SPEECH

OF

MR. EWING, OF OHIO,

ON

THE DOCTRINES OF THE PROTEST

OF THE

PRESIDENT OF THE UNITED STATES,

AND

ON THE QUESTION OF RECORDING SAID PROTEST

ON

THE JOURNALS OF THE SENATE.

DELIVERED

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SPEECH.

Mr. EWING, of Ohio, rose and said:

Mr. PRESIDENT: I am much at a loss in what manner to characterize the paper which is the subject of discussion. When read to us, the other day, in the Senate, I pretty well appreciated its character and its purpose. I noted down, too, some of its language; and, if the Secretary read it right, and if I heard him right, that which is sent abroad, in the official, as the President's protest, and the forty thousand copies which are published in pamphlet form, and scattered to the four winds, differ, in some material points, from the one which is before us, and in points which were the subject of comment here. In this paper the President speaks of the Secretary of the Treasury as *his Secretary*, in one instance, and, in two others, he speaks of the Secretaries generally as *his Secretaries*; using, in three instances, the *possessive* pronoun, and thus appropriating those high officers of the law to himself as his sole and exclusive property. That circumstance was not passed over in silence here; something was said in this debate of *his Secretaries* and *his Government*, and in the printed pamphlet we find the more modest term, *the Secretaries*, in two cases out of the three, supplying the place of *his Secretaries*. Such is the fact, if the paper was correctly read from your desk. But, since I came into the Senate chamber this morning, prepared to discuss the motion, or rather the paper that is before you, another change has come over the spirit of our dream; a codicil, or a supplement, or a gloss, or a recantation, in part, of this paper, is presented us. On the whole, we do not know well what it is, or where to find it.

"It flits ere you can point its place;" but I trust now it will remain without further change, until I can say the few things which I wish to say concerning it.

By what I could gather from the reading of the addendum, or supplemental paper, I do not think it at all varies the original, unless it be to cover up, and give room to explain away, some assertions of power too flagrant for the present times to bear, and too openly and boldly expressed, to admit of equivocation or denial. But this amendment will do; it gives sea-room; there is space now for turning and tacking, so that there is no danger of being run down by any one who takes the trouble of pursuing the point. The explanation will set it all right; for it is one of those incomprehensible mysticisms which no one can exactly comprehend, and therefore no one can refute.

But the original paper—what is it, and by what authority does the President send it here? It is not a message under the constitution, giving the Senate information of the state of the Union, or recommending any legislation; and it responds to no call of the Senate. We once, by a resolution asked the President for his argument on the subject to which this paper

relates. While the resolution, which is the subject of complaint, was pending before the Senate, you have not forgotten, sir, that we, by a formal resolution, asked him to send us an authenticated copy of the paper which he read to his cabinet, recommending the removal of the deposites, taking the responsibility on himself, and giving his reasons for the act—and he refused us. But now, when the Senate has passed upon the matter, he sends us this paper, which he calls a protest, and asks us to enter it upon our journals. Well, a protest be it—for, as it is a nondescript, and he is the inventor, he has a right to give it what name he pleases. He tells us, also, that he has caused it to be entered on the Executive journal. As to the propriety of this I have nothing to say—if the Executive have a journal, and this be the kind of matter which is usually inserted there, why be it so. We entered our protest (in the form of a resolution) against executive usurpation on our journals, and if the Executive thinks we have usurped any powers belonging to him, he certainly should have the right to enter his protest on *his* journal. These seem to be common and equal rights. But the President goes further; he sends us his protest, and wishes us to give it a place among our records—a thing which I am by no means inclined to do. Had the Senate sent him their resolution, with a request similar to this, *he* would have treated it, without hesitation, as I trust we shall treat this paper, refused it a resting-place within his doors. And what was the resolution which called forth this singular document, and why was it resolved on by the Senate? The event is too recent for the state of things under which it took place to be forgotten.

The public deposites had been removed by the President from the Bank of the United States, where the law had placed them, and the Secretary of the Treasury sent to us a report containing, what he called, his reasons for such removal. All admit we were bound to examine and pronounce upon the sufficiency of those reasons. We did so, and found them wanting. But they did not contain the whole reason for the act. The President's message, a paper which he read to his cabinet, and published in his official journal, and which was in the hands of every body, and bearing his own signature, showed that it was by virtue of *his mandate* that the act was done, and that, in truth, there was *no discretion* exercised by the Secretary; that no controling reason actuated him, except the will of the President. Our first resolution, therefore, did not cover the whole case; the act of the Secretary was, as it stood before the people, sheltered behind another power, the mandate of the President; and it was our *right*, and I hold it was our *duty*, to determine whether that *reason*, if it be worthy of the name, were sufficient to justify it. In other words, whether, in the exercise of the discretion vested in him by law, the Secretary of the Treasury was bound to conform to the will of the Executive, and yield that *discretion* to his *will?* Such are my views of that resolution, so far as relates to its *quasi* legislative character; for neither of the resolutions are, strictly speaking, legislative acts, but they are required to be passed upon by the provisions of a law, which has also the solemnity of a compact. The honorable Senator from Alabama [Mr. King] said, the other day, that this resolution proposed no legislation, and that no man, except the Senator from New Jersey [Mr. Southard] would say that he meant it as the basis of a legislative act. Now, I cannot allow that Senator to answer for me on this subject. I have my own views upon it, and would prefer expounding them for myself. I considered those resolutions as legislative in their character, and that the very passage of them would require of the Secretary of the Treasury to restore the public funds to their proper and legal depository; for, inasmuch as they were placed there by *law*, nothing

less than the sanction of the law-making power, in all its branches, could permanently remove them. Thus far I considered both the resolutions legislative in their character.

