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REPORTS

AND

PUBLIC LETTERS

OF

JOHN C. CALHOUN.

EDITED BY

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ONSLOW TO PATRICK HENRY,

On the Powers of the Vice-President, as President of the Senate.

[NOTE.—The following correspondence grew out of the failure of Mr. Calhoun, as President of the Senate, to call Mr. Randolph, of Va., to order, during the delivery of his celebrated Retrenchment Speech, in which he indulged in certain remarks highly offensive to the Administration, and especially to Mr. J. Q. Adams (the President,) and Mr. Clay, his Secretary of State. The former resorted to the newspapers, under the signature of "PATRICK HENRY"—and arraigned the Vice-President (Mr. Calhoun) for neglect of duty; while the latter appealed to the *duello*, and called Mr. Randolph to the field. The letters of "Onslow" (Mr. Calhoun) contain, in a brief space, a clear and forcible exposition of the power of the President of the Senate in questions of order.—EDITOR.]

No. I.

If rumor may be credited, I may be proud in having you as an antagonist [Mr. A., the President of the United States]; and if I were actuated by a sentiment of vanity, much of my reply would be devoted to tracing the strong, but, perhaps, accidental analogy between the style of your numbers and some of our public documents. But truth, and not the gratification of vanity, is my object; and though the pride of victory would be swelled in proportion to the high standing of an opponent, I shall, without stopping to inquire into the question of authorship, proceed directly to the point at issue.

If you have failed in your argument, you have at least succeeded in giving the question a new and interesting aspect. You have abandoned the rules and usages of the Senate, as the source of the Vice-President's authority as the presiding officer of the Senate. You contend that the disputed right is derived directly from the Constitution, and that the Vice-President's authority is wholly independent of the *will* of the Senate, which can neither give nor take it away. It is not my wish to misstate your arguments in the slightest degree, and, to avoid the possibility of misrepresentation, you shall speak for yourself. Spurning the authority of the Senate, you scornfully observe:—

"With the easy assurance of a man stating a conceded postulate, he (Onslow) says, 'After all, the power of the Vice-President must depend upon the rules and usages of the Senate:' a postulate not only false in its principle, but which, if true, would not sustain the cause to whose aid it is invoked. Unless the Constitution of the United States was subjected to some military construction, the power of the Vice-President, in presiding over the Senate, rests on deeper, holier foundations than any rules or usages which that body may adopt. What says the Constitution? 'The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided.' 'The Senate shall choose their own officers, and also a President pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.'—(Const. U. S. Art. 1. Sec. 3.) It is here made the duty of the Vice-President to preside over the Senate, under the sole restriction of having no vote except in a given case; the right of the Senate to choose their President is confined to two contingencies; his powers, after being so chosen, are identical with those of the President set over them by the Constitution, and any abridgment of those powers by the Senate would be a palpable infraction of that Constitution. Now, sir, what is the import of the term 'to preside,' in relation to a deliberative assembly? Can any sophistry devise a plausible definition of it, which would exclude the power of preserving order? In appointing an officer to preside over the Senate, the people surely intended not to erect an empty pageant, but to accomplish some useful object: and when in another part of the Constitution, they authorize each house 'to determine the rules of its proceedings,' they do not authorize it to adopt rules depriving any office created by the Constitution of powers belonging, *ex vi termini*, to that office. If the plainest or most profound man in the community were asked what powers he supposed to be inherent in the presiding officer of either House of Congress, he would instantly enumerate—First, the power of preserving order in its deliberations; next, that of collecting the sense of its members on any question submitted to their decision; and, thirdly, that of authenticating, by his signature, their legislative acts. I have before said, and I regret that I am obliged to repeat a truism, that 'the right to call to order is a necessary consequence of the power of preserving order;' and that, 'un-

less a deliberative body, acting within the sphere of its competence, expressly restrict this power and this right, no restriction on them can then be supposed.' In divesting the President set over them by the people, of any power which he had received, either expressly or impliedly, from the people, the Senate, instead of 'acting within the sphere of their competence,' would act usurpingly and unconstitutionally—they would nullify the connection which the people had established between themselves and their President; they would reduce themselves to the monstrous spectacle of a body without a head, and their President to the equally monstrous spectacle of a head without a body; and their violent act, while it would be disobeyed as illegal, would be contemned as ridiculous. But, in truth, the Senate have never thus forgotten their allegiance to the Constitution."

