

Daniel Webster SECOND REPLY TO ROBERT HAYNE

In 1830, a great debate took place in the Senate of the U.S. Congress between Daniel Webster, of Massachusetts, and Robert Hayne, of South Carolina. Hayne maintained that the Union of the States established by the Constitution is merely a compact between independent States, and that lawfully, if they wished, States could withdraw from the Union. Webster protested on January 26, 1830, that the Constitution is ordained and established by the people of the United States, and that its laws bind the States into a perpetual union from which they cannot lawfully separate. In this interpretation of the Constitution and in his eloquent plea for unity, Webster gave voice to the new nationalism, and attempted to sweep away the whole doctrine of the right of a State to secede from the Union or to annul a Federal statute.

...This leads us to inquire into the origin of this government and the source of its power. Whose agent is it? Is it the creature of the State Legislatures, or the creature of the people? If the Government of the United States be the agent of the State governments, then they may control it, provided they can agree in the manner of controlling it; if it be the agent of the people, then the people alone can control it, restrain it, modify it, or reform it. It is observable enough, that the doctrine for which the honorable gentleman contends leads him to the necessity of maintaining, not only that this General Government is the creature of the States, but that it is the creature of each of the States, severally, so that each may assert the power for itself of determining whether it acts within the limits of its authority. It is the servant of four-and-twenty masters, of different wills and different purposes, and yet bound to obey all. This absurdity (for it seems no less) arises from a misconception as to the origin of this government and its true character. It is, sir, the people's Constitution, the people's government, made for the people, made by the people, and answerable to the people.

The people of the United States have declared that this Constitution shall be supreme law. We must either admit the proposition, or deny their authority. The States are, unquestionably, sovereign, so far as their sovereignty is not affected by this supreme law. But the State Legislatures, as political bodies, however sovereign, are yet not sovereign over the people. So far as the people have given power to the General Government, so far the grant is unquestionably good, and the Government holds of the people, and not of the State governments. We are all agents of the same supreme power, the people. The General Government and the State governments derive their authority from the same source. Neither can, in relation to the other, be called primary, though one is definite and restricted, and the other general and residuary. The National Government possesses those powers which it can be shown the people have conferred on it, and no more. All the rest belongs to the State Governments, or to the people themselves. So far as the people have restrained State sovereignty by the expression of their will, in the Constitution of the United States, so far, it must be admitted, State sovereignty is effectually controlled. I do not contend that it is, or ought to be, controlled farther.

The sentiment to which I have referred propounds that State sovereignty is only to be controlled by its own "feeling of justice" --that is to say, it is not to be controlled at all, for one who is to follow his own feelings is under no legal control. Now, however men may think this

ought to be, the fact is that the people of the United States have chosen to impose control on State sovereignties. There are those, doubtless, who wish they had been left without restraint; but the Constitution has ordered the matter differently. To make war, for instance, is an exercise of sovereignty; but the Constitution declares that no State shall make war. To coin money is another exercise of sovereign power; but no State is at liberty to coin money. Again, the Constitution says that no sovereign State shall be so sovereign as to make a treaty. These prohibitions, it must be confessed, are a control on the State sovereignty of South Carolina, as well as of the other States, which does not arise "from her own feelings of honorable justice." The opinion referred to, therefore, is in defiance of the plainest provisions of the Constitution. I must now beg to ask, sir, whence is this supposed right of the states derived? Where do they find the power to interfere with the laws of the Union? Sir, the opinion which the honorable gentleman maintains is a notion founded in a total misapprehension, in my judgment, of the origin of this government, and of the foundation on which it stands. I hold it to be a popular government, erected by the people; those who administer it, responsible to the people; and itself capable of being amended and modified, just as the people may choose it should be. It is as popular, just as truly emanating from the people, as the state governments. It is created for one purpose; the state governments for another. It has its own powers; they have theirs. There is no more authority with them to arrest the operation of a law of Congress than with Congress to arrest the operation of their laws....

The people, then, sir, erected this government. They gave it a Constitution, and in that Constitution they have enumerated the power which they bestow on it. They have made it a limited government. They have defined its authority. They have restrained it to the exercise of such powers as are granted; and all others, they declare, are reserved to the states or the people. But, sir, they have not stopped here. If they had, they would have accomplished but half their work. No definition can be so clear as to avoid possibility of doubt, no limitation so precise as to exclude all uncertainty. Who, then, shall construe this grant of the people? Who shall interpret their will, where it may be supposed they have left it doubtful? With whom do they repose this ultimate right of deciding on the powers of the government? Sir, they have settled all this in the fullest manner. They have left it with the government itself, in its appropriate branches.

