SPEECH

OF

W. S. OLDHAM,

of Texas,

UPON THE BILL TO AMEND THE CONSCRIPT LAW, MADE IN THE SENATE, SEPTEMBER 4, 1862.

Mr. President: When the original Conscript bill was before the Senate, I urged its consideration in secret session, for the reason that I believed its open discussion would produce a demoralizing effect upon the army, excite the minds of the people, and, therefore, be prejudicial to the public service. Although strongly opposed to the measure, I deemed it imprudent to make known the grounds of my opposition, which I should have had to have done in a public discussion. The bill was passed and I submitted to it. Inasmuch as it is now proposed to extend the provisions of that bill, I avail myself of the occasion to give the reasons of my opposition to the principles which it contains.

The supporters of this bill claim for it a merit to which, in my humble opinion, it is in nowise entitled. It is said, triumphantly, that the Conscript law has filled the ranks of our army; that to it are we indebted for the brilliant victories achieved by our arms around this city and elsewhere since its passage; in a word, that it has been the salvation of the country. These asseverations are used as arguments in favor of the passage of the bill under consideration.

I deny that it is entitled to the merits so vauntingly claimed for it by its supporters. My colleague, (Mr. Wigfall,) in the remarks just made by him, made a statement, inadvertently, perhaps, which completely repels these extravagant pretensions. He said, that in consequence of the "intermeddling of the State Governments, but few conscripts have been brought into the army." And it is true that but few have been brought into the army. I do not believe there were any in the army in the battles fought in the neighborhood of this city. It was that

part of the bill which retained the twelve months' regiments in the service, that has proven the safety of the country. Hard as was that measure, I voted to retain those regiments until their places could be supplied, when I voted for the substitute offered by you. (Mr. Orr in the Chair.) To the retention of the twelve months' regiments is mainly attributable the victories achieved by our arms, and the bright prospects before us. That fact cannot be claimed as an argument in favor of the principle contained in the bill before the Senate. The conscription principle, which takes the citizen from his private pursuits and forces him into the army as a soldier, and which is the only principle in the bill before us, is entitled to no part of the merit claimed, and furnishes no argument in favor of either the extension or continuance of the system.

No, Mr. President, the Conscript law brought no new levies into the field, and all the battles that have been fought since that law was passed, have been fought by volunteers then or since received in the service. The disasters to which we were subjected before the passage of that law, did not occur because the people were unwilling to volunteer in the defence of their country. It is well known, that many offered their services and were refused. More offered their services than the Government could arm. Our people were induced, by the War Department, to believe that their services were not needed. Had the Government, at the outset, received no volunteers but for the war, and had our troops not been dispersed in squads along a frontier line of two thousand miles, and upon every creek and inlet of our extensive sea coast, we would not have met with the disasters which we did. When our troops were afterwards concentrated and massed, victory again perched upon our banners. Under these circumstances, I do not believe we should have originally departed from the mode of raising troops by voluntary enlistment, or call upon the States, to which the people were accustomed, and adopted one new and untried, which carries an implication upon the patriotism of our people, in the coercive feature contained in it, and which, to my mind, is obnoxious to serious constitutional objections. Nor do I believe we should extend that system by the passage of this bill, when it is acknowledged by its friends, that the conscript principle has brought but few additional troops into the service.

Before proceeding to the consideration of the Constitutional objections which I entertain against the bill, I must express my dissent to the rule of construction laid down by the President in his correspondence with the Governor of Georgia. He says "that when a specific power is granted by the Constitution, like that now in question 'to raise armies.' Congress is the judge whether the law passed for the purpose of executing the power is necessary and proper." I understand this rule in the mode in which it is stated to carry with it the implication, that whatever means Congress may decide to be necessary and proper to execute a specific grant of power is Constitutional, "unless it comes in conflict with some other provision of our Confederate compact."

