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NEW ELECTION OF GOVERNOR.

(DEBATE CONTINUED.)

Mr. Breckenridge's argument in reply.

I confess, Mr. Speaker, that I feel very little encouraged further to urge the discussion of this question. The vote which was taken on yesterday in the committee of the whole, is decisive of the sense of the house; and a doubt can scarcely exist of the adoption of the amendment submitted by the gentleman from Bourbon. It is not for victory, therefore, that I contend. Duty alone prompts me to rise. The resolution which I had the honor to offer, was not obtruded into this assembly upon slight consideration. It was the result of patient reflection and laborious research; sanctioned, as was believed, by a rational interpretation of the constitution, and calculated to secure the just rights of the community. It is due then to my own character and pretensions that I should defend a proposition on which I have staked my judgment and consistency; that I should vindicate those great principles of freedom which I conceive are about to be perverted, & advocate, even in opposition to the representatives of the people, what I believe to be the people's rights.

In the investigation of a subject so solemn and interesting, it was surely to have been expected that gentlemen would have progressed with a temperance of expression and dignity of deportment; with a liberality of indulgence and candor in reply, suited alike to the magnitude of the question, and the delicacy of the station we in common occupy. Such a course was recommended in the opening of the argument, by a studied avoidance of every expression and allusion which might wound the feelings of individuals, or give to the measure an appearance of personality. It is greatly to be regretted that so many of the gentlemen who have favored the house with their views on this occasion, should have consulted their feelings rather than their understandings, and have substituted declamation for argument. Far from meeting the advocates for a new election in manly argument on the great constitutional question involved in the discussion, they have either assumed the unconstitutionality of such election, and eloquently inveighed against the attendant horrors of anarchy and misrule; or adopting the maxim, that ridicule is the test of truth, have adroitly attempted to supply by sarcasm, the deficiency of argument. I will own sir, that it is easier to laugh than to reason.—

Even the gentleman from Nelson, in the consciousness of his strength, and the display of those great talents which shed a perpetual lustre around the cause he advocates, has stooped to consider the resolution which led to this debate, as the mere project of a boy, whose more matured intellect will not fail to reprehend the juvenile political aberration. My friend, in the luxuriance of his fancy and the versatility of his genius, has blended fiction with argument, and added prophecy to eloquence. No sally of wit too playful for his mirth; no affective dispensation too sad for his solemnity. With remorseless hand he invades the mansions of the tomb; conjures up the names of the honored dead, and, as if to paralyze the energies of the child, makes the spirit of a venerated father sit before the vision of his son! Why seek, in the elucidation of an abstract principle, to array against each other beings who are united by the indissoluble ties of nature? Why institute comparisons as injurious as unnatural? Why insinuate an oppugancy of opinion without reason and without support? Suffer me to interpret for the gentleman the views and principles of one, whose memory he so much honors by his praises, and whose feelings and sentiments it was once my delightful task to catch: shall I blush to own that my bosom even now swells with the proud consciousness of acting upon those lessons which in my childhood he taught? O no! For me thinks if it be allowed the sainted spirit

of the just to regard the affairs of earth, that the revered being whom it has been the study of my life to imitate, beholding the first and noble efforts of his offspring, standing almost alone in the midst of the councils of his country, asserting the right of free suffrage, and defending the liberties of the people against the odious doctrine of constructive power, would own, & approve, and bless! But, sir, I am sensible that I have already too long pursued the example of gentlemen in travelling out of the question in debate.