But, to warrant us in their adoption, it is wholly immaterial whether they were legislative, or whether they looked to future legislation, or not. It is a right inherent in all men, and in all bodies, to express their opinions concerning matters of great import to themselves, and to the community of which they may form a part, or of which they are the organs. Those opinions may approve, condemn, or advise; and this, although there be no constitutional provision securing them that right. The opinion of a single individual may be expressed by his own simple assertion; but that of a numerous body can only be expressed in the form of enactment or of resolutions. Look at the whole practice of the country upon the subject; the resolutions of our legislative bodies, not as acts of legislation; the resolutions of Virginia of 1798; and those resolutions of instruction from various State Legislatures, which the President has embodied in this very message; none of them warranted by the constitution of the United States, or the constitution of any of the States. And what does the President tell us? That a Legislature, or a legislative branch, may pass no resolutions, except those which are to be the basis of legislation, or which the constitution expressly warrants; and, at the same time, sends us transcripts of numerous resolutions, according to his doctrine, so unconstitutionally passed; and, at the same time, indirectly censures some of us because we did not obey them. But, sir, the *right* of those Legislatures to pass these resolutions was, under the practice of our Government, undoubted; so is our right also, it is admitted, fully admitted, by the Senator from Georgia, [Mr. Forsyth,] the strongest and most thorough defender of executive claims upon this floor.

But the discussion has again called up certain resolutions of the Senate, moved by an honorable Senator from Mississippi, [Mr. Poindexter,] which declare that it is inexpedient, except in cases of necessity, to appoint individuals, resident in one State, to fill offices in another.

These resolutions were passed before I had the honor of a seat on this floor, and they were passed by an almost unanimous vote of the Senate, of which a clear majority were supporters of the present administration; but they crossed somewhat the purposes of the Executive; and the Senator from Alabama [Mr. King] soon discovered that they were a violation of the constitution; and, though they had his vote on their passage, so strong is that argument in his mind, that he now says no man, divested of passion, can doubt that they are unconstitutional. Here, again, I must beg the honorable Senator not to decide a constitutional question for me. The fact that weighs so strongly on his mind to prove it unconstitutional, namely, that it thwarts Executive purpose, has little weight with mine; and I, sir, was first called to reflect on that subject in the utmost calmness, and without the least movement of passion. My conclusion was wholly different from that of the honorable Senator. I thought that he and those who voted with him had not violated the constitution, or encroached upon any of the executive powers. The resolution did not restrain the President in his right of nomination; it merely settled a rule by which Senators proposed to be guided, save in cases of necessity, in their co-ordinate duty of appointment. Suppose the Senate had passed a resolution, generally, that it was inexpedient to confirm the nomination of a convicted felon, or a fugitive from justice, or a man of base and infamous character, if nominated to any honorable or responsible station; would any man have thought that this body was infringing on the just rights

of the Executive? And would it not have been just as well to have done so, as it was to reject such nominations when they were sent before us for confirmation. The resolution referred to was, in fact, respectful to the President: it gave him information of the general views of the Senate on the subject to which it referred, and was a course far more conciliatory towards him, and more regardful to the character and feelings of a nominee, than the simple rejection, which no man doubts we had a right to make for that cause. The Senator spoke of the repeal of those resolutions. I remember the circumstances well.

On the last night of the session, at about 3 o'clock in the night, after nearly half the Senators had retired, exhausted and overcome with fatigue and watching, the motion to rescind this resolution was brought forward and carried by, I think, sixteen to fourteen votes. So the resolution was thus rescinded, and its recision, under these circumstances, is produced as evidence of the opinion of the Senate that it was unconstitutional. One word more, in reply to the Senator from Alabama. He said, in answer to some remark of the Senator from Maine, near me, [Mr. SPRAGUE,] that that gentleman was not very obedient to any body; and this, in allusion, as I understood him, to the instructions sent to that Senator from the Legislature of Maine; and it was spoken in a tone of reproach or accusation. I stand, sir, in precisely the same predicament, and am willing to believe a share of the reproof was intended for myself. But what is the accusation thus made on this floor against us? We are sworn to support the constitution of the United States, and we are charged with disobeying instructions, which require us to support acts in violation of that constitution. On subjects of this kind, when I am bound to the performance of my duty by the solemnities of an official oath, the Senator from Alabama will excuse me, if I am not very ready to *obey those* who have no right to command, but who *do* command me to disregard and to violate that oath.

In order to give the semblance of propriety to the emanation of this "protest," the President says: "But when the Chief Executive is, by one of the most important branches of the Government, in its official capacity, in a public manner, and by its recorded sentence, but without precedent, competent authority, or just cause, declared guilty of a breach of the laws and constitution, it is due to his station, to public opinion, and to a proper self-respect, that the officer thus denounced should promptly expose the wrong which had been done."

Now, I ask you, sir, if the same rule would not, in like manner, apply to the Senate, if this body, its motives, and its acts, were attacked by the President in his official character, "in a public manner, and by his recorded sentence, but without precedent, competent authority, or just cause," and "declared guilty of a breach," of a solemn compact, "and of the constitution?" And such has been the case within the present session.

At the last session of Congress the two Houses passed a bill, entitled "An act appropriating for a limited time the proceeds of the sales of the public lands." This bill was retained by the President, and not returned to the House in which it originated within the session. If he had returned it within ten days without his assent, it was his duty, by the constitution, to accompany it with his reasons for refusing that assent. If he did not return it within *ten* days, its return, and any message he might return with it, were irregular and void as an official act. But, on the 5th of December last, he returned us that bill, with a message, in which he says that it is "*in direct and undisguised violation of the pledge given by Congress to the States before a single cession was made;*" and, in the next paragraph, he says: "In the appor-

tionment of the remaining seven-eighths of the proceeds, this bill, *in a manner equally undisguised, violates the conditions on which Congress obtained title to the ceded lands;*" and, in another paragraph, he says, in substance, (and in this I agree with him,) that "a violation of that pledge is a violation of the constitution." It would lead me too far out of the course of my argument to show, what I am at any time prepared to show, that these charges against us were utterly unfounded. But where was our spirit, Senators, when we not only received and recorded this illegal paper, this gratuitous insult upon our body, but made ourselves the vehicle for spreading it abroad among the States and the people? Sir, your journal will show that, on motion, I think of a Senator from Alabama, five thousand copies were printed, by our order, for distribution. If we are chargeable with any departure from duty, it has been for tameness and submission. As a body, this Senate is "more sinned against than sinning."

