Amendments to the Constitution.

SPEECH

OF

HON. JOHN J. DAVIS,

OF WEST VIRGINIA,

DELIVERED

IN THE HOUSE OF REPRESENTATIVES,

MARCH 23, 1872.

"To compromise with *usurpation* is to become an accomplice with it."—*Burke.*

WASHINGTON:
F. & J. RIVES & GEO. A. BAILEY,
REPORTERS AND PRINTERS OF THE DEBATES OF CONGRESS.
1872.

Amendments to the Constitution.

SPEECH

OF

HON. JOHN J. DAVIS,

OF WEST VIRGINIA,

DELIVERED

IN THE HOUSE OF REPRESENTATIVES,

MARCH 22, 1872.

"To compromise with usurpation is to become an accomplice with it."—Burke.

WASHINGTON:
R. & J. HIVES & GEO. A. BAILEY,
REPORTERS AND PRINTERS OF THE DEBATES OF CONGRESS.
1872.

Amendments to the Constitution.

Mr. DAVIS. Mr. Speaker, on the 5th day of February the gentleman from Maine [Mr. PETERS] brought forward the following resolution, which was adopted by the House:

"*Resolved*, That the thirteenth, fourteenth, and fifteenth amendments to the Constitution of the United States having been ratified by the number of State Legislatures necessary to make their adoption valid and binding, as well as having been sanctioned by the most significant popular approval, the highest patriotism and most enlightened public policy demand of all political parties and all citizens an acquiescence in the validity of such constitutional provisions and such reasonable legislation of Congress as may be necessary to make them in their letter and spirit most effectual."

And on the same day the gentleman from New York [Mr. BROOKS] introduced the following resolution, which was also adopted:

"*Resolved*, That we recognize the thirteenth, fourteenth, and fifteenth amendments to the Constitution as valid parts thereof."

These resolutions were offered and passed under a suspension of the rules without debate, and under circumstances which precluded any discussion at the time of the great and vital questions involved in them. There is no difference practically between the two resolutions, for I imagine that if the amendments are valid and binding as parts of the Constitution, they are the law of the land, constitutionally so if valid, and must be respected and obeyed without question. If their validity is not a question of doubt, as the resolutions affirm, and more especially if the fourteenth and fifteenth amendments are valid as a part of the Constitution, and are to be accepted as such by the people, the Federal Republic has perished.

Having voted against the resolutions because, in my judgment, each of them in effect dignifies the most flagrant usurpations with the title and sanctity of laws, I deem it right and proper, with all proper respect for the movers of the resolutions, to express the reasons for my dissent from the principles they embody. I am aware, sir, that there is a body of politicians who regard the doctrine of State rights as an abstraction, and treat an inquiry into these questions, or a discussion of them, as the resurrection of "dead" and "exploded" issues that should be permitted to rest undisturbed. If they can educate public opinion up to this belief, it will be an easy task for Federal usurpation to accomplish its work of destruction, the annihilation of the States, and the conversion of the Government into one of an absolute majority without check or limitation. In my judgment the doctrine of State rights, so far from being either an abstraction or a dead and exploded issue, is a vital and practical inquiry now.

I am not one of those who believe that the principles of this Government can ever be in danger from an open, bold, and manly assertion of the rights of either the States or the people. If the Government is subverted, it will be by indirect, insidious attacks, disguised under the forms of law; by an unconstitutional extension of Federal power; by an invasion of the rights of the States, and when the principles upon which the Government was founded shall have so degenerated that that which was once considered as usurpation is sanctified as law, and is appealed to as evidence of right. If we turn our attention for a moment to the Government as established by the Constitution, we shall see clearly that the supposed amend-

ments are a total subversion of it in theory and in fact, and are utterly destructive of the very existence of the States. The Federal Government, which originated in a solemn compact between the States, each covenanting and agreeing with the others, was established as a Government of limited and delegated powers, specifically enumerated and defined in a written Constitution, which the States, through conventions composed of delegates elected by the people thereof, severally assented to and ratified.

"Who are to form the new Constitution?" * * * * "Are not the States the agents? Will they not be the members of it? Did they not appoint this Convention? Are not they to ratify its proceedings? Will not the Constitution be their act?"—*Madison*, Elliott's Debates, vol. 5, p. 413.

Mr. Madison says again:

"Do they require that in the establishment of the Constitution the States should be regarded as distinct and independent sovereigns? They are so regarded by the Constitution proposed."—*Federalist*, No. 39.

The powers delegated extend only to matters respecting the common interests of the Union, leaving the several States, as to all powers not delegated, sovereign and independent of each other.