A writ of election ought to issue, or it ought not. The constitution either does or it does not authorize it. If it be unauthorized by the constitution, the legislature has merely to abstain from the assumption of the power.— Subsequent legislatures will be left free to act, and a more enlightened & equally conscientious assembly may not hesitate, from the influence of new lights and more matured reflection, to enact a law in furtherance of the true principles of the constitution, providing for a new election. Is it decent, is it respectful to seize on a particular case for the expression of opinions, which cannot fail to fetter and embarrass, without restraining from action those who are to come after us, and whose duty it may be to guard, by general provisions, against future occurrences of a similar nature? Are the declarations contained in the substituted resolution at all necessary for the decision of this question? When the gentleman from Bourbon tells us "That the present lieut. governor is entitled to hold, by constitutional right, the office of governor during the whole period of time for which his late excellency George Madison was elected, and that no provision can be made by law for holding an election to supply the vacancy," does he imagine that this legislative dictum will settle the question? Suppose it does not?—Then it is useless and unnecessary.— Suppose it does? Then is this legislature guilty of an usurpation of the rights of their constituents? It is not denied that this topic greatly divides the sentiments of the people. It will not be denied that they only can elect a governor. Will gentlemen then, upon a question at least doubtful, question whose advocates multiply in proportion as it is agitated; a question of immense importance & of extreme delicacy; on which there has been no fair expression of public opinion; and from the decision of which by this house a future appeal may be taken? Will gentlemen presume to pledge the support of their constituents and of their government in the establishment of a power, which the sovereignty of Kentucky may to-morrow declare illegitimate? Will they dare to snare from the investigation of the people the charter which confers all authority on their servants, and thus by proclamation create a governor? And will they after all this modestly denounce, as the enemies of order, of law and of the constitution, the men who, in opposition to such self-creating power, are solicitous only that the officers of the government should owe their elevation to the suffrage of their fellow-citizens, and not to the ambiguity of a phrase, or the mere force of construction!

I deny, Mr. Speaker, that the opposers of a new election have fairly met this question. They either admit our premises and deny our conclusions, or taking it as a position conceded, that a new election is unconstitutional, their reasonings have been directed against the commission of such an outrage.— Suffer me briefly to recapitulate the grounds on which we rely, and to examine how far the arguments adduced have been noticed and refuted.

I had always thought, until I heard the erudite preamble to the substitute under consideration, that all power was inherent in the people; that they exercised it by their agents, not because they had not a right to exercise it in person, but because it was impossible to do so; and that all magistrates under the control of a limited constitution, were to look to the plain declarations of such constitution for the authority which they exercised. We are informed, however, that "the people in convention assembled, have seized upon, secured and provided for many of their rights and privileges, and restrained the departments of government," &c. Such language might be appropriate in the parliament of Great Britain; it might come well from an English orator descending on the magna charta, which the valor of his ancestors wrung from the fears and necessities of a tyrant; but in a land of freedom where the people have voluntarily conceded so much of their sovereignty as is merely adequate to sustain the fabric of government, and

where rulers are dependent on the people, and not the people upon their rulers, it is a gross perversion of every idea suggested by the structure of a free constitution. What is a constitution? The mighty will of the people expressed in rules of fundamental law. It is a will paramount and permanent, binding on the very power that forms and expresses it. What are the uses of a constitution? To organize government; distribute its powers; guard against ambition, and provide a mode of reform other than revolution. Is not every constitutional officer the creature of the constitution? Will any officer created by that instrument dare to transcend the powers prescribed him? Does the constitution of Kentucky contain a single prohibitory clause in relation to the executive department? Not one. I ask then under what pretext is that an executive officer can be justified in the exercise of powers not given him by the constitution? I am not to prove that the lieut. governor is prohibited from serving out the full term for which a governor, deceased, was elected. The constitutional provisions on this head are all affirmative, and it follows, that nothing less than an express declaration can transform a lieut. governor into a real governor. Very different are the provisions of our constitution concerning the legislative department of our government. There we find terms of negation.— There we meet with exceptions and reservations; certain acts are forbidden; all else not inconsistent with the principles and expression of the constitution, it is competent for this legislature to do. I do not hesitate, therefore to say, that it is from the constitution and not from the constitution that I derive the power with which I am invested. There are specific acts which the representative may not indulge in. There are stretches of power in the indulgence of which he dare not engage. They are enumerated. Surely it will not be contended that the people in their constitution gave away all their powers, or prohibited to themselves the exercise of them all? Now whatever powers they have, at least, for all the ends of legislation, and he may constitutionally do that which the residuary powers of his constituents would authorize them to perform. If then all powers contained in the constitution were given by the people; if all powers not given were retained, and if they have not conferred upon the lieut. governor in certain contingencies the powers of a governor; then he ought not to exercise them. But it is admitted by the friends of a new election, that the lieut. governor may constitutionally exercise the duties appertaining to the office of governor until the vacancy can be supplied by the election of another governor. To provide for that election is the object of the resolution I had the honor to move; and to prove that the legislature not only has the power, but is bound by the most solemn obligations of duty, to pass a law giving efficacy to the provisions of the constitution, has been my aim and effort.