But it is insinuated, though not expressly averred, that, because the Senate are the triers of impeachments, it may not pass any resolutions which directly or indirectly inculpate an officer subject to impeachment. I say this doctrine is not distinctly asserted, but the course and purport of the argument go to this point.

Now, I had supposed, and indeed had believed, that no one doubted, or could doubt, the position that the judicial power of the Senate was cumulative and not restrictive on its other powers; that its power, as a legislative body, is, in all things, as full and perfect as it would be, if it possessed no other powers. So, also, with its executive functions; and so with its judicial; that in each and all its respective duties, it is as unrestrained and efficient as if it were confined and limited to the performance of that single duty alone. Such must necessarily be the case, unless its powers be somewhere restrained in these respects by the constitution; and I find no such restriction. The only limitation to its powers, as a branch of the Legislature, is, that it may not originate revenue bills. And it cannot exercise its judicial power of trying an impeachment, until articles be preferred by the House. But in no respect is it deprived of its natural aud inherent rights as a deliberative assembly, of collecting and expressing the aggregate of the opinion of its members by resolution, or of the right to speak, in its *quasi* legislative character, by resolutions, as in the case of the two resolutions passed on the subject of the deposites.

It is not true that the President has been tried by the Senate in their capacity of a high court of impeachment; it is not true that criminal charges have been by us preferred against him. I will not say that there was not crime in the acts which he admits he has done, and which we say were against the constitution and the law, but we have not accused him of crime, nor have we thought proper to acquit him. We have done neither; for the plain reason that we have not passed judgment upon him. Nor is it true that in the species of inquiry which we did institute, as to the legality of the act—in our inquiry into the law and the constitution on the admitted facts—it is not true that he had no notice of the inquiry, and no opportunity to be heard. *His* Secretary of the Treasury, (and in this particular instance he is, perhaps, right in calling him *his*, for the Senate had neither part nor lot in his appointment) —*his* Secretary of the Treasury sent us, at an early day in the session, his reasons for the act which our resolutions disapprove.

At a subsequent day a further document was sent to, and received by us, from the same quarter, containing further reasons for the same act, and an official answer to arguments delivered by Senators on this floor. Not satis-

fied yet with the opportunity which we had given the Executive to be heard, we called upon him, by a resolution of the Senate, for an authentic copy of a certain other paper which he had read to his cabinet, and which was published in his official gazette, giving more especially his individual reasons for the act, and taking upon himself its whole responsibility. This he denied us. Now, who can say, after all this, that the President was tried and condemned unheard? For, as it is the moral effect of the decision of the Senate he deprecates, it is only the moral and rational privilege of notice and defence that he can ask for, or could claim—such as consists with his own dignity and that of this body, and with the nature and character of the inquiry that was before us.

But the writer of the protest mistakes or misstates the point on which we held the act of the President unconstitutional and illegal. The Senate did not deny his power to remove the Secretary of the Treasury; no one Senator denied it in argument; but we did deny his constitutional power to touch the public treasure by means of that power of removal. The weapon which he wielded was, we admitted, a lawful weapon; but the use he made of it was, as we contended, unlawful. This was the argument; this the distinction; intelligible, it would seem, to any ordinary intellect. No member of this Senate can fail to comprehend it. But we did also deny that the power of removal was an independent power granted to the President by the constitution. We held it to be a power which was necessary to carry into effect other powers granted by the constitution; and, being so, was properly at the disposal of Congress, under the eighth section of the first article of that instrument, and that the act of 1789 vested it in the President. But the President, claiming it as an implied power arising out of the constitution, asserts his right to exercise it, for any and for every purpose, independent of legislative authority. And where, I ask, is his warrant? Senators here contend for a strict construction of all the powers granted by the constitution to this Federal Government, and yet contend, also, for a liberal construction of the powers of the Executive; and that he should have by implication, without a grant in the constitution, all the powers necessary to carry into effect his expressly granted powers. Denying it to the Legislative department of the Government, to which it is granted in express terms, they assert it to belong to the Executive, to which it is no where granted. This is a course of reasoning which, I confess, I do not well comprehend; but I will leave it, and pass for a moment to the practical operation of this power in the hands which at present wield it.

And here I wish to bring some of his opinions in as close connexion as possible with much of his practice, that we may see how far he has observed the golden rule, "do unto others as you would they should do unto you." Speaking of the censure cast, or alleged to be cast upon him, by the resolution of the Senate, he says: "And it is not too much to say, of the whole of "these proceedings, that if they shall be approved and sustained by an intel- "ligent people, then will that great contest with arbitrary power, which had "established in statutes, in bills of rights, in sacred charters, and in consti- "tutions of government, the right of every citizen to a notice before trial, "to a hearing before conviction, and to an impartial tribunal for deciding on "the charge, have been waged in vain."

Recollect, it is not an accusation in point of law, where judgment follows conviction, of which he speaks; but it is a solemn opinion of the Senate as to an executive act, and it is the moral influence of that opinion of which he speaks, and which he deprecates in such solemn terms. But how has it been

with the hundreds and thousands whom he has dismissed from office without accusation, without a hearing, without even the shadow of a charge; dismissed them to want and beggary; their hopes blasted, and their characters assailed, by his vile "official," and its still viler echoes? Did he duly appreciate the moral effect of an official judgment upon them, which he now feels, or professes to feel so deeply, when it touches his own person? Other and better men, in other and more quiet times, have thought of this, in reference to this very subject of removal. I read from the speech of Mr. Page, of Virginia, (the same, I believe, whose name honors one of the new counties in that State,) delivered in the House of Representatives in 1789, on a clause in the bill creating the Department of Foreign Affairs, which recognised the power of removal in the President.