There can be no mistake as to the source or the nature of the power, according to your conception. You tell us plainly that it rests "on a deeper, holier foundation" than the rules of the Senate—that it is "inherent in the Vice-President, and that, as presiding officer, he possesses it *ex vi termini;* that an attempt to divest, and, of course, to modify the power 'by the Senate, would be to act' usurpingly and unconstitutionally," and that "such violent act would be disobeyed as illegal, and contemned as ridiculous."

These are, at least, lofty grounds, and if they can be maintained, there is an end of the controversy. It would be absurd to go farther. An inquiry into the rules and usages of the Senate, after such grounds are occupied, becomes ridiculous, and much more so an inquiry into those of the houses of Parliament: for surely, if it is beyond the power of the Senate to give or withhold the right, it must stand on an elevation far above parliamentary rules or usages; and I was, therefore, not a little surprised to find that, after so bold an assertion, more than four fifths of your long and elaborate essay were devoted to a learned and critical inquiry into these very rules and usages. There can be but one explanation of so strange an inconsistency, but that a very satisfactory one. You lack confidence in your own position; and

well might you, for, surely, power so despotic and dangerous, so inconsistent with the first principles of liberty, and every sound view of the Constitution, was never attempted to be established on arguments so imbecile and absurd; to which no intellect, however badly organized, could yield assent, unless associated with feelings leaning strongly to the side of power. That such are your feelings, no one who reads your essay can doubt. None of your sympathies are on the Democratic side of our institutions. If a question be made, as to where power is lodged, it requires but little sagacity to perceive, that you will be found on the side which will place it in the fewest and least responsible hands. You perceive perfection only in the political arrangement, which, with simplicity and energy, gives power to a single will. It is not, then, at all surprising, that you should seize on that portion of the Constitution which appoints the Vice-President to be President of the Senate; and that you should quote it at large, and dwell on it at length, as the source of high and uncontrollable power in that officer; while you have but slightly and casually adverted to another section in the same article, which clothes the Senate with the power "of determining the rules of their proceedings, punishing its members for disorderly conduct, and, with the concurrence of two thirds, of expelling a member."—(See Art. 1, Sec. 5.) Had your predilections for the unity and irresponsibility of power been less strong, you could not have failed to see, that the point of view in which you have thought proper to place the question, made it one of relative power between the Senate and its presiding officer. You place the Vice-President on one side, and the Senate on the other; and the more you augment the constitutional power of the former, as the presiding officer, just in the same proportion you diminish the power of the latter. What is gained to the one is lost to the other; and in this competition of power you were bound to present fully and fairly both sides. This you have not done; and,

consequently, you have fallen, not only into gross, but dangerous errors. You set out by asserting that the very object of the appointment of the Vice-President as President of the Senate was, to preserve order; and that he has all the powers, *ex vi termini*, necessary to the attainment of the end for which he was appointed. Having gained this point, you make your next step,—that the right of enforcing order involves that of calling to order; and this again involves the very power in question, which the Vice-President declined to exercise. You then draw two corollaries:—that the power held by the Vice-President, being derived direct from the Constitution, is held independently of the Senate, and is, consequently, beyond their control or participation; and that, as the Vice-President alone possesses it, he, and he alone, is responsible for order and decorum. Such is the summary logic, which you accompany with so much abuse of Mr. Calhoun for not calling the power, which you have, as you suppose, clearly proven he possesses by the Constitution, into active energy, by correcting and controlling, at his sole will and pleasure, the licentious and impertinent debates of Senators.

Let us now turn the same mode of reasoning on the side of the Senate, and you will perceive that it applies with infinitely more force, though you have not thought it deserving of notice.