Against the doctrine, that we bring with us the sovereignty of the people, and have power to pass any law not repugnant to or inconsistent with their will, the gentleman from Barren (Mr. Monroe) most solemnly protests.— That we derive our powers from our election and not from the constitution, is a doctrine at which he shudders. Permit me to explain to that gentleman the distinction between a government of original and a government of delegated powers. In the former the representative represented all the powers of the people. They retain all that have not been given away or interdicted to their exercise in the constitution, all of which, for them, may be exercised by their representatives.— The Representatives then has only to ask, is the measure forbidden by the constitution? Is it repugnant to the genius and spirit of the constitution? If it is not, I am at liberty to exercise, in its adoption, all those powers which the people have interdicted to their own use, and which they have elected me to use for them. But in a government made up of delegated powers, the representative, like the executive and judicial officer, cannot transcend the limits of the powers delegated.— What says the constitution of the United States? Congress shall have power to declare war, to lay and to collect taxes, &c. and this very enumeration of powers is a negation of all others not expressly given. The federal government was constituted for special purposes. Powers adequate to these purposes were conferred upon its officers; when they are found to be incomplete, there is no great original

reservoir of power from which they can receive additional supplies.

My friend from Barren (Mr. Underwood) objects to arguments drawn from analogy. He is unwilling to enter into a dissertation on the distribution of powers, and thinks it wholly unimportant to enquire which of the three departments possesses the greatest aptitude for usurpation. Holding the constitution in his hand, he declares it to be the only authority which deserves to be consulted. He would decide upon the constitution, I presume, as he would upon a deed or charter of incorporation, merely by inspection.— For my own part I must consider this a course too hazardous to venture on.— We are all laboring to ascertain the true meaning of the constitution. Its provision be ambiguous; if its expressions be obscure, how are we to come at the intention of its framers but by an attentive investigation and impartial comparison of the circumstances and causes which conspired for its adoption? How are we better to reach the design of the convention but by considering the evil that was to be remedied; the nature of the proposed remedy and the general reason, which would most obviously suggest themselves in favor of its selection?

What then were the circumstances which produced the convention? The people were dissatisfied with the old constitution. They saw almost every exertion of their power stopping short of the end they wished it to produce. They say the influence of popular elections on their public servants weakened or destroyed, by reason of the distance to which they were removed from the great mass of voters. An intermediate body of men perpetually interposed between the people and their most permanent and powerful functionaries, gave away at pleasure the highest offices of state.— The supreme executive thus chosen, with a senate similarly created, and having authority to supply its own vacancies, to counsel and advise him in the appointment of judicial and ministerial officers; had a vote on the proceedings of the legislature, which could be obtained only by a majority of two thirds. They were determined to take elections into their own hands, and thus render every officer of government responsible more directly to themselves. So far did this determination carry them that they have unfortunately impaired the independence of the judiciary. The existing evil, therefore, was, that the old constitution was not sufficiently democratic; and the remedy is, the establishment of popular elections. The aristocratic features are taken away. The governor is chosen, not by electors, but by the people. Senators are elected in the same way.— The veto of the former cannot control a bare majority; and the latter can no longer fill vacancies in their own body. This argument drawn from the old constitution is entitled to high consideration. Yet gentlemen have not pretended to answer it. Among the many who have spoken, one only, the gentleman from Scott has even alluded to it. Silence is politic when investigation would be defeat.

We are now to enquire why the convention did so frame the new constitution as to render it more democratic than the old? Why they made the governor and senate directly responsible to the people. Why they abolished the self-creating power of the one, and weakened the destroying power of the other? It was in obedience to the strong admonitions of experience. It was in consonance with the views of the most enlightened statesmen, and in accordance with the principles taught by the wisest legislators.— What are those principles? Are we not necessarily led to investigate them? and will my friend from Barren pretend, that without an acquaintance with them, we are prepared to interpret the constitution?