"I venture to assert," said Mr. Page, "that this clause of the bill contains "in it the seeds of royal prerogative. If gentlemen lay such stress on the "energy of Government, I beg them to consider how far this doctrine may "go. Every thing which has been said in favor of energy in the Executive, "may go to the destruction of freedom, and establish despotism. The very "energy so much talked of has led many patriots to the Bastile, to the block, "and to the halter. If the Chief Magistrate can take a man away from the "head of a Department without assigning any reason, he may as well be "invested with power, on certain occasions, to take away his existence. "But will you contend that this idea is consonant with the principles of a "free Government, where no man ought to be condemned unheard, nor "until after a solemn conviction of guilt, on a fair and impartial trial?"

Such was the opinion of an honest and intelligent man, more than forty years ago, on the subject of *removal* without cause, without accusation, and without a hearing. If these things had been done towards the President, which he avers, but which in fact have not been done; if he had been tried by the Senate in this matter, and condemned unheard; and if all the moral consequences of an actual conviction were to follow, it were only teaching him to feel what he has made a thousand others feel as keenly; it were, indeed, a simple act of retributive justice. But, in truth, the complaint is without a shadow of foundation. The Senate has not tried, nor convicted him; and, in our proceedings and judgment on this constitutional question of power and privilege, he has been heard whenever he chose to communicate with, or would deign to answer us.

Some of the closing paragraphs of this protest are of a character so singular, that I cannot refrain, though it is stepping out of the way of sober argument to notice them. He says, "The resolution of the Senate contains an imputation upon my private as well as upon my public character." Does this assertion merit an answer? What does he complain of? The resolution of the Senate pronounces certain acts, which he admits he has done, to be in violation of the constitution: it is a question, arising from a construction of that instrument, whether it be so; and that construction involves, it seems, an imputation on his private character. And he adds, "I have lived in vain, "if it be necessary to enter into a formal vindication of my character and "purposes from such an imputation. In vain do I bear upon my person "enduring memorials of that contest in which American liberty was achiev-"ed." Now, if this be true—and it is to me, as well as to the rest of this body, a new matter of history—if it be true that, boy or lad, he got hurt any where, or any how, and at any time, or by any accident, during the revolutionary war, what effect ought it to have, or should it have had, if urged in time, in the grave judgment of the Senate, upon their construction of the

constitution? The Senate say to the President, You had no right to seize the public purse; the constitution entrusts its custody to Congress; pray restore it. Hear the reply: *You are mistaken in your construction of the constitution; I got hurt when I was a boy, in the time of the revolution, and I have the scar on me yet.* This argument, if it be worth any thing, must be decisive of the question; for no man can answer it. If it be not, the next in its order is: *I commanded an army, and won a battle, in the late war.* These, sir, are in substance a part of the arguments by which the constitution of our country is, it seems, to be settled between the great departments of our Government!

"'Tis true 'tis pity; pity 'tis 'tis true."

But, in proceeding to prove the purity of his conduct and his motives, the President says, in this his protest: "If I had been ambitious, I should have "sought an alliance with that powerful institution which even now aspires to "no divided empire." He seek an alliance with that institution, to gratify *his* ambition? Why, sir, one of his first acts was, through one of his humble instruments, to *command the obedience* of that institution, and attempt to compel it to submission; and another agent has since boasted that he would bring it, as a reptile, to the feet of the Executive. Does this look like seeking power through an alliance with that institution, or like riding over, and crushing it? But, if the kind of alliance that he means is that which would make the Bank subservient to the Executive, submissive to his will, and an instrument in his hands, then he did, in fact, seek that alliance; but the Bank refused to come into the compact. Hence this war—"war to the knife"—against it. But he adds—and this is the most extraordinary of all—"If I had been venal, I should have sold myself to its designs." Is this possible? Is it the President of the United States that speaks this language, who makes a merit of having forborne to sell himself for money?

Why, there is not one honorable man in a thousand that would submit to the statement of the proposition, as to himself, hypothetically, with the *if*, without feeling and repelling it, as a deep and degrading insult. But the President of the United States is not ashamed to couple his name and his station with such a proposition, and doubtless claims merit (for why else should he name it?) that he has not yielded to bribery. One fact I would like well to know: Did the Bank, or any man in behalf of the Bank, directly or indirectly, offer him a bribe? If so, why was it not at once disclosed to the nation, that public vengeance might have fallen, with all its weight, upon the head of him who dared the deed? But, sir, I do not believe it. I do not believe that the Bank, or any individual on behalf of the Bank, ever offered to bribe the President, or that it would have purchased, if he had offered himself for sale. But enough of this. I turn from it with feelings which I cannot, and which, perhaps, I ought not, to attempt to express. In enumerating the personal motives which should have induced him to desist from the attack upon the Bank, and in attempting to show that none but the most patriotic moved him onward, he wholly omits to notice one—revenge; that darling passion,

"Sweet to the soul, as honey to the taste;"

which the nation believes did, more than all other considerations, actuate and impel him.

I now will trouble the Senate for a few moments with a subject in which I may be allowed to feel some individual interest. It is that part of the protest in which the President has presented us, "as a matter of history," with

a copy of certain resolutions, passed by the Legislature of the State of Ohio, instructing me—for my colleague needed no instruction—to sustain the Executive in his act of the removal of the deposites.

I was aware of the existence of those resolutions before the President saw proper to recite them. My colleague laid them upon your table in the early part of the session, that they might be a subject of easy reference, and that we might have the line of duty which they marked out for us constantly before our eyes. As I, and certain other friends near me similarly situated, did not conform exactly to these and similar mandates, we were singled out as a mark at which some of the light-armed troops should aim their missiles. There was occasionally a hand-grenade cast from the other side of the House amongst us, and some arrows were discharged from a Parthian bow, which were intended to quiver in our sides. But I, sir, did not think fit to put myself upon my defence, or even to regard or notice the attacks. I looked upon this as a matter between my constituents, the people of my State, and myself; and I did not think it in good taste, if it could be avoided, to bring up in discussion here any matter of division, or difficulty, or misunderstanding there. But the President of the United States has seen fit to copy into the paper which he calls his protest, and send to us here, and send abroad to the nation, these resolutions, which he says "deliberately approve those very measures" which I, by my vote, have condemned. Thus personally assailed by the Chief Magistrate of the nation, it is a duty which I owe to myself and to the people of the State which I represent, that I should give my views publicly on this floor upon this subject.

