct and conscientious adoption, that the committee should fully determine for itself, whether the tariff is an abuse or an usurpation of power. The same disfranchisement of states and individuals attends the pursuance of unlawful *ends*, as the use of unauthorised *means* by the federal government, and it is enough for us to know that our "reserved rights" as a sovereignty, and our liberties as men are insidiously assailed, to harmonize our movements toward a point of common suffering or common security. Treating these points then, as proved or assented to, I shall briefly suggest and answer arguments as to the *mode* and *time* of "basing ourselves on our sovereignty" for relief.

It seems to be conceded on all hands, that relief, if administered, must come from the state "in her highest sovereign capacity," and the inquiry therefore, *how* this array of sovereignty is to be obtained, seems naturally to take precedence of the question *when* its exercise would be expedient. To the decision of this point, as it involves the locality of a power, it becomes us to know what is the power necessary to be executed and what the organ of its deposite. As it must be obvious to the committee that the powers of *protesting*, *petitioning* and *remonstruting*, are worse than nugatory, I shall proceed at once to what Mr. Jefferson calls the "rightful remedy," in cases of deliberate outrage; a "*nullification* of the law."

Is there the power to nullify a deputed or reserved power, & if deputed where is the evidence of its delegation, & what the department of *sovereignty* to which it belongs? As the committee will perceive that the answers to these questions depend on the apportionment of sovereignty under our complex adjustment of political control, they will indulge me in a hasty review of the nature and extent of derivative and original powers in the constituted authorities of the state and federal governments respectively, and in the people.

The powers rightfully exercised by a government must be freely aided, formally attested, and regularly conferred. The grants by which powers are conveyed, and of course the muniments authenticating their transfer, under our government, are written constitutions; and hence the question whether a power be ceded or retained, must be settled by reference to the parchment. To inquire gravely if the power under debate were in the federal government itself, farther than as involved in a discretionary or even arbitrary right to review and reverse its own laws, would be little less than mockery and insult to the good sense of the committee; for unless managed with a complete discretion, it would be a weapon for suicide in the hands of government, and as such repugnant to the ends of its creation. It is true that the power of veto lodged in one department of that government (so far as the mere suspension of a law bears a resemblance to its complete reversal) is somewhat analogous to the power under debate; but this power is so parallized when antagonist interests array the whole functions of government in an undivided front against a conflicting sovereignty, as to become, for the protection of the rights of the latter, wholly nugatory and unavailing.

The power to nullify its own laws then, other than by a legislative process, not being specially ceded to, and in truth being repugnant to the existence of the federal government; it follows, that it must still inhere in the people as an original power, or have been ceded by them to the government of the state, or some one of its branches. To determine this point understandingly, it will be necessary to analyze the nature and distinctive characters of the grants and limitations which establish and restrain the federal and state sovereignties respectively; as with the exception of the small residuary mass still left in the people, each government is respectively the reservoir of such powers as belong not to the other. The charter of sovereignty in the federal government is a deed conferring *enumerated powers* by special clauses of cession, and the *means* to their execution by general clauses of cession; the *limitations* to which powers, tho' sometimes special, are finally summed up in a *general restraining clause* reserving such powers as are not therein granted to the states or to the people respectively. This indeed is the only mode by which a government intended to be limited in the sphere of its operations, could be effectually controlled; for special limitations without being followed up by a clause of general restraint, presuppose a general grant, to which they serve as exceptions. Not so however, the constitution of the state—commencing unlike the federal constitution, it holds a course directly antipodal* throughout. Proceeding to confer the functions of sovereignty, they are not doled out, with a jealous parsimony, as in the former case, but dealt out with a liberal, almost a lavish hand; not counted out by grains, but *sown broad cast upon the parchment*. In the state constitution *the grants*, instead of being special, *are general*; and the *restraints* upon state, unlike those upon federal power, are *special*. These facts are strictly in unison with the necessities which gave rise to the different instruments—whether we regard the federal constitution as the substratum of a new government, or as remedial of defects in antecedent government, it was still intended to *confer new powers*; or else it would have failed to repair those defects which it was designed to remedy. The state constitution, on the contrary, instead of being designed to institute government, or confer power, was merely intended to *adjust, arrange, and in some instances, restrain pre-existent sovereignty*; and hence in every case that the general declarations of antecedent sovereignty, though expressed in the form of grants were rather intended to perfect the symmetry than the energies of the instrument, while the arranging and restraining clauses were mainly remedial. In this conclusion, Mr. Chairman, I am fully sustained by the fact, that under the colonial charter, sovereignty existed in *sufficient quantity* in the constituted authorities; or the royal charter would not have been continued for near 14 years after the revolution, or which is the same, between the declaration of independence and the adoption of our state constitution, and by the strong analogies of many of our sister states having but recently adopted constitutions, and of their retaining their charter to this day. If then the power of nullification would have been in the constituted authorities under the colonial establishment; or if it would pass under the *general grants* in the state constitution, and *(as is the case)* there is no special restraining clause to inhibit its exercise; as it is conveyed to no other government, it follows that it is not in the people by their bill of rights, but in the *efficient sovereignty of the state;* those invested with *actual dominion*.