The Constitution has vested the Senate with the right of determining the rules of its proceedings, and of punishing members for disorderly conduct, which may extend even to expulsion. The great object of giving the power to establish rules is to preserve order. The only effectual means of preserving order is, to prescribe by rules, what shall be a violation of order; and to enforce the same by adequate punishment. The Senate alone has these powers by the Constitution: consequently, the Senate alone has the right of enforcing order, and, consequently, whatever right the Vice-President possesses over order, must be derived from the Senate; and,

therefore, he can exercise no power in adopting rules or enforcing them, but what has been delegated to him by the Senate, and only to the extent, both in manner and matter, to which the power has been delegated. The particular power in question, not having been delegated, cannot be exercised by the Vice-President; and, consequently, he is not responsible. Do you not perceive the irresistible force with which your own mode of reasoning applies to the substantial constitutional powers of the Senate, and how partial and absurd your arguments in favor of the inferred constitutional power of its presiding officer, must appear in contrast with it? As absurd as it now appears, it shall be, if possible, infinitely more so, before I have closed this part of the investigation.

With the same predilection, your assumptions are all on the side of uncontrolled and unlimited power. Without proof, or even an attempt at it, you assume, that the power in controversy is *inherent* in the Vice-President; and that he possesses it *ex vi termini* as presiding officer of the Senate. Now I, who have certainly as much right to assume as yourself, deny that he possesses any such power; and what may, perhaps, startle a mind organized like yours, I affirm that, as presiding officer, he has no inherent power whatever, unless that of doing what the Senate may prescribe by its rules, be such a power. There are, indeed, inherent powers; but they are in the *body*, and not in the *officer*. He is a mere agent to execute the will of the former. He can exercise no power which he does not hold by delegation, either express or implied. He stands in the same relation to the body, or assembly over which he presides, that a magistrate, in a republic, does to the state; and it would be as absurd to attribute to the latter inherent powers as to the former. This, in fact, was once a fashionable doctrine. There was a time, when minions of power thought it monstrous, that all the powers of rulers should be derived from so low and filthy a source as the people whom they governed. "A deeper and

holier foundation" of power was sought; and that was proclaimed to be in the "inherent," divine "right of rulers;" and, as their powers were thus shown to be independent of the will of the people, it followed that any attempt on their part to divest rulers of power, would be an act of "such violence, as would be disobeyed as illegal, and contemned as ridiculous." I might trace the analogy between your language and principles and those of the advocates of despotic power in all ages and countries, much farther; but I deem it not necessary, either to weaken or refute your argument. A more direct and decisive reply may be given.

An inherent power is one that belongs essentially to the office, and is, in its nature, inseparable from it. To divest the office of it would be to change its nature. It would be no longer the same office. It is, then, a power wholly independent of the circumstances how the office may be created or filled, or in what particular manner its functions may be exercised. If, then, the power belongs to the Vice-President inherently, as presiding officer of the Senate, it is because it is essentially attached to the mere function of presiding in a deliberative assembly, and, consequently, belongs to all presiding officers over such assemblies; for it would be absurd to assert that it is inherent in him as President of the Senate, and then make it depend on the circumstance that he holds his appointment to preside in the Senate by the *Constitution*. The high power, then, which you attribute to the Vice-President, must belong, if your argument be correct, to the Speaker of the House of Commons, to the Lord-Chancellor, as presiding officer of the House of Lords, to the Speaker of the House of Representatives, and those of our State Legislatures. They must not only possess the power, but must hold it independently of the will of the bodies over which they preside; which can neither give nor take it away, nor modify the mode of exercising it, nor

control its operation. These consequences, absurd as they appear to be, are legitimately drawn from your premises.

Now, "out of thine own mouth I will condemn thee;"—by your own authorities you shall be refuted. To prove that the Vice-President possesses this power, you have labored to establish the fact that the Speaker of the House of Commons holds and exercises it, and in proof of which you have cited many cases from Jefferson's Manual.