The Senate represents the *States* in the Congress of the Union. The Senators are chosen by the Legislatures, or appointed by the Governors in the recess; but it is the *State* which each, however selected, represents, and not the Legislature or the Governor, who was the mere instrument used by the people and the constitution for his selection. Then, as he is the representative of a *State*, in order to determine to whom he is responsible for the due performance of his duty, as representative to constituent, we must next determine *what is the State*. Is it the Legislature? No; they are but servants of the people, and exercise, in their behalf, but a delegated power. It is THE PEOPLE THEMSELVES, bound together by the constitution, which is *their social compact*, and exercising their powers, through their appropriate agents, under that constitution and compact. The Legislature of the State are the trustees or servants of the people, for certain objects specified in that constitution. The Senators here in Congress are their trustees or servants, for certain other purposes, likewise specified in the constitution. Each has its own appropriate functions to perform; and it is not delegated to the one to control or direct the other. I do not stand, therefore, to the *Legislature* of my State in the relation of representative to constituent. I stand in that relation only to the sovereign power—THE PEOPLE; and to them only am I bound to yield that obedience which the representative owes to the combined and enlightened will of his constituents.

It is argued by some, that, because the people of a State cannot practically assemble and instruct their Senators, therefore the Legislature must have the power to instruct them. Singular logic, this! It supposes that public functionaries, charged with a high and sacred trust, and bound by the most solemn oath to discharge that trust faithfully, must, not only in theory, but in practice, *obey* somebody; that they must have *some master*, who shall stand by and command them; and, if you prove that those who intrusted them with the power do not stand by and direct them, that somebody else must. In

the present day, all must be in leading strings. But the assumption is not true, in point of fact. The will of the people of a State can, to all reasonable certainty, be ascertained by a Senator in Congress, on all great and momentous questions. On questions of very great importance, they may assemble in their primary character and instruct him. I believe that I now know the will of a majority, and a very large majority, of the people of my own State, and, knowing, I obey it. I may, it is true, be mistaken; if I am, the responsibility rests on myself, and I am willing to take it, and bide the issue.

I have thus far considered the doctrine of *absolute right* in the Legislature to command, and the absolute duty of obedience in the Senator. But there is another point of view in which this subject requires to be considered, in order to avoid all misapprehension arising from the general opinions already expressed. I admit that the State Legislatures have a right, and, in cases of great national importance, it is their duty, to express their opinions, in the way of resolutions of request, or instructions, if you please, (for I will not quarrel with the forms which usage has given us,) to their Senators and representatives in Congress. It is their right to do it, as a select and enlightened portion of the people. As such, they may inform the judgment, strengthen the hands, and lighten the responsibility of the representative. Their opinion is entitled to respect, as the opinion of an intelligent portion of the people, and as *evidence* of the public will. But that opinion may be rendered valueless, and that *evidence* may be weakened or destroyed, by attendant circumstances.

Such was the case here. These resolutions were the result of party discipline and party organization, not of evidence, argument, deliberation, and calm judgment. The vote upon them was strictly a party vote, and they did not pass through the usual forms of legislation. I have a letter on my desk, informing me that those resolutions were introduced into the Senate of the State, and passed through it in less than three hours, and almost without discussion. They were introduced and passed, when but one side of the question had been heard, after the receipt of the reasons of the Secretary of the Treasury, which I took care to send them, and before the report of the Committee of the Bank, which I sent also, had reached them; and, on the next morning, a member of the Senate, who had voted with the majority, moved a reconsideration, and declared, with just indignation, on the floor of the Senate, that those resolutions had come ready furnished to hand from Washington, and he spurned at the idea of making himself the instrument of their adoption. And I have no doubt of the fact. I believe that they were manufactured by the kitchen cabinet here, and forwarded through their branch at Columbus; and were, through the craft of the managers there, imposed upon many honest and unsuspecting members of that Legislature; strong party men, but honest men—who would never have made themselves instruments in the transaction, had time been allowed them to ascertain its true purpose, and had they been aware of the juggling which was practised upon them and upon the country. And shall I receive this, and obey it as the will of the people of my State? No: if such be its origin, I spurn it with indignation; coming from a source like that, it were a libel upon the people; it were a foul insult to intrude it on me as their will. Why not send the instructions from the lower story of the palace direct, instead of giving them this unnecessary circuit? I would as soon receive them fresh from the limbeck in which they were originally concocted, as now, after they have performed their seasoning voyage; for that has purified them of none of the poisonous drugs with which they were medicated. And what right has the President, or what right has

any man, to thrust himself between me and the people whom I represent, and interfere with my legislative duties and my official responsibilities? Sir, I will not acknowledge those resolutions as of any binding force whatever, or as any evidence of the will of the people of Ohio. I believe it is not their will. I believe that a very large majority of the people are not only opposed to the act which those resolutions direct me to sustain, but that they would rather trust to my judgment, on that or any other great national question to be settled here, than to the inspiration, (for judgment it could not be called, as they had neither time nor facts out of which to form a judgment) of that majority of the Legislature which gave those instructions. The sober judgment and the intelligence of that Legislature were opposed to those resolutions. I hold in my hand, as an evidence of this fact, the protest of fifteen of the thirty-six Senators, all able, intelligent men, and among them the late Chief Justice of the State, in which they give their reasons calmly, but strongly, against the measure; all of which reasons I had the gratification to find, in accordance with the views which I, about the same time, urged in my place on this floor.