"The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State governments are numerous and undefined. The former will be exercised principally on external objects, as war, peace, negotiation and foreign commerce, with which last the power of taxation will for the most part be connected. The powers reserved to the several States will extend to all the objects which in the ordinary course of affairs concern the lives, liberties, and properties of the people; and the internal order, improvement and prosperity of the States."—*Federalist*, No. 45.

It is to the extent only of the powers granted or prohibited, that the several States are bound by the Constitution, or affected in their sovereignty.

"Its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects."—*Federalist*, No. 39.

In declaring that it should be the supreme law of the land, nothing more is conceded than that within the sphere of the powers granted the Government established should be binding upon the States or people.

"If a number of political societies enter into a larger political society, the laws which the latter may enact pursuant to the powers intrusted to it by the Constitution must necessarily be supreme over these societies, and the individuals of whom they are composed." * * * * "But it will not follow from this doctrine that the acts of the larger political society which are not pursuant to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely usurpations, and will deserve to be treated as such."—*Mr. Hamilton*, (see Federalist, No. 37.)

As to all the powers not delegated by the States, and which they reserved and excepted out of the grant made to the Federal Government, they are as absolutely supreme and independent of each other as if they had never confederated together for any purpose. The government they instituted was a Federal and not a consolidated government. In the thirty-ninth number of the Federalist Mr. Madison says:

"That it will be a federal, and not a national act, as these terms are understood by the objectors; the act of the people, as forming so many independent States, not as forming one aggregate nation, is obvious from this single consideration, that it is to result neither from the decision of a majority of the people of the Union, nor from that of a majority of the States. It must result from the unanimous assent of the several States that are parties to it, differing no otherwise from their ordinary assent than in its being expressed, not by the legislative authority, but by that of the people themselves. Were the people regarded in this transaction as forming one nation, the will of the majority of the whole people of the United States would bind the minority in the same manner as the majority in each State must bind the minority; and the will of the majority must be determined either by a comparison of the individual votes, or by considering the will of the majority of the States, as evidence of the will of a majority of the people of the United States. Neither of these rules has been adopted. Each State, in ratifying the Constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act."

While the framers of the Constitution regarded the Federal Government in its nature, scope, and character as a Government of limited and defined powers, in which "the States would clearly retain all the rights of sovereignty which they before had, and which by that act were not exclusively delegated to the United States," the State conventions to ratify the Constitution, and particularly the convention of Virginia, composed as it was of her most distinguished statesmen, alarmed at the extent of power which had been granted to the Federal Government, objected to its ratification because the powers of the States were not reserved by an express clause. Patrick Henry said:

"This Government will operate like an ambuscade. It will destroy the State governments, and swallow the liberties of the people, without giving previous notice."

Edmund Randolph, one of her delegates in the Federal Convention, refused to sign the Constitution, that he might be free to propose

amendments to it, and among them one, as he expressed it—

"That would draw a line between the powers of Congress and the individual States, defining the former so as to leave no clashing of jurisdictions, nor dangerous deputies, and to prevent the one from being swallowed up by the other under general words and implications."

This spirit of jealous apprehension, that by an extension of Federal power the reserved rights of the States might be subverted, caused the conventions of the States of Massachusetts, New York, New Hampshire, Rhode Island, and South Carolina, when they ratified the Constitution, to recommend that certain alterations and amendments should be made, the more effectually to secure the rights of the people and the power of the States against the encroachments of Federal power; and with certain provisos and propositions for amendments, those States ratified the Constitution. The First Congress under the Constitution, held at New York on the 4th March, 1789, in accordance with the "desire expressed by the conventions of a number of the States, that further declaratory and restrictive clauses should be added, in order to prevent misconstruction or abuse of its powers, and as extending the grounds of public confidence in the Government," proposed to the States for their adoption twelve amendments, ten of which were ratified, and among the ten that article found in the Constitution declaring, in carefully chosen words, that—

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The language employed in this article is clear and unequivocal. Every power which is not delegated is excepted and reserved by the States respectively, or to the people, that is, to each State separately and distinctly against each and every other State—against the Federal Government in whole, as well as against each and every department thereof. This amendment, if doubt existed before, forever settled the character of the Federal Government, and marked the boundary line of its authority. In all its departments the Government was to represent delegated powers only, and its organization was so arranged and so restrained by limitations upon the powers of its three coördinate departments as to prevent the abuse of power in fulfilling the great trusts confided to it. When it transcends the limits of its delegated powers its acts will be merely usurpations, and void; they will bind no one, neither can they deprive the States of the full and complete exercise and enjoyment of all the undelegated and residuary powers belonging to them. These are the property absolutely of each State separately, which can neither be invaded or wrested from it without its consent, either by the act of the Federal Government or that of any number of its sister States in the Union, and which it may exercise without the least reference to responsibility to any other State. President Harrison, in his inaugural address, said:

"Our Confederacy is perfectly illustrated by the terms and principles governing a common copartnership. There a fund of power is to be exercised under the direction of the joint counsels of the allied members, but that which has been reserved by the individuals is intangible by the common government or the individual members composing it. To attempt it finds no support in the principles of our Constitution."

