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

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

I am not ignorant that those opposed to the doctrine have always, now and formerly, regarded it in a very different light, as anarchical and revolutionary. Could I believe such, in fact, to be its tendency, to me it would be no recommendation. I yield to none, I trust, in a deep and sincere attachment to our political institutions and the union of these States. I never breathed an opposite sentiment; but, on the contrary, I have ever considered them the great instruments of preserving our liberty, and promoting the happiness of ourselves and our posterity; the next to these I have ever held them most dear. Nearly half my life has been passed in the service of the Union, and whatever public reputation I have acquired is indissolubly identified with it. To be too national has, indeed, been considered by many, even of my friends, my greatest political fault. With these
strong feelings of attachment, I have examined, with the utmost care, the bearing of the doctrine in question; and, so far from anarchical or revolutionary, I solemnly believe it to be the only solid foundation of our system, and of the Union itself; and that the opposite doctrine, which denies to the States the right of protecting their reserved powers, and which would vest in the General Government (it matters not through what department) the right of determining, exclusively and finally, the powers delegated to it, is incompatible with the sovereignty of the States, and of the Constitution itself, considered as the basis of a Federal Union. As strong as this language is, it is not stronger than that used by the illustrious Jefferson, who said, to give to the General Government the final and exclusive right to judge of its powers, is to make “its discretion, and not the Constitution, the measure of its powers;” and that, “in all cases of compact between parties having no common judge, each party has an equal right to judge for itself, as well of the infraction as of the mode and measure of redress.” Language cannot be more explicit, nor can higher authority be adduced. . . . It has been well said by one of the most sagacious men of antiquity, that the object of a constitution is, to restrain the government, as that of laws is to restrain individuals. The remark is correct; nor is it less true where the government is vested in a majority, than where it is in a single or a few individuals—in a republic, than a monarchy or aristocracy. No one can have a higher respect for the maxim that the majority ought to govern that I have, taken in its proper sense, subject to the restrictions imposed by the Constitution, and confined to objects in which every portion of the community have similar interests; but it is a great error to suppose, as many do, that the right of a majority to govern is a natural and not a conventional right, and therefore absolute and unlimited. By nature, every individual has the right to govern himself; and governments, whether founded on majorities or minorities, must derive their right from the assent, expressed or implied, of the governed, and be subject to such limitations as they may impose. Where the interests are the same, that is, where the laws that may benefit one will benefit all, or the reverse, it is just and proper to place them under the control of the majority; but where they are dissimilar, so that the law that may benefit one portion may be ruinous to another, it would be, on the contrary, unjust and absurd to subject them to its will; and such I conceive to be the theory on which our Constitution rests.

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

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

Happily for us, we have no artificial and separate classes of society. We have wisely exploded all such distinctions; but we are not, on that account, exempt from all contrariety of interests, as the present distracted and dangerous condition of our country, unfortunately, but too clearly proves. With us they are almost exclusively geographical, resulting mainly from difference of climate, soil, situation, industry, and production; but are not, therefore, less necessary to be protected by an adequate constitutional provision, than where the distinct interests exist in separate classes. The necessity is, in truth, greater, as such separate and dissimilar geographical interests are more liable to come into conflict, and more dangerous, when in that state, than those of any other description: so much so, that ours is the first instance on record where they have not formed, in an extensive territory, separate and independent communities, or subjected the whole to despotic sway. That such may not be our unhappy fate also, must be the sincere prayer of every lover of his country.