The tendency of power long exercised by the same hands, to accumulate and strengthen itself, is attested by the history of all states of which we have the slightest notice. To avoid its undue accumulation in the hands of any individual or assembly, it has been found beneficial to divide among several departments the powers of government. Hence the establishment of the doctrine, that laws ought to be enacted, interpreted and executed, by distinct bodies. But experience has taught that a plurality of executive officers, invariably produces diversity of design, convulsion of deliberation, and imbecility of action. The best and freest governments, as well as the most vicious and despotic, are governed by a single executive chief magistrate. It will naturally strike the understanding of every reflecting man, that power thus extensively confided

to an individual, may be abused with impunity; and that public security requires it should be guarded from abuse by the clearest explanations and the strongest guards. Accordingly we find, that in all free governments, nothing is left to the discretion of the executive head—His powers and his duties are alike defined. He has only to examine the charter of his powers, to test the legality of his acts. What is commanded him to do it, is his duty to perform. Where his credentials are silent, his power is inoperative.— Yet it is amazing to reflect, that in all nations that have existed for a long time, the executive department of government, has in the end, swallowed up or corrupted all the other departments. Give to an individual as much power only as will enable him to nominate to office, and to execute the laws; and in the succession of ages his successors will rank with the princes and potentates of the earth. Such is the awful truth, established by the slavery of almost every people under the sun.— Why is it so? Why is humanity in every age and clime, destined to perish beneath the oppressor's scourge? Is it the decree of fate? Or is it the frailty of man? Alas! it is the consequence of ignorant acquiescence, imperceptibly yielding to ingenious vice. It is the chastisement of credulity—the scourge of weakness—the punishment of arrogance—the reward of pusillanimity—the trial of virtue—the shade of felicity—the light of renown.

Wherever power is confided it may be abused. Nay; wherever it is extensively exercised, it must often fail to produce the intended good, and not unfrequently to operate unintentional oppression. He who has much to do, will do something wrong; and as you extend the sphere of his action, you multiply the chances of error. He is compelled to confide in others by whom he may be deceived; and he will sometimes from partiality and affection select individuals, who are incompetent to serve him. Thus misrule will to a small extent, disfigure the administration of the wise and good. The people while they are the victims of its consequences, feel and acknowledge that it is unavoidable. This it is that the indiscretions of good men, and the inevitable inequalities which sometimes occur in the execution of the laws, may be ingeniously urged by the ambitious and designing, to extenuate their offences and justify their encroachments. But the executive department, possess a positive and superior aptitude for encroachment, in the individuality of the executive magistrate—the continuity of his power—the secrecy of combination—the unity—the promptitude, and consequent energy of execution—the patronage of office—and the allowing charms of station and authority. Gentlemen break the train of these reasonings by saying, that the governor of Kentucky has no patronage, no power; that of all creatures he is the most harmless and innoxious; that he cannot commission even a justice of the peace, without the advice and consent of the senate! I beg leave to recommend to my friend from Washington and to other gentlemen who have fallen into similar mistakes, to examine the constitution before they again attempt to expound it.— My friend from Shelby, who exults in the concession that under the provisions of the constitution of the United States, the Vice-President, serves out the full term for which the President dec'd was elected, will profit equally by a comparison of the two instruments. When I first addressed the committee on this subject, I assigned the reasons of the variance in the state and federal constitutions. I consider them conclusive, and shall not repeat them in the house.— Why, gentlemen ask this fear of executive encroachment? Are executive magistrates worse than the members of the legislature? Sir, I would resist with equal zeal an attempt on the part of the legislature to exercise powers not allowed them by the constitution. But the gentleman from Shelby declaims against those who are over jealous of encroachment. He contends that more danger is to be apprehended from the legislative than executive department, in a free country. To prove this he instances the passage of the late compensation law by congress. That law it is true was an obnoxious one.— What was the consequence? The people in the different states, from one end of the continent to another, turned out of office, with a very few exceptions those members who voted for it. Nay; in some instances they turned out those who opposed the measure, and were suspected of hypocritical and time serving motives—so determined were they to purge congress of all those who had offended. They accused their representatives in congress