While I shall at all times defend and uphold the Federal Government in the exercise of all its constitutional authority, as the surest and best guarantee for the perpetuity of a Union hallowed by memories that kindle the purest and loftiest feelings of patriotism, I feel it to be a duty no less sacred and binding to as strenuously defend the rights of the States, the governments of which are the real palladium of the people's liberties. It is upon these governments we rely mainly for the security of life, liberty, and property, "and just in proportion as we permit them to be stripped of their powers the Federal Government will become absolute and irresponsible, ruling without control or limitations, and justifying its excesses in the name of popular liberty."

When we give ourselves up to the delusion that our liberties are in no danger by suffering the States to be dismantled of their powers, in order to aggrandize and extend the powers of the Federal Government, we will discover, when it is too late to recover except by force what we have lost, that we are in the jaws of a centralized despotism, with no safeguards, no checks, and no limitations established for the security of our rights, either of life, liberty, or property. All these will be at the disposal

of a despotic and irresponsible majority, and we shall be the miserable subjects of tyranny and oppressions brought upon ourselves by our own folly and madness. The framers of the Constitution looked with jealous care to the preservation of the rights of the States; they believed that their maintenance in all their integrity was not only vital and essential to the liberties of the people, but to the very existence of the Federal Government; they taught us that the States are the pillars upon which the system rests, and that with their destruction the entire fabric of the Republic topples and falls to the ground; the States could exist without the Federal Government, but the latter must perish with the destruction of the States. Alexander Hamilton declared in the convention in New York that—

"The States can never lose their powers until the whole people of America are robbed of their liberties. These must go together; they must support each other, or meet one common fate."

Mr. Livingston, a member of the same convention, said:

"I conceive the State governments are necessary as the barrier between the people's liberties and any invasions which may be attempted on them by the General Government."

Fisher Ames, in the convention in Massachusetts to ratify the Constitution, said:

"A consolidation of the States would subvert the new Constitution." * * * * "Too much provision cannot be made against consolidation. The State governments represent the wishes and feelings and local interests of the people. They are the safeguards and ornaments of the Constitution; they will protract the period of our liberties; they will afford a shelter against the abuse of power, and will be the natural avengers of our violated rights."—*Elliott's Debates*, vol. 2, page 46.

James Wilson, one of the framers of the Constitution, and a member of the convention in Pennsylvania, said:

"The State governments ought to be preserved. The freedom of the people and their internal good police depend on their existence in full vigor."

I will add the testimony of but one other name illustrious in our history as the champion of civil liberty and free government, that of Thomas Jefferson, who recommended to us "the support of the State governments in all their rights as the most competent administrations for our domestic concerns and the surest bulwarks against anti-republican tendencies."

Such words of admonition when repeated in our ears to-day, standing as we do in the very shadow of that monster so much dreaded by the fathers and early statesmen of the Republic, a centralized Government, ought to arouse us to a sense of danger, and stimulate the decaying spirit of liberty to grapple with arbitrary power, with a bold determination to restore to the States the right of local self-government.

It was not the intention of the framers of the Constitution to place the reserved rights of the States in jeopardy by an extension of Federal power, nor to subject a minority of the States to the absolute will of a majority; nor was it their purpose to confer upon any Department of the Federal Government the power to subvert the Constitution, and by mere legislative action change essentially its form and character.

The Constitution, with all its limitations and restrictions, was designed to protect the reserved sovereignty of the States and the rights of the people against the encroachments of majorities, and is their wall of defense against Federal usurpation. Over the powers delegated, and over those alone, the States or the people thereof agreed that the Federal Government should have control, and in ascertaining the extent of its powers the Constitution is the guide. Such as are granted it may exercise. All not delegated are excepted and reserved by the States respectively, or to the people, and are inviolable. They are at the disposal and control of each State alone and absolutely, as a separate political community. The several States reserved the right to order and control their domestic institutions in their own way, to say who may or may not become citizens of each, to determine the qualifications of their own officers, and especially to regulate the right of suffrage and say who should vote and who should not. If there was any subject which above all others was carefully watched and guarded in forming the Constitution, it was that the Federal Government should not control the right of suffrage in the States.