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

To realize its perfection, we must view the General Government and those of the States as a whole, each in its proper sphere independent; each perfectly adapted to its respective objects; the States acting separately, representing and protecting the local and peculiar interests; and acting jointly through one General Government, with the weight respectively assigned to each by the Constitution, representing and protecting the interest of the whole; and thus perfecting, by an admirable but simple arrangement, the great principle of representation and responsibility, without which no government can be free or just. To preserve this sacred distribution as originally settled, by coercing each to move in its prescribed orbit, is the great and difficult problem, on the solution of which the duration of our Constitution, of our Union, and, in all probability, our liberty depends. How is this to be effected?
The question is new, when applied to our peculiar political organization, where the separate and conflicting interests of society are represented by distinct but connected governments; but it is, in reality, an old question under a new form, long since perfectly solved. Whenever separate and dissimilar interests have been separately represented in any government; whenever the sovereign power has been divided in its exercise, the experience and wisdom of ages have devised but one mode by which such political organization can be preserved,—the mode adopted in England, and by all governments, ancient and modern, blessed with constitutions deserving to be called free—to give to each coestate the right to judge of its powers, with a negative or veto on the acts of the others, in order to protect against encroachments the interests it particularly represents: a principle which all of our constitutions recognize in the distribution of power among their respective departments, as essential to maintain the independence of each; but which, to all who will duly reflect on the subject, must appear far more essential for the same object, in that great and fundamental distribution of powers between the General and State Governments. So essential is the principle, that, to withhold the right from either, where the sovereign power is divided, is, in fact, to annul the division itself, and to consolidate, in the one left in the exclusive possession of the right, all powers of government; for it is not possible to distinguish, practically, between a government having all power, and one having the right to take what powers it pleases. Nor does it in the least vary the principle, whether the distribution of power be between co-estates, as in England, or between distinctly organized but connected governments, as with us. The reason is the same in both cases, while the necessity is greater in our case, as the danger of conflict is greater where the interests of a society are divided geographically than in any other, as has already been shown.

These truths do seem to me to be incontrovertible; and I am at a loss to understand how any one, who has maturely reflected on the nature of our institutions, or who has read history or studied the principles of free government to any purpose, can call them in question. The explanation must, it appears to me, be sought in the fact that, in every free State there are those who look more to the necessity of maintaining power than guarding against its abuses. I do not intend reproach, but simply to state a fact apparently necessary to explain the contrariety of opinions among the intelligent, where the abstract consideration of the subject would seem scarcely to admit of doubt. If such be the true cause, I must think the fear of weakening the government too much, in this case, to be in a great measure unfounded, or, at least, that the danger is much less from that than the opposite side. I do not deny that a power of so high a nature may be abused by a State; but when I reflect that the States unanimously called the General Government into existence with all its powers, which they freely delegated on their part, under the conviction that their common peace, safety, and prosperity required it; that they are bound together by a common origin, and the recollection of common suffering and common triumph in the great and splendid achievement of their independence; and that the strongest feelings of our nature, and among them the love of national power and distinction, are on the side of the Union, it does seem to me that the fear which would strip the States of their sovereignty, and degrade them, in fact, to mere dependent corporations, lest they should abuse a right indispensable to the peaceable protection of those interests which they reserved under their own peculiar guardianship when they created the General Government, is unnatural and unreasonable. If those who voluntarily created the system cannot be trusted to preserve it, who can?

So far from extreme danger, I hold that there never was a free State in which this great conservative principle, indispensable to all, was ever so safely lodged. In others, when the co-estates representing the dissimilar and conflicting interests of the community came into contact,
the only alternative was compromise, submission, or force. Not so in ours. Should the General Government and a State come into conflict, we have a higher remedy: the power which called the General Government into existence, which gave it all its authority, and can enlarge, contract, or abolish its powers at its pleasure, may be invoked. The States themselves may be appealed to—three fourths of which, in fact, for a power, whose decrees are the Constitution itself, and whose voice can silence all discontent. The utmost extent, then, of the power is, that a State, acting in its sovereign capacity, as one of the parties to the constitutional compact, may compel the Government, created by that compact, to submit a question touching its infraction, to the parties who created it: to avoid the supposed dangers of which, it is proposed to resort to the novel, the hazardous, and, I must add, fatal project of giving to the General Government the sole and final right of interpreting the Constitution:—thereby reversing the whole system, making that instrument the creature of its will, instead of a rule of action impressed on it at its creation, and annihilating, in fact, the authority which imposed it, and from which the Government itself derives its existence.