It is true that he has, at least to a certain extent, but how has he acquired it? This is the important inquiry in the point of view in which we are now considering the question. Is it inherent, or is it delegated? If the former, I acknowledge that your argument from analogy, in favor of the inherent power of the Vice-President, would have much force; but, if the latter, it must utterly fail; for, if delegated, it clearly establishes the fact that the power is in the *body*, and not in the *presiding officer*, and, consequently, not inherent in the Vice-President, as you affirm. The instances you have cited shall decide the point. What say the cases? "On the 14th of April, 1604, rule conceived, that if any man speak impertinently, or beside the question in hand, it stands with the *orders of the House* for the Speaker to interrupt him, and to show the *pleasure of the House*, whether they will farther hear him." "On the 17th of April, 1604, agreed for a general rule, if any superfluous motion or tedious speech be offered in the House, the party is to be directed and ordered by Mr. Speaker." "On the 19th of May, 1604, Sir William Paddy entering into a long speech, *a rule agreed*, that, if any man speak not to the matter in question, the Speaker is to moderate." So it is said on the 2d of May, 1610, when a member made what seemed an impertinent speech, and there was much hissing and spitting, "that it was *conceived for a rule*, that Mr. Speaker may stay impertinent speeches." "On the 10th of November, 1640, it was declared that, when a business is

begun and in debate, if any man rise to speak to a new business, any member may, but Mr. Speaker ought to, interrupt him."—*See Hatsell's Precedents*, vol. ii., 3d edition.

Do you not notice, that in every case the power was delegated by the House; that the language is, "rule conceived," "it was agreed to as a general rule," "rule agreed," &c., &c.; and this, too, in relation to *the very power in question, according to your own showing?* Thus it is established, beyond controversy, that in the House of Commons the power is really in the body, and not in the presiding officer.

If, to this decisive proof that the power has been delegated to the Speaker of the House of Commons, and is, consequently, not inherent, we add that it is conferred on the Speaker of the House of Representatives (see 19th rule) by an express rule of the House, and that the Lord Chancellor, as presiding officer in the House of Lords, possesses it not, either ex officio or by delegation, as shall be shown hereafter, your monstrous and slavish doctrine, that it is an inherent power, will be completely overthrown, and you are left without the possibility of escape.

Should you attempt to extricate yourself by endeavoring to show that, under our Constitution, the relative powers of the Vice-President and the Senate are different from those of the Speaker and the House of Commons; and that, though the latter may hold the power by delegation from the body, that the Vice-President may possess it by a different and higher tenure, it would, at least, prove that you cede the point that it is not inherent, and, also, that it cannot be deduced from analogy between the *powers* of the two presiding officers, which you have so much relied on in another part of your essay. But this shall not avail you. The door is already closed in that direction. It has been, I trust, conclusively proved that the Constitution, so far from countenancing the idea of the power being inherent in the

Vice-President, gives it to the Senate, by the strongest implication, in conferring the express right of establishing its own rules, and punishing for disorderly conduct. If you are not yet convinced, additional arguments are not wanting, which, though they may not extort an acknowledgment of your error, will thoroughly convince you of it.

You have overlooked the most obvious and best-established rules of construction. What are the facts? The Constitution has designated the Vice-President as President of the Senate, and has also clothed that body with the right of determining the rules of its proceedings. It is obvious that the simple intention of the framers of that instrument was to annex to the office of Vice-President that of President of the Senate, without intending to define the extent or the limit of his power in that character; and, in like manner, it was the intention to confer on the Senate simply the power of enacting its own rules of proceeding, without reference to the powers, such as they may be, that had been conferred on their presiding officer. The extent of power as between the two becomes a question of construction. Now the first rule of construction, in such cases, is the known usage and practice of parliamentary bodies; and, as those of the British Parliament were the best known to the framers of the Constitution, it cannot be doubted that, in determining what are the relative powers of the Vice-President and the Senate, they ought to prevail. Under this view, as between the Vice-President and Senate, the latter possesses the same power in determining its rules that is possessed by the Houses of Parliament, without being restricted in the slightest degree by the fact that the Vice-President, under the Constitution, is president of the body, saving only the right of adopting such rules as apply to the appointment or election of a presiding officer, which the Senate would have possessed, if the Constitution had not provided a president of the body; and, as I have proved,

from your own cases, that the particular power in question incontrovertibly belongs to the House, it follows necessarily, according to established rules of construction, that the Senate also possesses it.

You have overlooked these obvious truths by affixing too high an idea to the powers of the presiding officer in preserving order. According to your conception, the House is nothing, and the officer every thing on points of order. Nothing can be more erroneous. The power you attribute to him has never been possessed by the president, or speaker, in any deliberative assembly; no, not even by delegation from the body itself.