The Constitution left each State to determine for itself its own electoral body, and if there is a doctrine essential to the preservation of popular liberty and the right of local self-government in the States, and for which the people should zealously contend and never consent

to relinquish, it is that which denies the right of the Federal Government to interfere with the right of suffrage. It is not only one, but the first and greatest of those rights which, never having been delegated, still remain exclusively with the people of each State. The same is true of the right of the people of each State to determine for themselves who shall be citizens of the State, and who should hold office therein and the qualifications requisite therefor. Each State may order and control these subjects as it pleases, free from the control or dictation of every other State, and can only be deprived of its sovereign power to do so by its own consent.

The Constitution nowhere grants to the Federal Government any power to interfere with the residuary sovereignty of the States in respect to these subjects. But the measures, the validity of which is affirmed by the resolutions, sweep away the Government established by the Constitution, and convert it into a consolidated Government, or a Government of the majority. They revolutionize the entire system of government both State and Federal, and break down all the barriers so wisely established to preserve the rights of the people and the reserved sovereignty of the States. When once the power to establish citizenship in the States, to prescribe the qualifications of their officers, and to limit or restrain their right to regulate suffrage as they please is conceded to the Federal Government, the States are reduced to petty corporations. They may exist in name, but their substance will have departed. What other powers will you confer upon the Government to make its consolidation more complete?

By the frame of government established by the Constitution the powers delegated were wisely distributed among three distinct and coördinate departments, legislative, executive, and judicial, the independence of each of which is secured and its powers defined. All the legislative powers granted in the Constitution are vested in a Congress which is therein provided for. This department of the Government is to consist of a Senate and House of Representatives. The latter body is to be composed of "members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature." The Senate is to be composed of two Senators from each State chosen by the Legislature thereof for six years, and it is expressly provided that no State, by any amendment to the Constitution, shall ever be deprived of its equal suffrage in the Senate. These two bodies, thus constituted, form the Congress in which all legislative powers granted in the Constitution are vested. The people of each State have a right to participate in the legislation of the country, and were careful to reserve this right by providing that each State should have two Senators and at least one Representative. As the Constitution has thus prescribed how Congress shall be constituted, and as it can exist only as it was created by the Constitution, a body composed of Representatives from only a part of the States, who arbitrarily deny to the other States the right of representation therein, is not a constitutional Congress, and is vested with no legislative powers. The power to propose amendments was granted to the Congress provided for in the first article of the Constitution, and to no other body or assembly of men. A fragmentary body, which assumes to exclude the Representatives from a number of the States, cannot therefore exercise this power.

If such an assembly is a constitutional Congress, vested with the whole legislative power of the Government, and can exclude ten States from representation, while assuming to legislate for them, why may not a majority of such fragmentary body exclude twenty, and a majority still of the body thus reduced deny the right of representation to other States, and so this process of reduction be carried on until the whole legislative power of the Government is vested in a single State? This is to assert the omnipotence of Congress, and to concede to it the power, at its own pleasure, to change entirely the character and form of government and destroy the Union. It is the concentration of all the powers of government in the same hands, and "is precisely the definition of despotic government."

The framers of the Constitution knowing the tendency of power toward centralization,

and especially the tendency of the legislative department to extend its own powers by usurpation, hedged it in by checks and limitations, and carefully enumerated its powers so as to leave no room for abuse or misconstruction. No such power of exclusion was conferred upon Congress by the Constitution, and its exercise, whatever may be the pretext, is simply revolution.

As no governments constructed by human agency are ever perfect, that established by the Constitution was not supposed to form an exception.

Its organization, in that the powers delegated were distributed among three coördinate departments, with powers limited and defined by a written Constitution, was an experiment. Time and experience, it was foreseen, might prove that alterations would be useful to enable it to exercise efficiently the powers delegated, or that the exercise of such powers being injurious to the States as well as dangerous to the liberties of the people, further limitations and restrictions should be imposed to secure these. It was necessary, therefore, to provide a mode of introducing such provisions or amendments, and this power is provided in the Constitution. To the Congress created thereby the power is granted to propose "amendments to the Constitution" whenever two thirds of that body shall concur therein, which are to be valid and binding as parts thereof when ratified by three fourths of the States, either by the Legislatures thereof or by conventions therein called for that purpose.