Sir, the very chief end, the main design, for which the whole Constitution was framed and adopted was to establish a government that should not be obliged to act through state agency or depend on state opinion and state discretion. The people had had quite enough of that kind of government under the Confederation. Under that system, the legal action, the application of law to individuals belonged exclusively to the states. Congress could only recommend; their acts were not of binding force till the states had adopted and sanctioned them. Are we in that condition still? Are we yet at the mercy of state discretion and state construction? Sir, if we are, then vain will be our attempt to maintain the Constitution under which we sit.

But, sir, the people have wisely provided, in the Constitution itself, a proper, suitable mode and tribunal for settling questions of constitutional law. There are in the Constitution grants of powers to Congress, and rest fictions on these powers. There are also prohibitions on the States. Some authority must, therefore, necessarily exist, having the ultimate jurisdiction to fix and ascertain the interpretation of these grants, restrictions, and prohibitions. The Constitution

has itself pointed out, ordained, and established that authority. How has it accomplished this great and essential end? By declaring, sir, that *"the Constitution and the laws of the United States made in pursuance thereof shall be the supreme law Of the land, any thing in the Constitution or laws of any State to the contrary notwithstanding."*...

This, sir, was the first great step. By this, the supremacy of the Constitution and laws of the United States is declared. The people so will it. No state law is to be valid which comes in conflict with the Constitution, or any law of the United States passed in pursuance of it. But who shall decide this question of interference? To whom lies the last appeal? This, sir, the Constitution itself decides also, by declaring, "that the judicial power shall extend to all cases arising under the Constitution and laws of the United States." These two provisions cover the whole ground. They are, in truth, the keystone of the arch ! With these it is a government; without them it is a confederation. In pursuance of these clear and express provisions, Congress established, at its very first session, in the judicial act, a mode for carrying them into full effect, and for bringing all questions of constitutional power to the final decision of the Supreme Court. It then, sir, became a government. It then had the means of self protection, and but for this, it would, in all probability, have been now among things which are past.

...Talk about it as we will, these doctrines go the length of revolution. They are incompatible with any peaceable administration of the government. They lead directly to disunion and civil commotion; and, therefore, it is that at their commencement, when they are first found to be maintained by respectable men, and in a tangible form, I enter my public protest against them all.

I profess, sir, in my career hitherto, to have kept steadily in view the prosperity and honor of the whole country, and the preservation of our federal Union. It is to that Union we owe our safety at home, and our consideration and dignity abroad. It is to that Union that we are chiefly indebted for whatever makes us most proud of our country—that Union we reached only by the discipline of our virtues in the severe school of adversity. It had its origin in the necessities of disordered finance, prostrate commerce, and ruined credit. Under its benign influences, these great interests immediately awoke, as from the dead, and sprang forth with newness of life. Every year of its duration has teemed with fresh proofs of its utility and its blessings. And although our territory has stretched out wider and wider, and our population spread farther and farther, they have not outrun its protection or its benefits. It has been to us all a copious fountain of national, social, and personal happiness.

I have not allowed myself, sir, to look beyond the Union, to see what might lie hidden in the dark recess behind. I have not coolly weighed the chances of preserving liberty when the bonds that unite us together shall be broken asunder. I have not accustomed myself to hang over the precipice of disunion, to see whether, with my short sight, I can fathom the depth of the abyss below; nor could I regard him as a safe counselor, in the affairs of this government, whose thoughts should be mainly bent on considering, not how the Union should be best preserved, but how tolerable might be the condition of the people when it shall be broken up and destroyed.

While the Union lasts, we have high, exciting, gratifying prospects spread out before us, for us and our children. Beyond that, I seek not to penetrate the veil. God grant that in my day, at least, that curtain may not rise. God grant that, on my vision, never may be opened what lies behind. When my eyes shall be turned to behold for the last times the sun in heaven, may I not see him shining on the broken and dishonored fragments of a once glorious Union; on states dissevered, discordant, belligerent; on a land rent with civil feuds, or drenched, it may be, in fraternal blood ! Let their last feeble and lingering glance rather behold the gorgeous ensign of the republic, now known and honored throughout the earth, still full high advanced, its arms and trophies streaming in their original luster, not a stripe erased or polluted, nor a single star obscured, bearing for its motto no such miserable interrogatory as, What is all this worth? nor those other words of delusion and folly, Liberty first, and Union afterward; but everywhere, spread all over in characters of living light, blazing on all its ample folds, as they float over the sea and over the land, and in every wind under the whole heavens, that other sentiment, dear to every true American heart—Liberty and Union, now and forever, one and inseparable!