The right of preserving order must depend on the power of enforcing it, or of punishing for a breach of order—a right *inherent* in the *House alone*, and never, in any instance, delegated to the chair. Our Constitution confines this right to each House of Congress, by providing "that they may punish for disorderly conduct,"—a power which they neither have delegated, nor can delegate, to the presiding officer. What, then, is the right of preserving order, belonging to the Vice-President, which you have so pompously announced, and for not enforcing which, according to your conception, you and your associates have denounced Mr. Calhoun almost as a traitor to his country?

It is simply the right of *calling* to order, *in the strict, literal meaning;* and, so far from being derived from the right of preserving order, as you absurdly suppose, it is not even connected with it. The right of *preserving order depends on the right of enforcing it*, or the *right of punishment for breaches of order*, always possessed by the body, but never, either by delegation or otherwise, by the chair. It is notorious that the chair cannot enforce its calls to order. The body alone can, and that only on its decisions, and not on that of the presiding officer. It is thus manifest, the high right of preserving order, to which you make the right

of calling to order incidental, belongs especially to the Senate, and not to the Vice-President; and, if your argument be correct, the incident must follow the right; and, consequently, it is the right and duty of a Senator to call to order for disorderly conduct. So clear is the proposition, that, if the member called to order by the chair for disorderly conduct chooses to persist, the presiding officer has no other remedy but to *repeat his call, or throw himself, for the enforcement of it, on the Senate.* This feebleness of the chair, in questions of order, explains why there has always been such indisposition to call to order, even when it is made the express duty by rule, as in the House of Representatives, and the House of Commons in England. Thousands of instances might be cited to establish the truth of this remark, both there and here: instances in which all that has been said and uttered by Mr. Randolph is nothing, but in which the Speaker waited for the interference of some of the members, in order to preserve order. Such was the case in the recent occurrence in the House of Commons, when Mr. Hume made an attack on the Bishop of London and the Lord Chancellor, both of whom, as members of the House of Lords, were under the protection of positive rules; yet no one, even there, had the assurance to throw the responsibility on the presiding officer. The partisans of power in our country have the honor of leading in these new and dangerous attacks on the freedom of debate.

Some men, of honest intention, have fallen into the error about the right of the Vice-President to preserve order independently of the Senate, because the judges, or, as they express it, the presiding officers in the courts of justice possess the right. A moment's reflection will show the fallacy. There is not the least analogy between the rights and duties of a judge and those of a presiding officer in a deliberative assembly. The analogy is altogether the other way. It is between the court and the House. In fact, the latter is often

called a court, and there is a very strict resemblance, in the point under consideration, between what may be called a parliamentary court and a court of justice. They both have the right of causing their decision to be respected, and order and decorum to be observed in their presence, by punishing those who offend. But who ever heard of the Speaker or Vice-President punishing for disorderly conduct? The utmost power they can exercise over disorderly conduct, even in the lobby or gallery, is to cause it to be suppressed, for the time, by the sergeant-at-arms.

Enough has been said, though the subject is far from being exhausted, to demonstrate that your views of the relative powers and duties of the Vice-President and the Senate, in relation to the point in question, are wholly erroneous It remains to be shown that your opinions (for arguments they cannot be called) are dangerous to our liberty, and that they are in conflict with the first principles of our Government. I do not attribute to you, or those with whom you are associated, any deep laid design against public liberty. Such an attempt, as flagitious as it may be, requires a sagacity and boldness quite beyond what we have now to apprehend from those in power. But that there exists, at the present time, a selfish and greedy appetite to get and to hold office, and that, to effect these grovelling objects, doctrines slavish and dangerous are daily propagated, cannot be doubted by even careless observers. The freedom of debate is instinctively dreaded by the whole corps, high and low, of those who make a speculation of politics; and well they may: for it is the great and only effectual means of detecting and holding up to public scorn every machination against the liberty of the country. It ranks first, even before the liberty of the press, the trial by jury, the rights of conscience, and the writ of habeas corpus, in the estimation of those who are capable of forming a correct estimate of the value of freedom, and the best means of preserving it.