This was the rule laid down by Chief Justice Marshall, in the

United States bank case of McCulloch *vs.* the State of Maryland, that Congress was the judge of the means necessary and proper to execute a given power, and that inasmuch as Congress, under the Constitution had the power to regulate the currency, and having decided that a bank was a means necessary and proper to that end, the law creating that institution was therefore Constitutional. Although, no such power as that to regulate the currency is given by the Constitution, yet the rule as stated, that when a specific power is granted, Congress is alone to judge of the means, is not thereby changed. This was the rule invoked by the old Federal party, in support of its measures of consolidation, and against which Mr. Jefferson and his followers so strongly protested. I could give a hundred illustrations of the unsoundness of the rule. That clause which is invoked in aid of this bill. "to raise and support armies," suggests an appropriate one to my mind. This power, it is contended is without limitation, unrestricted and plenery. Suppose that Congress under the power "to raise armies" should enact, that every citizen of the State of Virginia should *ipso facto* be a soldier, and that the army should be composed of Virginians alone, and under the power "to support armies" should declare the means for that purpose, should be raised off of the people of the State of Alabama, would any man give his assent to the Constitutionality of such a law? I could give other illustrations, but that already given I conceive will suffice. I cannot agree that the rule as to the means is co-extensive with the illimitable range of Congressional discretion, but that the means must be in fact, not only necessary and proper, but absolutely appropriate to the end.

It is insisted, that the power conferred upon Congress "to raise and support armies" is without restriction or limit, as to the mode and manner of its exercise. Upon this starting point, this fundamental proposition, I differ most decidedly with the supporters of this bill. I contend that the power is not only limited and restricted by other provisions of the Constitution, but the manner in which it is attempted to be exercised, is in conflict with the whole theory and spirit of our federative system of government.

According to the plain and obvious meaning of the Constitution as I understand it, Congress has no power over the citizens of the States, to coerce the performance of military service, only in their character as militia, and the provisions of the Constitution conferring that power, must be taken and construed in connexion with that "to raise armies." To those provisions of the Constitution, I proceed to call the attention of the Senate.

Congress shall have power "to provide for calling forth the militia to execute the laws of the Confederate States, suppress insurrections and repel invasions."

"To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the Confederate States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress."

These two provisions contain all the authority that Congress pos-

sesses over the militia, and it is not pretended that the service of the militia can be exacted in any other mode. Now, who are the militia? What do we understand by that term? The term has been defined to mean "a body of soldiers in a State enrolled for discipline." This may be a correct definition in the ordinary acceptation of the word, but to my mind it is most clearly not its meaning as employed in the Constitution. In that instrument, the term militia does not mean those bodies of enrolled soldiers in the States, who meet at cross roads on Saturdays, for muster, and whose uncouth appearance and awkward evolutions, have long been a source of mirth and ridicule. It has a vastly more important signification.

Congress shall have power "to provide for organizing, arming and disciplining the militia." This provision evidently refers to an existing class of men, unorganized, unarmed and undisciplined, not enrolled. The Convention of the State of Virginia in 1776, in their Bill of Rights, declared "that a well regulated militia composed of the body of the people trained to arms is the proper, natural and safe defence of a free State," &c. This declaration is contained in the Constitutions of most, if not all the States of the Confederacy. In the sense here used it clearly means the great body of the people capable of bearing arms, and the Constitution has conferred upon Congress the power to provide for their being "trained to arms." I do not understand that the Constitution conferred upon Congress the power "to provide for organizing, arming and disciplining the bodies of soldiers in the States enrolled for discipline," but the body of the people of the States capable of bearing arms. That instrument would have precisely the same signification did it read, "Congress shall have the power to provide for organizing, arming and disciplining the people of the States capable of bearing arms." Such appears to have been the understanding of the Congress of 1792, in the passage of the act for organizing the militia. By that law it is enacted that "each and every free, able-bodied white male citizen who shall be of the age of eighteen years and under the age of forty-five years," shall be enrolled in the militia. That law declares who are capable of bearing arms and their character as militia, is not dependent upon their enrollment, but upon their coming within or belonging to the class which Congress has declared shall constitute the militia. Therefore, I contend, that the term, as used in the Constitution, and the act of Congress passed in accordance with the provisions of that instrument, means "each and every free, able-bodied white male citizen between the ages of eighteen and forty-five years."

But whether I am right or not in my definition, the measure before us is equally obnoxious to constitutional objections. The Congress of the United States, in 1792, passed a law "for organizing, arming and disciplining the militia," and that law has been continued in force in the Confederate States by act of the Provisional Congress It is a fact that in most of the States, in contemplation of law in all, the people capable of bearing arms have been regularly enrolled in the militia, either under the act of Congress, or the laws of the respective States. "Every free, able-bodied white male citizen, between

eighteen and forty-five years of age," has been in fact or in law, "enrolled in a body of soldiers in his State for discipline," and is, in fact, a militiaman.