This power is granted in the Constitution as originally framed, and by virtue thereof twelve amendments were subsequently made to it, the object of which was not to enlarge, but to limit the power of the Government and to guard against misconstruction and abuse. One of those amendments, the tenth article, I have already recited. It is to be remembered that the power granted is to "propose amendments," and while none but a constitutional Congress can exercise such power, it is limited to what are strictly "amendments" to the Constitution. The power is given to three fourths of the States, by their ratification, to render these valid as parts of that instrument.

If it be true, and I suppose no one will seriously undertake to dispute the fact, that the Federal Government is a compact to which the States, or the people of each State, as a separate and distinct political community, are parties, and that the States parted with only so much of their sovereignty as is specified in the Constitution, and retained all powers not granted, is it not true also that as to the powers reserved the people of each State, as a State, each acting for itself, are alone competent to dispose of them, and that any enlargement of Federal powers at the expense of the States, by invading their residuary sovereignty, or stripping them of their reserved powers, is a transmutation of the Government and the establishment of a new compact, which, in order to claim validity, should receive the voluntary assent of each State whose reserved sovereignty is to be impaired or diminished?

As the form of Government was fixed and established by the Constitution—which is the compact by which the parties to it, the people of the several States as distinct sovereignties, agreed to be bound—can its character be changed except by the unanimous concurrence of the parties who made it? I know that the reply to all this may be that while, as a general rule of law as between contracting parties, the proposition announced is true, the Constitution warrants a departure from it, inasmuch as the power is delegated to three fourths of the States to amend it. But I put the inquiry whether the power thus delegated extends to anything more than the substance of the Constitution? Does it embrace matters that were not in the Constitution, and which each State refused to delegate in the grant of powers to the Federal Government? Would the States reserve what they had no power or right to retain as against the will of three fourths of their number? Of what force is the reservation if the possession of the thing reserved is dependent on the will of another? The reservation was unconditional and absolute. It was competent to the people of the several States to delegate all the powers of the States to the Federal Government; but as the delegations were few and defined, it is not only reasonable to presume, but it is in harmony with the objects for which the Government was established, to maintain that by expressly

reserving what was not granted the several States, or the people thereof, designed to preserve the individual supremacy and sovereignty of each State over its reserved rights and powers against the Federal Government, as well as against each and every other State. As these were not embraced in the Constitution, they were not to be subject to its operation or influence; and to concede that the several parties to the Constitution delegated to three fourths of their number the right by amendments to strip the remainder of all the powers they refused to surrender, is to assert a doctrine not only pregnant with the most serious consequences, but which makes the Constitution a charter of oppression to minorities, and of no effect as a limitation upon arbitrary power; for if by the power of amendment they may be stripped of a part of their rights, by the exercise of the same power they may be stripped of the whole.

It seems to me that there is a marked distinction between "amendments" and such provisions or additions as make essentially radical and fundamental changes in the character of the Government. As the States as to all powers not delegated are sovereign and independent of each other, and were careful in order to guard against any extension of the powers granted to insist upon an amendment to the Constitution as originally framed, declaring in explicit terms that its authority extended only to delegated powers, and that such as were not delegated each State reserved, it is in my judgment not only a violent but a dangerous construction that holds the power of amendment to extend to such rights as were reserved by the States, over which they refused to delegate any power, and which were not embraced in the Constitution. It is such a construction as is not reconcilable with the tenth article of amendments, which is practically and to all intents and purposes nullified by such interpretation; for if the power is held to extend to other than the substance of the Constitution, to the diminution of the reserved sovereignty of the States by depriving them of the power to regulate and control such vital matters as the right of suffrage, of citizenship, and of property, over which they severally refused to relinquish jurisdiction, the reservation of any powers by the States amounts to nothing, and the adoption of the tenth amendment must be regarded as a work of superlative folly. It was reserving what had already been surrendered.

The exercise of a power so extraordinary as this and so incompatible with the nature of the Government, as one of limited and delegated powers, would subvert the Constitution and subject a minority of the States to the power and will of an uncontrolled and uncontrollable majority. The frame of government agreed to by the people of the several States would depend for its continuance upon the will of three fourths of their number, who, by the exercise of this power so construed could at any moment, when either prompted by ambition or dazzled by the splendors of a great central power, subvert it under the guise of an amendment, and by the absorption of the powers of the States blot them out; and, as has already been attempted, and I fear not without success, erect a centralized despotism upon the ruins of a free Federal Republic.