Against this palladium of liberty your blows are aimed; and, to do you justice, it must be acknowledged, if the energy be not great, the direction is not destitute of skill. If you could succeed in establishing the points which you labor, that the Vice-President holds a power over the freedom of debate, under the right of preserving order, beyond the will or control of the Senate; and that, consequently, he alone is responsible for what might be considered an undue exercise of the freedom of speech in debate, a solid foundation would be laid, from which, in time, this great barrier against despotic power would be battered down. It is easy to see that the scheme takes the power of protecting this, the first of its rights, wholly out of the hands of the Senate, and places its custody in the hands of a single individual, and he in no degree responsible to the body over which this high power is to be exercised: thus effectually destroying the keystone of freedom—responsibility—and introducing into a vital part of our system uncontrolled, or, what is the same thing, despotic power; which, being derived, by your theory, from the Constitution, and being applicable to all points of order, necessarily would vest in the Vice-President alone an independent and absolute power, that would draw into the vortex of his authority an unlimited control over the freedom of debate.

Mark the consequences! If the Vice-President should belong to the same party or interest which brought the President into power, or if he be dependent on him for his political standing or advancement, *you will virtually place the control over the freedom of debate in the hands of the Executive.*

You thus introduce the *President*, as it were, into the *chamber of the Senate, and place him virtually over the deliberation of the body, with powers to restrain discussion, and shield his conduct from investigation.* Let us, for instance, suppose that the present chief magistrate should be

re-elected, and that the party which supports him should succeed, as, in all probability, they would in that event, in electing also their Vice-President, can it be doubted that the rules for the restraint of the freedom of debate in the Senate, which have been insisted on openly by the party during the last winter, would be reduced to practice, through a subservient Vice-President? And what are those rules? One of the leading ones, to advert to no other, is, that the conduct of the Executive, as a co-ordinate branch of that Government, cannot be called in question by a Senator in debate, at least so far as it relates to impeachable offences; and, of course, *an attempt to discuss the conduct of the President, in such cases, would be disorderly, and render the Senator liable to be punished, even to expulsion.* What would be the consequence? The Senate would speedily sink into a body to register the decrees of the President and sing hosannas in his praise, and be as degraded as the Roman Senate under Nero.

But let us suppose the opposite state of things, in which the Vice-President chooses to pursue a course independent of the will of the Executive, and, instead of assuming so dangerous an exercise of power, he should indulge (for indulgence it must be called, if allowed by his courtesy) that freedom of debate which exists in other deliberative assemblies. What will then follow? Precisely that which occurred last winter. Most exaggerated and false accounts would every where be propagated, by hirelings of power, of the slightest occurrence in the Senate: The public indignation would be roused at the supposed disorder and indecorum, and the whole would be artfully directed against the Vice-President, in order to prostrate his reputation; and thus an officer, without patronage or power, or *even the right of defending himself*, would be the target against which the whole force and patronage of the Government would be directed. Few men would have the firmness to ecounter danger so tremendous; and the practical result in the long run, must be a subservient yielding to the Executive will.

ONSLOW.

No. II.

Having now established, I may venture to say beyond the possibility of reasonable controversy, that the idea of an inherent right in the Vice-President, independent of, and beyond the will of the Senate, to control the freedom of debate, is neither sanctioned by the Constitution, nor justified by the relation between the body and its presiding officer, and that it is subversive of the right of free discussion, and, consequently, dangerous to liberty, I might here fairly rest the question. To you, at least, who treat with scorn the rules and usages of the Senate, as the source of the power of the Vice-President, all further inquiry is fairly closed. But as many, who may agree with you in the conclusion, may treat with contempt your high-strained conception of the origin of the power under investigation, it will not be improper to ascertain whether it has been conferred on the Vice-President by any act of the Senate, express or implied, the only source whence the power can be fairly derived. In this view of the subject, the simple inquiry is, Has the Senate conferred the power? It has been fully established that they alone possess it, and, consequently, from the Senate only can it be derived. We, then, affirm that the Senate has not conferred the power. The assertion of the negative, in such cases, is sufficient to throw the burden of proof on those who hold the affirmative. I call on you, then, or any of your associates, to point out the rule or the usage of the Senate by which the power has been conferred. None such has, or can be designated.