Whether we regard the militia as "the body of the people capable of bearing arms," or as "a body of soldiers in a State enrolled for discipline," the question next presented, what is the power of Congress over them? Congress has power "to provide for calling forth the militia to execute the laws of the Confederate States, suppress insurrections and repel invasions." This power is limited alone by the objects or purposes for which they may be called forth. It is not restricted as to the mode in which they shall be called out, or as to the term they shall be compelled to serve. Congress has the further power to provide for organizing, arming and disciplining the militia, and for *governing such part of them* as may *be employed* in the service of the Confederate States." This provision repels the presumption that the militia can only be called into the service as an organization, or entire body—they may be divided into classes and called into service *part* at a time. But in whatever mode they may be called, the Constitution contains this important reservation: "reserving to the States respectively the appointment of the officers, &c."

The original conscript bill, as well as the one before the Senate, violates this express provision of the Constitution, by taking every man who composes the militia of the States, "who is enrolled in a body of soldiers in a State for discipline," "every free, able-bodied white male citizen between eighteen and forty-five years of age" and places him under officers not appointed by the States. It further violates that provision of the Constitution which declares that "a well regulated militia, is necessary to the security of a free State," by completely destroying, disorganizing, annihilating the militia organizations of the States. It violates the rights of the States, by taking every soldier enrolled under its laws from under the command of the officers appointed under the authority of the States; it cashiers the officers, and forces them as privates in the ranks in the employment of the Confederate States, to be commanded by officers deriving their authority from that Government. It deprives the Governors of the States of their command of the militia under the Constitutions of their respective States.

Nor can we escape these palpable consequences by evasively ignoring the militia as an organization, but at the same time forcing into our service every man who composes that organization. The power of Congress is dependent upon the substantial meaning of the Constitution, and not upon the terms employed. Now let me ask what would be the substantial difference if the conscript law and this amendatory bill, instead of providing for enrolling the citizens of the States between eighteen and forty-five years of age, should have declared that "the body of soldiers in the States enrolled for discipline," in a word, the militia of the States shall be enrolled into the service of the Confederate States in the mode and for the term of service prescribed? There would not be a particle of difference in substance or meaning. The same men would be included and under the same

terms and conditions. Had such been the language employed, there is no person who would deny the right of the States to appoint the officers to command them Then can the States be divested of that expressly reserved right, by a mere play upon words avoiding the terms but retaining the exact substance and meaning of the Constitution.

The difficulty cannot be avoided, by ignoring the militia, as an organization, and taking the men, or part of the men, composing that organization. As I have already shown, Congress may call forth a *part* of the *militia*, but it is in that connection, in the same clause of the Constitution, which contains the reservation to the States of the right to appoint the officers to command them.

This reserved right of the States to appoint the officers to command the militia was jealously insisted upon by the framers of the Federal Constitution. Governor Brown, of Georgia, in his correspondence with the President, has collated what occurred in the convention upon that subject, which I propose to read to the Senate. "In the Convention, in the discussion upon the adoption of the paragraph in the Constitution of the United States, which we have copied and adopted without alteration, Mr. Ellsworth said: 'The whole authority over the militia ought by no means to be taken away from the States, whose consequence would pine away to nothing after such a sacrifice of power.' In explanation of the power which the committee, who reported this paragraph to the convention, intended to delegate to the General Government, when the militia should be employed in the service of that Government. Mr. King, a member of that committee, said: 'By organizing, the committee meant proportioning the officers and men; by arming the kind, size and calibre of arms; by disciplining, prescribing the manual exercise, evolutions," &c.

"Mr. Gerry objected to the delegation of the power even with this explanation, and said: 'This power in the United States, as explained, is making the States drill sergeants. He had as lief let the citizens of Massachusetts be disarmed as to *take the command from the States and subject them to the General Legislature.*' Mr. Madison observed "arming," as explained, did not extend to furnishing arms, nor the term disciplining to penalties and courts martial for enforcing them.