The residuary sovereignty of the States cannot be diminished by an act of Congress. What are termed the fourteenth and fifteenth amendments are diminutions of the residuary sovereignty of the States and delegations of new and additional power to the Federal Government. They embrace matters which were not in the original Constitution and over which its influence was not to extend, and the attempt to wrest any part of their residuary sovereignty from the States by the exercise of the power of amendment is, in my judgment, unauthorized by the Constitution. It is an exercise of power by Congress which finds no support in that instrument, and to the results of which no validity can be imparted by the approval of three fourths of the States. There is no power greater or less than the sovereign power of each State, acting voluntarily and uncoerced, that can assent to any delegation or diminution of its reserved powers.

The framers of the Constitution regarded the power of amendment, restricted as it is, as dangerous and exceptionable. Mr. Sherman expressed his fears in the Federal Convention, "that three fourths of the States might be brought to do things fatal to particu-

lar States; as abolishing them altogether," and experience has demonstrated that his fears were well grounded. For under the pretense of amending the Constitution, acts of political robbery have been attempted, the effect of which will be to abolish the States and convert them into petty provinces to be ruled by either a military chieftain or an imperial and despotic Congress, which brooks neither remonstrance nor control.

But there is another phase of the subject which I venture to suggest as worthy of consideration, if anything like constitutional governments are to be preserved in the States, or the existence of States secured.

The union existing between the States under the Articles of Confederation was superseded by the adoption of the Federal Constitution, which, when ratified by nine States, was to be binding "between the States ratifying the same." Had any one of the original members of the Confederation withheld its assent to the Constitution, it would not have been bound by it. It required their unanimous concurrence to make it binding upon all. North Carolina and Rhode Island, withholding their assent for some time after the new Government was put into operation, were treated by Congress in its legislation as foreign States. (See act passed July 31, 1789.)

The nature of the Government itself suggests the reasons why the unanimous assent of the original thirteen States was necessary to establish between themselves the new Constitution. The Confederation was to be dissolved and the frame of government existing under it was to be superseded by another which drew from the States additional powers and made "essential inroads on their constitutions." The sovereignty of each State was to be diminished and the new Government was to be vested with larger powers than were bestowed upon the older one. Such concessions could not rightfully be coerced from sovereign and independent States, and could proceed only from the sovereign power in each State, the people.

Since they, in the formation of each State government, had distributed its powers among three separate, coördinate, and independent departments, and had limited those powers by a written Constitution, no one of these departments, nor all combined, were invested with the sovereign power of the State. They were merely the creatures of that power; their scope of action was limited and defined, and each represented only so much of the sovereignty of the State as the people had seen fit to confer upon it. The Legislatures therefore were not competent to assent to the proposed delegations, and when the question of ratification was discussed in the Federal Convention, it was determined that none but the people, or a body chosen by them, representing the entire sovereign power of the State, could assent to any surrender of its powers. Mr. Madison said that—

"It is clear the Legislatures were incompetent to the proposed changes. These changes would make essential inroads on the State constitutions; and it would be a novel and dangerous doctrine that a Legislature could change the constitution under which it held its existence."

If the doctrine had been admitted that the Legislatures were competent to make such delegations, though they were but few and defined in their character, it would have followed that if they could delegate a part, they could delegate the whole, and subvert the governments of the States and make the creature greater than its creator. Truly did Mr. Madison say that the doctrine was "a novel and dangerous one," and it is to-day as dangerous, if not so novel, as it was then.

This "novel and dangerous doctrine" has been put into practice in the ratification of your amendments. The State Legislatures have been appealed to to delegate to the Federal Government additional powers which make "essential inroads on the State constitutions," and produce changes therein which they have no power to make. They have undertaken to change the organic law of their States and to diminish their sovereignty by delegating to the Federal Government such new and additional powers as the right to determine citizenship in the States, the qualifications for office and the control of suffrage, and in so doing have usurped control over subjects which by the several State constitutions—I know of no exception—have been placed entirely beyond their jurisdiction. Suffrage being a fundamental right of sovereignty, is secured by the State constitutions against legislative

control; so also are the rights of citizenship and the qualifications for office.

It is indeed a dangerous doctrine to admit the right of one department of a State government to interfere with what belongs exclusively to the people, and to assume to do that which they alone, or a body expressly chosen by them for that purpose, are competent to do. To admit the validity of mere legislative assent to such radical changes of the very forms of government, both State and Federal, is to rest the entire fabric upon no more substantial basis than legislative action; and as one Legislature, unless restrained by the constitution, may undo what a previous Legislature has done, all idea of permanence or stability in government is destroyed; for whenever ambition or corruption can bring such influences to operate upon the Legislatures of the States as will induce them to consent to such changes, the governments, both State and Federal, may and will be subverted.