If a similar question be asked as to the power of the Speaker of the House of Representatives, how easy would

be the reply? The 19th rule, which expressly gives the power to him, would be immediately quoted; and, if that were supposed to be doubtful, the journal of the House would be held up as containing innumerable instances of the actual exercise of the power. No such answer can be given when we turn to the power of the Vice-President. The rules are mute, and the journals of the Senate silent. What means this striking difference, but that, on this point, there is a difference, in fact, between the power of the Speaker and of the Vice-President? a difference which has been always understood and acted on; and when to this we add, that the rules of the two Houses in regard to the power are strikingly different; that, while those of the Representatives expressly delegate the power to the Speaker, those of the Senate, by strong implication, withhold it from the Vice-President, little room can be left for doubt. Compare, in this view, the 19th rule of the House and the 7th of the Senate. The former says, "If any member, by speaking or otherwise, transgress the rules of the House, the Speaker shall, or any member may, call to order: in which case the member so called to order shall immediately sit down, unless permitted to explain; and the House shall, if appealed to, decide on the case without debate; if there be no appeal, the decision of the chair shall be submitted to. If the decision be in favor of the member called to order, he shall be at liberty to proceed; if otherwise, he will not be permitted to proceed without leave of the House; and if the case require it, he shall be liable to the censure of the House." The rule of the Senate, on the contrary, provides, "If the member shall be called to order for words spoken, the exceptionable words shall immediately be taken down in writing, that the President may be better enabled to judge of the matter." These are the corresponding rules of the two Houses: and can any impartial mind contend that similar powers are intended to be conferred by them on

the Speaker and Vice-President? Or will it be insisted on that the difference in the phraseology is accidental, when it is known that they have often been revised on the reports of committees, who would not fail to compare the rules of the two Houses on corresponding subjects? Under such circumstances, it is impossible that it could be intended to confer the same power by such difference of phraseology, or that the withholding of the power in question from the Vice-President was unintentional. This rational construction is greatly strengthened, when we advert to the different relations which the two officers bear to their respective Houses. The Speaker is chosen by the House of Representatives, and is, consequently, directly responsible to the body; and his decision, by the rules, may be appealed from to the House. The Vice-President, on the contrary, is placed in the chair by the Constitution, is not responsible to the Senate, and his decision is without appeal. Need we look farther for the reason of so essential a variation in the rules conferring power on their respective presiding officers? It is a remarkable fact, that the same difference exists in the relation between the presiding officers of the two Houses of the British Parliament, and the bodies over which they respectively preside. In the Commons, the Speaker is chosen as in our House of Representatives, and is, consequently, in like manner responsible; on the contrary, in the House of Lords, the Chancellor presides *ex-officio*, in like manner as the Vice-President in the Senate, and is, in like manner, irresponsible to the body. Now it is no less remarkable that the Speaker possesses the power in question, while it is perfectly certain that the Lord Chancellor does not. Like cause, like effect; dissimilar cause, dissimilar effect. You, sir, have, it is true, made a puny effort to draw a distinction between the mode in which the Vice-President and the Lord Chancellor are appointed, and have also feebly denied that the latter has not the power of calling to order. Both

of these efforts show the desperation of your cause. What does it signify by whom an *ex officio* officer is appointed, if not by the body? There can be but one material point, and that without reference to the mode of appointment—is he, or is he not, responsible to the House? If the former, there is good cause for the delegation of the power; for power exercised by responsible agents is substantially exercised by the principal; while by irresponsible agents it is the power of him by whom it is exercised. Nor is your effort to show that the Chancellor has the power less unhappy. You have cited but one instance, and that really renders you ridiculous. The Lord Chancellor, as is well known, has the right of speaking; and you most absurdly cite the commencement of a speech of one of the Chancellors, in which he states that he would call back the attention of the Lords to the question at issue, as an instance of exercising the power of calling to order as presiding officer, for departure from the question! Though you have signally failed to prove your position, you have not less completely established the fact, that your integrity is not above a resort to trick, where argument fails. Nor is this the only instance of subterfuge. You made a similar effort to do away the authority of the venerable Jefferson. He has left on record, that he considered his power as presiding officer of the Senate as the *power of umpirage*, or, what is the same thing, an appellate power. In order to break the force of this authority, you have denied the plain and invariable meaning of the word, and attempted to affix one to it which it never bears. You say that its usual meaning is synonymous with "office," "authority," or "the act of determining," and that it is only in its technical sense that it conveys the idea of an appellate power! Can it be unknown to you that no word in the language more invariably has attached to it the idea of decision by appeal, and that there is not an instance of its being used by any respectable authority in the sense which you state to be its usual meaning?