After the adoption of the first part of the clause, Mr. Madison moved to amend the next part of it, so as to read, "reserving to the States respectively, the appointment of the officers under the rank of *general officers.*" Mr. Sherman considered this as absolutely inadmissible. He said that 'if the people should be so far asleep, as to allow the most influential officers of the militia, to be appointed by the General Government, every man of discernment would rouse them by sounding the alarm to them.' Upon Mr. Madison's propos tion, Mr. Gerry said, 'let us at once destroy the State Governments, have an Executive for life, or hereditary, and a proper Senate, and then there would be some consistency in giving full powers to the General Government, but as the States are not to be abolished, he wondered at the attempt, to give powers inconsistent with their existence. He warned the Convention against pushing the experiment too far.'

"Mr. Madison's amendment, to add to the clause, the words, 'under the rank of general officers,' was voted down by a majority of eight States to three, according to the Madison papers, and by nine States to two, according to the printed journals of the Convention."

This power of the States to appoint the officers to command the militia, for which the framers of the Federal Constitution, so zealously contended, did not extend to the command of the militia, in time of peace merely. But little danger is to be apprehended in time of peace, but it is in times of war, when society is convulsed, that danger is to be apprehended from the graspings of military power. They well knew how powerless the people would be to protect and preserve their liberties, if placed in the military service, under officers deriving their power from the General Government. Hence they insisted upon the reservation of this power, as a means of securing the rights of the States and the people. If the people, as militia, when called into the service of the country, are placed under the command of officers appointed by the State, the interest which the officer has in common with the men under his command, and the office which he holds, are pledges of his fidelity to the State appointing him.

If the fears of the framers of the Federal Constitution, were not mere phantoms, if it was a real danger against which they were so anxious to guard, how much more danger is to be apprehended from this and the original Conscript bill? They not only deny the right of the States to appoint the officers to command the militia, but they destroy the militia itself, by forcing the citizens of the States to become soldiers of the Confederate States.

From the first organization of our military establishment, under the Provisional Government, this right of the States, to appoint the officers, seems to have become so distasteful to those having control of our military affairs, that unceasing efforts have been made to evade it, and the original Conscript bill seems to have been framed, with the express view to that object. That bill as originally framed, assumed the power of creating a vast military establishment of pyramidal form and proportions, the common soldiers, composed of the free citizens of the States, constituting the mud sills, the substratum, the foundation, the officers appointed under the authority of the Confederate Government, rising by degrees above to the apex, upon which was placed the President, like the crowned head of the British Government—the sole fountain of office and honor. It is the duty of the soldier to obey and not to inquire into the legality of the orders of his superior officer Under such a military system, what defence has the country, against a combination of military officers, (not a representative of a State amongst them), officers educated to their profession as an art, relying upon it for the means of living, as well as of glory and fame, whose distinction and importance can grow only in war, but who in peace must retire from notice? The citizens of the States, converted by coercion into Conscript soldiers of the Confederacy, completely manacled by the chains of military law and military subordination, may be forced by some favorite ambitious military leader, to become the destroyers of their own and their country's liberties.

On the other hand, by observing the right of the State to appoint, the officers would be selected from amongst the citizens of the State, having a common interest with them to guard. They would be bound by the ties of attachment to the State in which they lived, and whose commission they bore, to guard with fidelity, its sovereignty and the liberties of its people.

According to my view of the constitutional power of Congress, we have no authority to exact by coercion, military service of the citizens of the States, only as militia, and then under the restraints which I have already indicated—and while I am willing to force every man in the Confederacy to discharge his duty, in defending his country, I am desirous of drawing the line of distinction between those who are, and who are not willing—to give every man the privilege of tendering his service as a volunteer—and force those who will not do so, through State laws and State authority. The conscript system disregards the will of the citizen, it is coercive in all its features, it acts upon the citizen individually, seizes him, regardless of the condition of his family, or his private affairs, without time to provide for the one, or to arrange the other; with bayonets at his back, and the terrors of military law over him, he is forced into the service of the country for a period only limited by the unlimited discretion of Congress. Such is not the mode in which soldiers should be obtained to defend the liberties of a free people.