Before proceeding further with these remarks, I have a word to say in relation to the thirteenth amendment. While it differs in its origin from the fourteenth and fifteenth amendments, in that the seceding States were voluntarily absent from the Congress which proposed it, yet from its nature, as an unauthorized encroachment upon the rights of the people of the States, and from the manner of its pretended ratification, in my judgment it is equally unconstitutional, and confers a title to freedom not by any means free from legal or constitutional doubt. Nevertheless, I have no desire to reënslave those who by the accident of war and the acquiescence of the people of the States in which the institution of slavery existed, have been set free; nor would I countenance or aid in remanding back into slavery any of that class. But I can never admit that it is in the power of Congress under the guise of amendments, though three fourths of the States may approve them, to deprive the citizens of either a single State or one fourth of the States of any species of property whatever. With this expression of opinion, which I trust is sufficiently clear to prevent any misunderstanding, I shall dismiss this amendment from further consideration.

From the premises stated, together with the historical facts connected with the origin and ratification of the "amendments," I am irresistibly led to denounce as false and unfounded the conclusions of both the resolutions quoted in the opening of my remarks. In both the amendments are recognized as "valid parts of the Constitution," and if this be true, it involves the further admission that they are in fact amendments and have been constitutionally proposed and ratified. To call them "valid" is to admit that all that is required to make them so has been done and constitutionally done. As I have already discussed the question, I need not stop here to inquire if a Congress in which ten States were denied representation was a body invested with constitutional power to propose measures of such solemn import. Where is the authority in the Constitution which either expressly or by implication warrants the position that they had forfeited their right to representation? If successful war, waged to prevent the severance of the bond of union between them and their sister States, effected what it was intended to defeat, then such exclusion might find some shadow of justification. But this the supporters of the amendments would scarcely dare to admit. It is historically true that as States in the Union they were denied the right of representation, while the body which excluded them devised and enforced a scheme of "reconstruction" wholly "outside of the Constitution," as Thaddeus Stevens, its boldest, frankest, and most consistent advocate, declared it to be. To the tender mercies of this cruel monster the destinies of the seceding States were committed; and while usurpation was plotting to destroy by these acts the Union founded upon the voluntary consent of those States, they were held in the grip of military power and forced at the point of the bayonet to submit to political ravishment. "Reconstruction" is the parent of the fourteenth and fifteenth amendments. They are the children of its loins, and like parent like children. The reconstruction acts were "outside the Constitution;" being unconstitutional they were simply usurpations and void, and their results are necessarily illegitimate and can have no claim to validity.

To sum up the whole matter, conceding for

the sake of argument that these propositions were amendments, the Congress by which they were proposed was not a constitutional one, but had by the arbitrary exclusion of ten States from representation reduced itself to a mere fragment, incapable of legally exercising such power. But I cannot admit that they are, properly speaking, amendments. They have no relation whatever to the subject-matter of the Constitution, but make such essential changes in that instrument as to virtually subvert the whole frame of Government subsisting under it, and to open the door to still bolder and more dangerous encroachments upon the liberties and rights of the people of the several States. They were not required to cure any defect in the original Constitution; none of its provisions needed any such alteration; no evil was discovered in the distribution of the powers of Government or its organization that required any readjustment of its machinery; it needed no repairing to stimulate its action or renew its vigor; it was simply to enlarge and centralize power in the Federal Government; to diminish and weaken the sovereignty of the States; to lessen their influence; to reduce them to the condition of provinces, and to convert the Government from a Federal into a centralized and imperial one, that such additions, improperly styled amendments, were attached to the Constitution. Again, I maintain that, relating as they do to subjects over which the people had never delegated any control to any of their creatures, no State government, nor any department of any State government, had any right or power whatever to pretend to ratify them; and I do not fear to assert that the amendments, so far from being valid, as declared by the resolutions under consideration, are but acts of a fractional Congress, unauthorized by the Constitution, and therefore utterly null and void.

But besides affirming the validity of the amendments, the first resolution instructs the people to acquiesce in such "reasonable legislation of Congress as may be necessary to make them in their letter and spirit most effectual." What is "such reasonable legislation?" Are civil rights bills, under whose withering influence the courts and civil tribunals in the State perish, such "reasonable legislation?" Is it to be found in your enforcement bills? Are we to look for it in acts to destroy the freedom of elections, to control the ballot-box, and to substitute for the popular will the decrees of the bayonet? Is either reason or the spirit of freedom apparent in such legislation as the act passed on the 20th of April, 1871, which transforms the Executive into a dictator, and arms him with more than imperial power?