... The Tariff itself is a strong case in point; and the reason applies equally to all others where Congress perverts a power from an object intended, to one not intended, the most insidious and dangerous of all infractions; and which may be extended to all of its powers, more especially to the taxing and appropriating. But, supposing it competent to take cognizance of all infractions of every description, the insuperable objection still remains, that it would not be a safe tribunal to exercise the power in question.

It is a universal and fundamental political principle, that the power to protect can safely be confided only to those interested in protecting, or their responsible agents,—a maxim not less true in private than in public affairs. The danger in our system is, that the General Government, which represents the interests of the whole, may encroach on the States, which represent the peculiar and local interests, or that the latter may encroach on the former.

In examining this point, we ought not to forget that the Government, through all its departments, judicial as well as others, is administered by delegated and responsible agents; and that the power which really controls, ultimately, all the movements, is not in the agents, but those who elect or appoint them. To understand, then, its real character, and what would be the action of the system in any supposable case, we must raise our view from the mere agents to this high controlling power, which finally impels every movement of the machine. By doing so, we shall find all under the control of the will of a majority, compounded of the majority of the States, taken as political bodies, and the majority of the people of the States, estimated in federal numbers. These, united, constitute the real and final power which impels and directs the movements of the General Government. The majority of the States elect the majority of the Senate; of the people of the States, that of the House of Representatives; the two united, the President; and the President and a majority of the Senate appoint the judges: a majority of whom, and a majority of the Senate and House, with the President, really exercise all the powers of the Government, with the exception of the cases where the Constitution requires a greater number than a majority. The judges are, in fact, as truly the judicial representatives of this united majority, as the majority of Congress itself, or the President, is its legislative or executive representative; and to confide the power to the Judiciary to determine finally and conclusively what powers are delegated and what reserved, would be, in reality, to confide it to the majority, whose agents they are, and by whom they can be controlled in various ways; and, of course, to subject (against the fundamental principle of our system and all sound political reasoning) the reserved powers of the States, with all the local and peculiar interests they were intended to protect, to the will of the very majority...
against which the protection was intended. Nor will the tenure by which the judges hold their office, however valuable the provision in many other respects, materially vary the case. Its highest possible effect would be to retard, and not finally to resist, the will of a dominant majority.

But it is useless to multiply arguments. . . .

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

How the States are to exercise this high power of interposition, which constitutes so essential a portion of their reserved rights that it cannot be delegated without an entire surrender of their sovereignty, and converting our system from a federal into a consolidated Government, is a question that the States only are competent to determine. The arguments which prove that they possess the power equally prove that they are, in the language of Jefferson, “the rightful judges of the mode and measure of redress.” But the spirit of forbearance, as well as the nature of the right itself, forbids a recourse to it, except in cases of dangerous infractions of the Constitution; and then only in the last resort, when all reasonable hope of relief from the ordinary action of the Government has failed; when, if the right to interpose did not exist, the alternative would be submission and oppression on one side, or resistance by force on the other. That our system should afford, in such extreme cases, an intermediate point between these dire alternatives, by which the Government may be brought to a pause, and thereby an interval obtained to compromise differences, or, if impracticable, be compelled to submit the question to a constitutional adjustment, through an appeal to the States themselves, is an evidence of its high wisdom: an element not, as is supposed by some, of weakness, but of strength; not of anarchy or revolution, but of peace and safety. Its general recognition would of itself, in a great measure, if not altogether, supersede the necessity of its exercise, by impressing on the movements of the Government that moderation and justice so essential to harmony and peace, in a country of such vast extent and diversity of interests as ours; and would, if controversy should come, turn the resentment of the aggrieved from the system to those who had abused its powers (a point all-important), and cause them to seek redress, not in revolution or overthrow, but in reformation. It is, in fact, properly understood, a substitute,—where the alternative would be force—tending to prevent, and, if that fails, to correct peaceably the aberrations to which all systems are liable, and which, if permitted to accumulate without correction, must finally end in a general catastrophe. . . .

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