It will be remembered, however, by the committee, that I have admitted that relief can only be afforded by the state, acting in her "highest sovereign capacity;" and I mention it now, because at this time of the debate I am confronted with a proposition, which if true, will render this admission fatal to the argument I am enforcing, to prove the Legislature competent to administer the remedy. The proposition to which I refer is this, that so far from any department of established government being the depository of the supreme power, the *sovereignty of the state*, instead of being contained in, is *paramount even to the whole array of constituted authority!* As this position forms an important preliminary point, thro' an affirmative decision of which we can alone efficiently reach the merits of the debate, it becomes us not to evade but to examine it.

This brings us to an inquiry which I think it high time should have been regularly made before the committee, to wit: What is sovereignty? I know, Mr. Chairman, it is beneath the dignity of the discussion to descend to verbal criticism, or to attempt to convert it into a tilt about words; but if we intend to labor in concert, it is important, that we should know the tools to be used in the work. It is impossible to commence in a "babel of iniquities," and we do not approach our end a whit the nigher, by imitating some learned gentlemen in "gabbling a leash of languages." To come to the point then, *sovereignty is control*; and I defy gentlemen to frame a definition or cite an instance of its actual or possible exercise; whether embraced in its original, deputed, or ultimate forms; whether absolute or modified, that is not in strict accordance with this definition. If we find it employed in originating, restraining or destroying government; electing, instructing, commissioning, or disfranchising its agents; framing, prescribing, expounding, or executing laws, it preserves its identity throughout; and every functionary of government from the highest magistrate, to the meres menial of power, is to an extent, a participant in the common stock. Whether we contemplate its volcanic energies roused in a tempest of revolution by a mighty and indignant people, to demolish with force established systems; or survey its more benign and temperate influence, in arranging the elements of society into harmonious motion; in its more eccentric and angry, or its regular and pacific mood, the same great characteristic still prevails, the *workings of an overruling and controlling power*. Blackstone (48-9) treating of the several forms of government holds this language: "However they began, or by what right soever they subsist, there is and must be in all of them a supreme, irresistible, absolute uncontrolled authority, in which the 'jura summi imperii,' or *rights of sovereignty reside.*" If examined, this observation, will be found to correspond, or at farthest not to conflict with the definition I have given.—When speaking of the authority intrusted with these sovereign rights as "supreme," the meaning is, that to the extent of its dominion, it is without an *actual* superior; when as "irresistible" that its powers are of competent energy to their own inforcement; when as "absolute," that its mandates are of positive obligation within its jurisdiction; when as "uncontrolled," that its functions *within their scope*, are without control: and it is worthy of remark, that in enumerating all these properties, he does not mention or even hint as an attribute of sovereignty, that it is *unlimited* or *incapable of control*; the word "uncontroled," conveying neither the idea that it is *incapable of restraint or without limit*, but merely that *within its limits it is without restraint*. The definition of sovereignty therefore, which designates it as "that power in a government which is *without limit*," is faulty; power for being limited, being not the less supreme, within its prescribed bounds: and there being no power in a government *without limit*, unless the government be a despotism (power in all other forms of government being laid out and marked by distinct rules and bounds,) it follows that a power without limit, as to all other forms, must be a power *above* and not "*in*" or *under* government. Sovereignty then being synonymous with power, without any reference to limits or extent, it follows that wherever the power resides in a government, there also, is the sovereignty, in other words, *government is sovereignty*, or at least the *medium* or *instituted organ* of control, and its origin having no effect upon the extent of its powers, but merely upon its *right* to exercise them, it follows that whether "de jure" or "de facto," it is actually sovereign to the extent of its functions. From this identity between sovereignty and government arises its distinctive appellations; as, when the supreme power is in one man, the government is a monarchy; when in a council composed of select members, an aristocracy; when in the people, a pure democracy, and in their agents, a representative democracy, or republic; each being further distinguished according to the mixture or modification of these forms. In this then, as in other republics, that sovereignty which emanated from the people, being transfered to their agents, it follows that upon *grounds of sovereignty*, the power of nullification belongs to the state government, or at least to one of its departments; and hence if it does not exist concurrently in some other department as an incident to sovereignty existing elsewhere, no other authority is competent to its exercise. I have shown that it is not in the federal government, and as the only remaining body in which sovereignty could reside is the people, let us see if they have any and what sovereignty remaining, and if any, whether this power would follow as an incident.