So much for this historical fact, with which the President has favored us. I have, in the execution of a high and solemn trust confided in me by the people, and under the solemn obligation of an oath, felt bound to obey the dictates of my own judgment and conscience, and to disobey, and for the causes above stated to wholly disregard these instructions. I did so when they were forwarded to me by the Legislature. I shall do so still, now they are revived and reproduced by the Executive. I will neither lend my aid to destroy the constitution and the liberties of my country, nor will I abandon my post that another may supply my place who might join in that work of destruction; and, for a judgment upon my acts, I appeal—*not to Cæsar*—but *from Cæsar* TO THE PEOPLE OF OHIO.

But the reasons of the President, for sending us this paper, opens a new mine of executive power, hitherto unexplored. It is his oath of office which justifies and requires of him this new and most extraordinary measure; he has solemnly sworn that he "will faithfully execute the office of President of "the United States, and will, to the best of his abilities, preserve, protect, "and defend the constitution of the United States." So the Senate has violated and assailed the constitution, and he is bound by his oath to interfere and defend it. Perhaps his interference may, in the first instance, prove ineffectual. This body may not yield, at once, to his remonstrance, and restore the constitution and conform their acts to what, in his opinion, it legitimately warrants. What then? Having once interfered, under his *oath* to protect and defend the constitution, will he not make that interference effectual, and protect and defend it at all hazards, and by all the means which are in his power? In speaking of the acts of the Senate, in this very paper, he says, "If the Senate have a right to interfere with the executive powers, they "have also the right to make that interference effective;" and it is not at all to be presumed that he rates his own powers and his own rights, in point of efficiency, lower than the powers and rights of this body; and that he will claim less for himself, when he has interfered, than he is willing to concede to them, in case they may interfere. Sir, this quarrel is sought without any just cause whatever. All executive power, and all his individual popularity, are to be arrayed and armed against the Senate, which he regards as all that now stands firmly, and that has power to stand, between him and absolute uncontrolled dominion.

And the Senate does possess the power, if not to place the constitution upon its ancient pillars, at least to prevent its utter prostration, and total and final

ruin. And first among the defensive weapons with which we are armed, is the power to check the abuse of executive patronage, which has entered into our halls of legislation, and extended itself into every section of our country, and into all the haunts of business and of life. It has gone forth corrupting and to corrupt. General Jackson, when a candidate for the high station which he now fills, saw and exposed the danger to which our institutions are subjected, by this unrestrained exercise of the power of appointment. I read from his letter of resignation to the Legislature of Tennessee, presented the 14th of October, 1825. In speaking of a proposed amendment to the constitution of the United States, which should render members of Congress ineligible to any executive appointment, he says:

"The effect of such a constitutional provision is obvious. By it, Congress, "in a considerable degree, would be free from that connexion with the Exe- "cutive department, which at present gives strong ground of jealousy and "apprehension on the part of the people. Members, instead of being liable "to be withdrawn from legislating on the great interests of the nation, through "prospects of executive patronage, would be more liberally confided in by "their constituents; while their vigilance would be less interrupted by party "feeling and party excitements. Calculations from intrigue or management "would fail. Nor would their deliberations, or their investigation of subjects, "consume so much time. The morals of the country would be improved; and "virtue, uniting with the labors of the representatives and the official minis- "ters of the law, would tend to perpetuate the honor and glory of the Gov- "ernment.

"But if this change in the constitution be not obtained, and important ap- "pointments continue to devolve on representatives in Congress, it requires "no depth of thought to be convinced that corruption will become the order "of the day; and that, under the garb of conscientious sacrifices to the public "good, evils of serious importance to the freedom and prosperity of the re- "public may arise. It is through this channel the people may expect to be "attacked in their constitutional sovereignty, and where tyranny may be ex- "pected to spring up in some favorable emergency. Against such inroads "every guard ought to be interposed, and none better occurs than that of "closing the suspected avenue with some necessary constitutional restriction. "We know that human nature is prone to evil. We are early taught to pray "that we may not be led into temptation; and hence the opinion, that, by a "constitutional provision, all avenues to temptation, on the part of our politi- "cal servants, should be closed."

Good sound doctrine this, and truth, solemn truth, as his subsequent conduct and the present state of our country verify. He saw the danger. He saw the certainty that *corruption would become the order of the day*, if members of Congress were subject to the temptation of executive appointment. He knew that their eyes would be turned to the Executive, and not to *the people who sent them, and whom they should serve;* and that their hopes would rest on executive patronage, and promotion from the executive hand. He knew the consequence of the exercise of this power; and, knowing, has used it to an extent exceeding all that was ever heard or thought of by other Presidents, or in other times. How many, Mr. President—was it five or was it six—that were appointed in a single year, from this Senate, to high executive offices? What numbers from the other House to offices of all descriptions, high and low? It seemed to be thought glory enough to serve the President in any station. He became, at once, every thing; the country and the people, nothing. As the constitution is not amended, and that means of