The conscript system is well calculated to reduce our soldiers and armies down to that standard, which we have heard prescribed for them on this floor—that our soldiers should be mere machines, not citizens, our army a vast mass of iron; unthinking *vis inertia;* to be hurled at the will of its commander with irresistible force against the columns of the enemy. Our armies are, and should be composed of quite different materials; of men of flesh and blood, bone and muscle, of feeling and sensibilities, sympathies and sentiments, of intelligent thinking men, freemen, who have a country to love, institutions to preserve, rights to maintain, liberties to guard; who are surrounded by families and friends, enjoying the same Heaven bestowed blessings, and who fondly hope to transmit those blessings unimpaired to their posterity. Inspired by the exalted sentiments which these causes are calculated to excite, our citizen-soldiery have rallied to the standard of their country in the hour of her peril, they have met the enemy on a hundred bloody fields; have fought as freemen alone can fight, and as mercenary machines never fought, and have wrested victory from the foe in every contest. Let us not crush out from the bosoms of our soldiers, these patriotic sentiments, with the enthusiastic spirit which they inspire, but rather let us fan the flame to brighter burning. Desperate indeed, will be the condition of our country when she shall be compelled to rely, for the defence of her liberties, upon machine mercenaries commanded by pensioned officers!

While I am opposed to this bill, I am ready and willing to vote to raise as large a force as the President may desire, yet I may be permitted to suggest that there is a point in the resources of every country, beyond which we cannot go, without danger. A force beyond the

population and resources of a country, must result in rapid exhaustion. The population at home must be provided for, the industrial pursuits of the country must be carried on, supplies for the army in the field must be raised and furnished. I, however, make the suggestion, without further comment.

REMARKS

OF

W. S. OLDHAM,

of Texas,

UPON THE AMENDMENT TO THE EXEMPTION BILL, PROPOSED BY MR. DORTCH, THAT JUSTICES OF THE PEACE SHALL BE LIABLE TO CONSCRIPTION. MADE IN THE SENATE, SEPTEMBER, 9TH, 1862.

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MR. PRESIDENT: I concur with those Senators, who believe that the amendment proposed by the Senator from North Carolina, presents a very important question; that the power asserted by it, is inconsistent with the very existence of the States. I, however, cannot perceive the consistency of gentlemen, who supported the two Conscript Bills, but who now seem to be seized with such alarm at the proposition before us. To my mind the amendment asserts no greater power in the General Government, than is done by those bills. They declare that every citizen of the States, between the ages of eighteen and forty-five years, shall be a soldier, coerce him into the army, to serve for the term of three years or the war. The power asserted over the individual citizen is absolute and unlimited. It is, however contended, that those measures were passed in the exercise of a clearly delegated constitutional power; the unlimited and unrestricted power, "to raise and support armies." I denied that proposition, and contended at the time, without effect, that that power is limited and restricted by other provisions of the Constitution, and especially by the clauses in relation to the militia.

This discussion between the supporters of the Conscript Bills, has been a source of some interest to me. Scarcely a corporal's guard of us in the Senate opposed those bills, for the very reasons now given in opposition to this amendment; that they asserted a power which might destroy the States. Now, upon this minor proposition, to en-

rol Justices of the Peace, there seems to be a sudden awakening up, and we hear speeches able and eloquent, in favor of the rights of the States.

I agree with the supporters of this amendment, that it is not for those who voted for the Conscript Bills, to deny the power asserted by this amendment. As I said to the Senator from Georgia, (Mr. Hill,) *sotto voce*, while he was addressing the Senate,—when you admit the power in this Government, to enter the States without their authority or consent, seize their citizens and force them as soldiers, into the Confederate army, it seems to me you admit a power, that may take, not only Justices of the Peace, but every officer of the State governments. It follows as a logical conclusion from admitted premises.

It was urgently insisted in support of the Conscript Bill, that the power delegated to Congress, by the Constitution, "to raise and support armies," is unlimited, and that every man in the Confederate States is the subject of that power. If that be true, then where is the saving in behalf of a Justice of the Peace, the Judges of the StateCourts, or of the Governor of the State himself? Gentlemen seem to have somewhat receded from their original position, for here is an acknowledgement, that there are certain persons in the States not subject to this power of Congress, and that it is so far restricted. We are told, however, that this limitation or exception, is not contained in any express provision of the Constitution, but results from the very nature of our system of Government, that to admit the power in Congress, to force the officers of the State governments into the military service of the Confederacy, is to admit the power to break up and destroy the States; that the existence of the States is made to depend upon the will of Congress—that Congress possesses no power, which, if exercised to its full extent can destroy the States.