Of *actual sovereignty* the people, *as individuals*, have none, unless it be contained in the democratic rights, or more correctly privileges* of *suffrage* and *instruction*.—Election however is but a modification of the appointing power; and the Electoral College but a *collective functionary of government*, so that suffrage must be exercised by the citizen, not as *an individual* but a civil organ or agent of government. So of instruction—it is a power belonging to *concerted majorities* and always bearing relation to a *civil trust*. Both however, *as powers of government*, could not be exercised by the citizen in his *individual* capacity, for government is a *substitution of a civil* in the stead of *a social state;* an exchange of the *power of individuals* for the *power of majorities*, and the acts of the *citizen* are as separable from those of the *individual*, as are his *civil* from his *domestic* relations. He may enjoy private rights or personal privileges, under the protection of government; but he can exercise no *privilege or function connected with the government but as its agent for that purpose*; in other words in the cases mentioned, he acts as a *citizen* not as an *individual*. Be the relation however what it may that the people have to the government in executing these trusts, the power of nullification cannot follow as an incident *to them*, and these being their only known powers *under government*, it follows that if the power in debate belongs to the people, their right to exercise it must accrue from some power *paramount to government*. The only power of this sort, and in truth the only power properly belonging to the people *as individuals*, is the *revolutionary power*, or the exercise of their *ultimate—possible sovereignty*.

I have never denied to the people this right of self-protection, when arrayed in organized majorities, and if that which is merely *possible* and *suspended*, a mere inchoate, unperfected right can be said to *exist*, and not merely to have a power of existence, I am willing to concede to them paramount sovereignty; for when this stupendous power is organized for relief, in the absence of protection by the regular tribunals, it certainly is supreme, alike over the government and the laws. If the right to nullify be an appendage of the revolutionary power, (and not of some power under government,) the people are at least *potentially* entitled to its exercise; for so far as this *naked possibility* extends, they may subvert a government of their creation at any moment. Conceding however, for the sake of argument that the right to nullify might follow the exercise of this unconsummated power of revolution, yet until it is become complete by actual convention, it would no more destroy a concurrent power existing in the government, than the right which the people unquestionably have to *make laws*, would stop their agents from *municipal legislation*. An unexecuted right in a person civil or natural, in a body politic or an individual, dependant for its existence upon a dispossession of a like power in another, can alone exist to the prejudice of the latter, by actual consummation; as incomplete can never supercede complete powers. Be this as it may however, it has been conceded that this revolutionary power, "the ultima ratio," as gentlemen have styled it, to which the power of nullification has been supposed appendant, can only be exercised by the *people in Convention*; and I think I am prepared to show to the satisfaction of the committee, that *a convention as such*, and exercising its appropriate functions, *cannot proceed to nullify a law*.