saving our legislators from corruption, and our country from "tyranny," cannot now avail us, we, who would preserve the purity of our institutions, and avert that tyranny, must resort to the only other means now in our power. And I trust we will resort to it, and adhere to it with stern inflexibility, and that, if the President *will nominate*, the Senate *will not confirm*, any member of Congress to any executive office whatever. I, for one, will not advise and consent to any such appointment. Another evil is worthy to be noticed and arrested, while it may. General Jackson early foresaw, or apprehended, that Executive patronage would be made "to bear upon the elective franchise;" and that evil has now come upon the country in full and unmitigated virulence. Armies of office-holders, whose names fill a volume, swarm in our cities, and are stationed in every town and village in our country. They compose the nucleus around which the political party, which supports the present dominant power, gather, and form, and rally. Others traverse the country, collect and convey intelligence, and arrange and marshal the hosts, and prepare them for action. No man can, at this day, obtain an executive appointment, unless he have earned it as a political partisan, or some friend has so earned it for him. No man can retain an office, unless he continue to do battle in obedience to the mandates of his leader. Such is the present state of things. But the Senate may *check*, if it cannot entirely *correct*, this evil also. And I, for one, will do all that in me lies to correct it. I will advise and consent to the appointment of no man to any office, who has earned that appointment in the arena as a political gladiator. And I will advise and consent to the re-appointment of no man to any responsible office, who, while he held that office, abused it to the mere purposes of party, instead of using it for the benefit of his country. When I can have proof of either of these things, clear and unquestionable, my course, for one, will be decisive and unvarying. We have too long heard as the ground, and the only successful ground, of recommendation to office, that the applicant was devoted to the interests of one man rather than the interests of his country; that he had rendered, and he was capable of rendering, service to that man, or his party, rather than to his country. At the same time, I would inquire into no man's political opinions or personal preferences; it is a gross abuse that such inquiries have ever been made in appointments to office. I will be disposed to do all that is possible to correct that abuse; and it can only be done by disappointing the hopes of him who expects to rise by making a trade of politics. The Senate have always possessed these powers, but it has not always been necessary to exercise them. It is only in the last resort—'tis when the ship drifts before wind and tide that the sheet anchor is cast out to fix and save her. And it is a struggle now for the very existence of the constitution, which is struck at in its last stronghold. The protest of the President, which is before you, is his *arrière ban*, the summons to his powers to come up and do battle against the Senate. And it is a mighty power, and that power a unit—controlled by one head, and animated by one spirit—that is arrayed against, and now pressing upon us. With us there is division—different views, divided counsels—all anxious to sustain the dignity and independence of the Senate; but all cannot agree as to the true mode by which they are to be sustained. The honorable Senator from Alabama [Mr. King] is of opinion that true dignity rests in submission. In this he is entirely consistent. He has always, I believe, advised and pursued the same course in every contest between the Executive and the Senate. Another honorable Senator, for whom I have great respect, but whom we have not yet heard on this subject, will, I have no doubt, as heretofore, be of opininn, that the President and the Senate

are both a little wrong—the Senate most so; and he will, on the whole, reckon it is the best for us to submit. Others, and I am one of them, think and feel, that, be the odds against us what it may, we should stand for our constitutional rights, and defend and sustain them by all constitutional means.

The protest warns us, that, if we persist, the harmony of the relations between the President and the Senate will be destroyed, and that it will lead to serious alterations in the frame-work of our constitution, or "*the practical abandonment of some of its provisions.*" And what, sir, do you suppose, are the provisions of the constitution, in addition to those which he has disregarded and violated, which he now proposes *practically to abandon*, if the Senate persist in thwarting his will? Dispense with the confirmation of the Senate to his appointments, by appointing in the recess, and again and again so appointing, as in the case of Gwynn? Suppose, then, as would probably be the case, we so frame the appropriation bill, that nothing could by law be paid to an officer not confirmed by the Senate? He would practically abandon another of the provisions of the constitution; pay *his* officers without regard to the appropriations, or make them the depositories of so much of the public treasure as will indemnify them for delay and difficulty in procuring their salaries. If this be not his purpose, why does he assert that broad claim of control over the public purse, utterly unknown, and unheard of, down to the day of the promulgation of that protest. The bold doctrine that "Congress "cannot take out of the hands of the Executive department the custody of "the public property or money, without an assumption of executive power, "and a subversion of the first principles of the constitution," the explanatory protest which he sent us this morning covers up and mystifies; but it does not retract this assumption of power. The plain strong text does but carry out to its results the lawless power which he had already exercised in seizing the public deposites, and holding them in his own custody. He now simply bids defiance to Congress, and says, in effect, he has the public purse; he has a right to it, and he will keep it. The Secretary, in whose care it was placed, is now *his* Secretary, and we can put it in the custody of no agent who will not at once be *his* agent, by virtue of his trust. Such is the text of his protest; and the gloss which came in to-day does not, in my opinion, retract or explain, it only obscures it.

As the President has, in his protest, appealed to the debate in 1789, on the bill for organizing the Department of Foreign Affairs, I will, while the attention of the Senate is turned to the subject, refer to the speech of a member from Georgia, [Mr. JACKSON,] who foretold, in an admirable manner, some of the consequences which have resulted from the unfortunate admission of the power of removal, first inserted in that law. The clause which I read is in the 4th Elliott's Debates, pages 169, 170. Speaking of the evil consequences of placing the power of removal in the hands of the President, he says: "But let me ask gentlemen, if it be possible to place these officers in "such a situation as to deprive them of their independence and firmness? For, "I apprehend, it is not intended to stop with the Secretary of Foreign Affairs. "Let it be remembered that the constitution gives the President the com-"mand of the military. If you give him complete power over the *man with* "*the strong box*, he will have the liberty of America under his thumb. It is "easy to see the evil which may result. *If he wants to establish an arbi-*"*trary authority, and finds the Secretary of Finance not inclined to* "*second his endeavors, he has nothing more to do than to remove him, and* "*get one appointed of principles more congenial with his own.* Then, "says he, I have got the army; let me have but the money, and I will es-

"tablish my throne on the ruins of your visionary republic. Let no gentle-
"man say I am contemplating imaginary dangers—the mere chimeras of a
"heated brain."

Sir, whatever it might then seem, it was no chimera. How strictly, to the very letter, has his prediction been verified! The powers which the constitution has placed in the hands of the President, and those which, within five years, he has been able to seize into his grasp, either within or without the pale of the constitution, cannot fail to excite the deepest alarm in the bosom of every friend of American liberty. He has the power of the sword—*that* the constitution gives him; the command of the army and the navy; but even there, to make himself more absolute, he has asserted and exercised doubtful and odious powers, if, indeed, he has not assumed unconstitutional powers. The right of removing, by his own mere will, any officer in the army or the navy, without a trial by court-martial, or against the judgment of such court; I deny that the constitution has vested him with any such power; and its assumption is against the whole spirit and genius of our institutions. Its tendency is obvious. It makes the President superior to the law; and the officer who would hesitate to obey his illegal command, must do it at the hazard of his own removal, and having his station filled by one who would be more supple and obedient.