In all this I concur; the argument is conclusive, and I contend just as conclusive against the conscript bills as against the amendment offered by the Senator from North Carolina. The State Government, which the people have ordained and established, with the corps of officials appointed for its administration, does not constitute the State; but the people, the political society, or community, in whom the sovereign power, resides constitutes the State. The people are the source of power, they not only create the machinery of government, but keep it in operation, and without their continued power operating upon it, it must stop.

The power "to raise and support armies" is only limited as Senators contend, as to the officers of the State and Confederate Governments. If under its authority, we can force every citizen of the States, between the ages of eighteen and forty-five years into the military service, in the exercise of the same power we can declare that every legally qualified voter in the States shall be a soldier and be compelled to enter the service; if we can fix the period or term of service at three years, we can fix it at ten years, or for life. Now should Congress see proper to exercise the power to the extent stated, what would be the effect upon the States? In most of the States, elections for members of the Legislature, judicial officers, including Jus-

tices of the Peace, Governors, members of Congress, and Senators take place at stated periods, ranging from two to six years. In Texas, and I believe, in most, if not all the States of the Confederacy, "no soldier, seaman or marine in the service of the Confederate States" is entitled to vote at elections. They are expressly disqualified by the State constitutions. Therefore the citizens of the States by being made conscript soldiers, are disqualified as electors—the motive power is withdrawn from the machinery of government—the legislative, executive and judicial offices of the States, must become vacant for want of electors to fill them. Not only so, the seats of members of both houses of Congress, the chair of the Vice President, that of the President of the Confederate States must all become vacant for the same reason—which of course would destroy the Government both State and Confederate.

It is no argument to say that the power will never be abused by Congress, to such an extent. The framers of the Constitution never intended to subject the very existence of the Government, both State and Confederate, to the discretion of Congress. The Confederate Constitution was intended to confer power, to preserve the States, and the Governments created by them, but none whatever which may be used for their destruction. When legislation is attempted involving the rights and sovereignty of the States, they are to be met and resisted, not by appeals to the mercy of Congress, not to play the tyrant, but by the barriers of the Constitution itself. Therefore the suggestion that Congress would never abuse its power, by exercising it to the extent indicated ,is no argument to prove that the power exists.

Under the broad and unrestricted construction, placed upon the power of Congress "to raise and support armies," by the friends of the conscript bill at the time of its passage, the power exists, not only to make a soldier of every citizen, but to force into the service of the Confederacy, in some capacity or other, every woman, child and negro in the Confederate States, to take the lands, horses, mules and other property of the people. Although the tyrannical abuse of the power in such cases would be much more palpable and apparent, no stronger constitutional argument could be made against the existence of the power itself, than that claimed in the conscript bill. In truth, the power in each case, results from the same clause of the Constitution under a construction, which if allowed, makes the conclusion that it exists irresistible. Hence, I respectfully submit, that I cannot clearly perceive the consistency of Senators, who voted for the conscript bills, but who now deny the existence of the power asserted in the amendment under consideration. I cannot see the consistency of protecting the officer, after having made slaves of the citizens. But gentlemen seem to have become suddenly alarmed, (whether at the consequences of their own doctrine I know not,) for the rights of the States. Their arguments seem to me like scrambling over the hull after the kernel has been extracted—like fighting to preserve the agent, after having murdered his principal—for the shell of a State Government, after having taken from under its protection the people who framed it, and surrendered them to the absolute dominion of federal

power. To use a vulgarism, it is like raising a great cry over the hide and tallow, after having given up the carcase.

Mr. President, I do not look to the Constitution to ascertain what rights have been retained by the States, but for the powers they have delegated to the Federal Government. This Government was established to protect, preserve and perpetuate the States, and all the powers conferred upon it, are in harmony with that great leading and fundamental purpose. Whatever may be the language of the Constitution, a construction should not be placed upon it, which would destroy the ends for which it was adopted, but one which accords with the true intent and spirit, and meaning of the instrument.

It has been asserted, and history has been appealed to, to verify the assertion, that a free representative government cannot exist except in a country of small geographical extent—that the baser passions of our nature, and especially the passion of avarice, will produce a combination of individuals and of the stronger sections, to oppress the minority and weaker sections. I believe this to be true, where the government possesses the sole power of legislation over the individual, domestic and local affairs of the people, as well as in regard to their general interests. I believe that, it is only upon the federative principle of our Government; a local government for individual, domestic and sectional interests—with a common government to regulate affairs of general concern, that a free representative Government can be maintained over a wide extent of territory, in which there are rival interests and pursuits.