The presumed necessity for the call of a Convention is not to absolve us from the obligations of the law, as one ground is that it imposes no obligation. It is to promulge to the citizens of the state that the law is void; and instead of absolving them from an obligation which has no existence, to arrest its unrighteous enforcement. Before however the Convention can pronounce the law null with their countervailing sanctions appended, they must *convince themselves that it is so*, and to this end they must test it by the only criterion, the Constitution of the United States, and *judge* of its conformity or non-conformity to that standard. The Convention then is expected to exercise *judicial power!* But is not judicial power a branch of *government?* Governmental powers are first legislative, second *judicial*, and third executive. Is a Convention as such, exercising powers proper to it in that character only, competent to the exercise of either of these powers? What is a Convention? A representation of the people *as the elements of society*. What its province and legitimate purpose? To *destroy, institute, or modify government*—deciding judicially is neither destroying, instituting or modifying, but *exercising* government, and presupposes that the Convention have first *constituted themselves a government*, and then proceeded to exercise its powers. Admit that a Convention may constitute themselves the government, and thence proceed to exercise functions of sovereignty, what follows? As I before said, that they must have first made themselves the government, before they can proceed to exercise its powers. Then why pull down the state sovereignty, as already subsisting in the state government, when it must be acknowledged that, as to the question under debate, the Convention could do no more than substitute themselves as a *special government* in their stead? Why when you have general agents whose power and duty it is, among other things to administer the contemplated relief, should you create special deputies, who can do no more? In fine, if expediency does not demand a substitution of authorities, *what is gained by pulling down a sovereignty, competent to all the ends of government, to put up in its stead another, no more competent?*

A Convention called to institute government is intended to *confer or create the power* of enacting, *repealing*, *expounding* and executing laws; the exercise of either of these functions, once created, belongs regularly to the constituted authorities. Hence if a Convention proceeds to exercise either of them, it abolishes "pro tanto," existing sovereignty, and vests for the time the government in different agents. If not, this anomaly follows, that, to the extent of the powers exercised by the Convention, there are *two co-existent sovereignties*, when *one* would not only be sufficient, but greatly preferable. Now, this, to say the least of it, would be unnecessary.—For if they should exercise the same powers, in the same manner, and for the same purposes, the act of one would be as good as the act of both; but should they not harmonize in the exercise of their powers, their acts would invalidate each other mutually—*Cumulative legislation is at best unprofitable; and conflicting legislation a virtual subversion of government; for confound the canons of department, & you subvert the obligation to obedience.* In such a case of accidents and cross-purposes, would it not seem strangely like the will of the people, reflected through both the Legislature and Convention, was conflicting with itself? In such an event, which is to give way?

If the constituted authorities are not the sovereignty of the state, then is the party governing inferior to the party governed

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* In writing off a long extempore argument it is impossible that the same language can be used, or that words will occur in the same position, or ideas in the same order as when delivered. My purpose is to send you the argument *in substance*, lest I should be thought to sculk from a responsibility which others are assuming, by having their sentiments perpetuated; and I conceive that the subject is not materially fettered by the transposition of a word, the varied arrangement of a sentence, or the enlargement or reformation of a view.

* There is perhaps nothing which can better characterize those instruments and the spirit of their formation than the very introductory words of each. "All legislative powers *herein granted*," says the federal constitution, and thence proceeds to detail them, while the constitution of So. Ca. begins, "The legislative authority of the state," and dispenses alike with details and words of caution. The one enumerates powers even subordinate and declaratory, while the other hardly pauses to know what it is dispensing.

* They are strictly privileges, being exercised by the courtesy and permission of the majority.