He has also perverted the power of appointment to a mere instrument of influence and corruption. I characterize it by the strong words which he has used in his letter of resignation. By means of that power, unless we impose a salutary check upon it, he may operate on members of this and the other House of Congress, by raising their hopes, exciting their fears, and bringing them as suppliants to his feet, or to the feet of the vilest minions who surround him, and who are supposed to influence his secret councils. Abroad, throughout the various parts of the Union, he wields that power also; not for the benefit of the nation, of which he is the head, but for the purposes of party; for the purpose of sustaining and perpetuating influence; and to that end the public treasures are lavished and consumed.

He claims, too, a dispensing power over the laws; laws which have passed through all the solemnities of enactment, which have received the sanction of both Houses of Congress, and of the Executive, and even of the highest judicial tribunal of the country. He claims the right to refuse to execute them on the ground that *he* considers them as against the constitution. He has also seized into his possession, and claims the sole control over the public treasure; and denies that Congress can make any law, within the pale of the constitution, which may rescue it from his hands. And he claims that by virtue of his oath of office, he may, and ought to enter the halls of legislation, especially this chamber, and "preserve, protect, and defend the constitution" against the acts of this Senate. And what have we to oppose to his accumulated power, his inroads, and his aggressions? The constitution, which is our banner, stout hearts, firm and resolute minds, and an unwavering trust in God and our country.

Sir, cast back your eyes for but eight short years over the history of our country, and you will see by what combination of circumstances those powers have been gathered, and concentrated in a single hand; it is an instructive, but mournful retrospection. But what then *was* the situation of our country? What is it now? And what has produced the rapid and alarming change? Within that time, strong and marked divisions, partly of principle, partly sectional, developed themselves in the nation, took strong possession of the public mind, and fixed the attention, and absorbed the feelings of

the people. Our constitution, and the powers which it confers upon the National Legislature, became a subject of deep and all-pervading interest; the one would limit to the strict letter of the instrument; the other would extend, by a rational and necessary intendment, those powers. The present Chief Magistrate, and those who most adhere to him, assumed a doubtful station: now flattering the hopes, and now alarming the fears of each of the contending parties, as he seemed disposed to incline to or oppose their doctrines. Thus the contest was encouraged and kept up with fierceness and violence. Public attention was fixed and centered upon that struggle; while the Executive was (sometimes gradually, at other times by a bold and sudden wrench,) drawing and seizing all the powers of Gevernment to himself; and even those who watched the legislative power with the most suspicious jealousy, permitted his enormous strides to dominion for a long time to pass unheeded, and without censure. Heavily did the vessel of State labor in her onward course, under this various pressure:

"Harder beset,
"And more endanger'd, than when Argo pass'd
"Through Bosphorus betwixt the justling rocks;
"Or when Ulysses, on the larboard shun'd
"Charybdis, and by the other whirlpool steer'd."

Still, she has thus far won her way, amid the fighting elements; but the rocks, and shoals, and whirlpools, are not yet passed, and no quiet haven is in sight. We have long seen and felt the downward tendency of things, but could scarcely poise ourselves in calmness to resist or check its motion; for so rapid has been the torrent which dashes and rolls us onward, that the head becomes giddy, and the mind bewildered, and the eye dim, as we gaze upon the billows which rush and foam around us.

Sir, our republic has long been a theme of speculation among the savans of Europe. They profess to have cast its horoscope, and fifty years were fixed upon by many as the utmost limit of its duration. But those years passed by, and beheld us a united and a happy people; our political atmosphere agitated by no storm, and scarcely a cloud to obscure the serenity of our horizon—all of the present, was prosperity; all of the future, hope. True, upon the day of that anniversary two venerated fathers of our freedom and of our country fell; but they sunk calmly to rest, in the maturity of years and in the fulness of time; and their simultaneous departure on that day of jubilee, for another and a better world, was hailed by our nation as a propitious sign, sent to us from Heaven. Wandering the other day in the alcoves of the library, I accidentally opened a volume containing the orations delivered by many distinguished men on that solemn occasion, and I noted some expressions of a few who now sit in this hall, which are deep fraught with the then prevailing, I may say universal, feeling. It is inquired by one, "Is this the effect of accident or blind chance? or has that God, who holds in his hands "the destiny of nations and of men, designed these things as an evidence of "the permanence and perpetuity of our institutions?" Another says, "Is it "not stamped with the seal of Divinity?" And a third, descanting on the prospects bright and glorious which opened on our beloved country, says, "Auspicious omens cheer us."

Strong spirits, (I use the term in the sense in which the French academicians use it, *les forts esprits*,) strong spirits may sneer at these impressions, which are the offspring of feeling rather than of reason, and which resolve themselves into no philosophical connexion of cause and consequence:

Sed mî, infirmior sum
Unus multorum—

I do not, and I cannot, wholly deny their influence.

Yet it would have required but a tinge of superstitious gloom to have drawn from that event darker forebodings of that which was to come. In our primitive wilds, where the order of nature is unbroken by the hand of man; there, where majestic trees arise, spread forth their branches, live out their age, and decline; sometimes will an ancient patriarchal plant, which has stood for centuries the winds and storms, fall when no breeze agitates a leaf of the trees that surround it. And when, in the calm stillness of a summer's noon, the solitary woodsman hears on either hand the heavy crash of huge branchless trunks, falling by their own weight to the earth from whence they sprung, prescient of the future, he foresees the whirlwind at hand, which shall sweep through the forest, break its strongest stems, upturn its deepest roots, and strew in the dust its tallest, proudest heads. But I am none of those who indulge in gloomy anticipation. I do not despair of the republic. My trust is strong that the gallant ship, in which all our hopes are embarked, will yet outride the storm; saved alike from the breakers and billows of disunion, and the greedy whirlpool—the all-engulfing Maelstroom of executive power—that unbroken, if not unharmed, she may pursue her prosperous voyage far down the stream of time; and that the banner of our country, which now waves over us so proudly, will still float in triumph, borne on the winds of Heaven, fanned by the breath of fame, every stripe bright and unsullied, every star fixed in its sphere, ages after each of us now here shall have ceased to gaze on its majestic folds forever.