Is it in such legislation as makes the civil subordinate to the military power, and clothes the President with authority, limited by his own discretion alone, to make war upon the States, to suspend the great writ of *habeas corpus*, and to declare martial law as he has already done under its provisions? Martial law! It is the suspension of all law. It takes away the right of citizens to legal trial. "It suspends the claim of an enemy to quarter and the other rights of civilized war. The whole compound is the fiend's charter; and the public man who connives at its introduction, who fails in his day and in his place to resist it at whatever cost or hazard to himself, is a traitor to civilization and humanity, and though official morality may applaud him at the time, his name will stand in history accursed and infamous forever!" Are these measures to which freemen counsel freemen to submit? Is the writ of *habeas corpus* no longer worth preserving? Is martial law the code by which the liberties of a free people are to be measured and maintained?

Yet these are the legitimate and inevitable fruits of these amendments. Nay, they are but the budding of the baneful tree. Who can say what shall be the bitterness of its ripened fruit? What shall be the next step toward our complete enslavement? And where shall the swelling tide of despotism stop? What barriers shall stay its onward rush? Are we so near the millennium that the liberties of millions may be safely trusted in the hands of one man? If the spirit of liberty is not dead, it will respond to such advice with scorn and contempt, if not with defiance. Webster said, in the heroic days of the Republic, that, "through all this history of the contest for liberty, executive power has been regarded as

a lion which must be caged. So far from being the object of enlightened popular trust, so far from being considered the natural protector of popular right, it has been dreaded, uniformly, always dreaded, as the great source of its danger." Who is he that will declare to the people to-day that "the security for freedom rests in executive authority?"

To what end are these resolutions introduced in the House? Can they render valid that which before was invalid? Can they divest wrong of its illegal character and clothe it with legitimate authority? If by their adoption the majority designed to strengthen usurpations, or to counsel a once free people to grant full absolution to those who did this great wrong, then in the name of liberty and justice, and in behalf of the States who have been robbed of their rights, I enter my solemn protest against their declaration. It is a revival of the slavish doctrine of "passive submission and non resistance," which, as Walpole says, "was first invented to support arbitrary and despotic power and was never promoted or countenanced by any Government that had not designs some time or other of making use of it." It teaches the people to regard the violation of the Constitution as a crime of little magnitude; it tends to corrupt their political faith, to take them off their guard, and lull to sleep that jealousy of power which we are told by all writers is essential to the preservation of freedom, and prepares them to receive and submit to still greater usurpations without protest—teachings most fatal to the existence of free government, since in all ages liberty has been maintained only by unceasing vigilance and by resisting at the very threshold every encroachment of arbitrary power, however small.

I am not unmindful that in giving expression to these sentiments I may have incurred the disapprobation of some of my political associates; but I am convinced that all attempts to conciliate the friends of centralization and arbitrary power are worse than vain. "Year after year we have been lashed round the miserable circle of occasional arguments and temporary expedients," and these questions are no longer to be evaded. They cannot be thrust aside or laid asleep. They involve so deeply the interests and the very existence of the States that they must be met, fairly and fearlessly met.

"Nothing is so rash as fear; and the counsels of pusillanimity very rarely put off while they are always sure to aggravate the evils from which they would fly."—*Burke.*

Let the friends of popular liberty put aside all faint-heartedness and boldly and openly take their stand upon those grand principles of government maintained by the fathers, and which still live in spite of the efforts of tyranny to crush them, or of a false policy to check their expression. Then may we hope to see constitutional government restored, and with it those safeguards which will protect the citizen and shield him from executive as well as legislative tyranny; martial law and military rule shall be dispensed with, and that safe but discarded political maxim that the military shall always be "subordinate to the civil power," shall be revived; the right of local self-government shall be restored to the States; virtue and intelligence shall be released from the fetters placed upon them, and ignorance and corruption shall be sent to the rear, to the end that misgovernment and anarchy in ten States of this Union may cease; from the shoulders of the people shall be rolled the load of taxation and the heavy burden imposed upon them to carry out revolutionary schemes. In short, with the restoration of the Constitution, usurpations will cease, violence and fraud will no longer be employed to give effect to pretended laws, the States will again become coequal members of the Federal Union, and the people, rescued from the threatened dangers of centralized despotism, will, in the future, guard more jealously and well the priceless heritage of a restored and redeemed Federal Republic.

Printed at the Congressional Globe Office.