It was upon this principle that the Government of the United States was formed, and it was the departure from the same principle, in its administration, that produced its overthrow, by the separation of the Southern States, and the consolidation of the Northern. Before the formation of the Federal Constitution, the States existed with all the functions of government, both foreign and domestic. A mutual sense of danger and for their common security, induced the States to unite and form a common government, to take charge of their foreign affairs, and regulate their intercourse with each other—but so far as their domestic affairs were concerned, they remained precisely as before, each State retaining the sole jurisdiction over them, within its limits. This right of the States, which they reserved of exclusive legislation over their individual, domestic, sectional and local interests, is what I understand to be State-rights. There is no subject more peculiarly within the province of the local legislature, than that of the citizens of the States, respectively. The State Government is peculiarly the guardian of the persons and property of its citizens within its limits. For every violation of the rights of the citizen, the State laws afford the remedy, the State courts pronounce judgment, which is executed by State executive or ministerial officers. The General Government never comes in contact with the individual, or his property, or with the local interests of a State, except in a few clearly specified and expressed instances, and then only incidentally, in carrying into effect powers granted in regard to matters in which the States have a common interest. Our fathers never conceived the idea of a general

government, with powers in conflict with those retained by the States over the persons and property of its citizens.

The Confederate Government was most certainly established upon the foregoing principles, and whatever doubts existed upon certain points in the old Government, care was taken to exclude them from our Constitution.

Now, Mr. President, I hold, that constitutions and laws, in a free representative government, are efficient as they accord with the sentiments of the people for whom they are made. If they are not sustained by public sentiment, they will be evaded, disregarded, or repealed. The people should, therefore, be educated into a knowledge of the true theory and spirit of our government, so as not to demand unconstitutional legislation, but to place every attempt at it under the ban of an enlightened public sentiment. It matters but little how carefully the rights of the States may be guarded in our Constitution, if the people become impressed with the idea that, Congress can legislate upon their local, or individual interests—subjects of exclusive State jurisdiction. The avaricious will have their objects of private speculation to press upon the attention of Congress, under plausible pretexts of advancing the public good; sections will urge their schemes of local aggrandizement, and politicians will offer themselves as candidates for public favor, and court success by pandering to the popular feeling, to personal and sectional prejudices, by advocating such unconstitutional schemes.

In times of war, like those in which we live, above all others, the Constitution should be strictly observed, by those charged with the administration of the Government. It is then, that the sentiments of the people are most yielding and submissive to usurpations of power, under the plea of necessity. I believe that our Constitution confers power, undoubted, amply sufficient for an effective administration of the Government, in both peace and war, and that there can be no pretext for the assumption of powers not granted, or for the exercise of those which are doubtful. If such is not the case, those who conferred upon me the seat which I hold in this body, have not clothed me with the power to supply the defects of the Constitution, by assuming powers not delegated, but have exacted from me an oath to abstain from the exercise of such a discretion.

Many measures have been introduced into this Congress, having a tendency to inculcate in the minds of the people a sentiment in favor of the power of the central Government, such as interfering with the domestic pursuits of the people, in prescribing the quantity of cotton they may plant; making Treasury notes a legal tender in the payment of private debts; condemning salt springs, wells, &c. All such things produce a feverish excitement in the public mind, with an improper desire, induced by our peculiar circumstances, that Congress shall pass laws, which, if not forbidden, are at least not authorized by the Constitution. No act, in my humble opinion, could possibly have a more deleterious effect upon the public mind in regard to the powers of this Government, than the Conscript act. A sense of the public

danger, has produced a submissive acquiesence in the extraordinary power asserted by that law, over the individual citizens of the States.

I have made these remarks, Mr. President, in consequence of the sudden zeal displayed by advocates of the Conscript bill, who, after having placed the citizens of the States under the power of the Confederate Government, have become alarmed at the idea of enrolling into the military service a justice of the peace. I shall vote against the amendment of the Senator from North Carolina, but upon the higher grounds that this Government has no power to coerce the citizens of the States, as individuals, into its military service.

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