It only remains to consider the cases that you have cited from the Manual, to prove that the Speaker of the House of Commons possesses the power in question; by which you would infer that it belongs also to the Vice-President. A very strange deduction by one who believes that the power originates in the Constitution, and that it neither can be given nor taken away by the authority of the Senate itself. After asserting that it has "deeper and holier foundations than the rules and usages of the Senate," there is something more than ridiculous, that you at last seek for the power in the rules and usages of the House of Commons! But let such inconsistency pass. You have, indeed, established the fact that the Speaker has the power, but you have overlooked the material circumstance, as I have shown from your own cases, that he possesses it by *positive rules of the House*. You might as well have shown that the Speaker of the House of Representatives possesses it, and then inferred that the Vice-President does also; for he, too, holds the power by positive rules of the body, which makes the analogy as strong in the one case as the other.

But you would have it understood that the rules of Parliament have been adopted by the Senate. No such thing. I challenge you to cite a single rule or act of the Senate that gives countenance to it. Finally, you tell us that Mr. Jefferson has cited these rules as being part of the rules and usages of the Senate. Admitting, for a moment, that Mr. Jefferson had cited them as such, still a very important question would arise, how came they to be the rules of the Senate? The Constitution provides that the Senate shall determine the rules of its proceedings; now, if that body has not, by any rule, adopted the rules of the British Parliament, by what process of reasoning could they be construed to be the rules of the Senate? That the Senate has not adopted the

rules of Parliament, is certain; and I confess I am not a little curious to see the process of reasoning by which they are made the rules of the Senate, *without adoption*. Is there not a striking analogy between this and the question, whether the common law is a part of the laws of the Union? We know that they have been decided by the highest judicial authority not to be; and, it seems to me, the arguments which would be applicable to, the one would be equally so to the other question. That the rules and usages of Parliament may be referred to to illustrate the rules of either House of Congress, is quite a distinct proposition, and may be readily admitted. Arguments may be drawn from any source calculated to illustrate, but that is wholly different from giving to the rules of another body a binding force on the Senate, without ever having been recognized as its rules. This is a subject of deep and grave importance; but as it is not necessary to my purpose, I decline entering on it. It is sufficient, at present, to deny that Mr. Jefferson has cited the rules of the Parliament, referred to by you, as those of the Senate. On the contrary, they are expressly cited as the rules of the British House of Commons, without stating them to be obligatory on the Senate. He has notoriously cited many of the rules of that body which are wholly dissimilar from the usages of the Senate. But you cite Mr. Jefferson's opinion, in which he says, "The Senate have, accordingly, formed some rules for its government" (they have been much enlarged since); "but these going only to a few cases, they have referred to the decision of the President, without debate or appeal, all questions of order arising under their own rules, or where there is none. This places under the discretion of the President a very extensive field of decision." If your object in quoting the above passage was to show that, where the Senate has adopted no rules of its own, the rules of Parliament are those of the Senate, it completely fails. Not the slightest countenance is given to such an idea. Mr. Jefferson,

on the contrary, says that, in cases of omission, the sound discretion of the President is the rule;* and such has been the practice, and from which it has followed that usages of the Senate are very different from the Parliament, which could not be, if the latter were adopted, where there were no positive rules by the Senate.

If this view of the subject be correct, which is certainly Mr. Jefferson's, the Vice-President had the right to make the rule by exercising a sound discretion; and the only question that could arise in this view is, whether he has acted on correct principles in referring the power to the House, instead of exercising it by the chair. So long as doubtful and irresponsible power ought not to be assumed—so long as the freedom of debate is essential to liberty—and so long as it is an axiom in politics that no power can be safe but what is in the final control and custody of the body over which it is exercised—so long the rule (to view it in that light) adopted by the Vice-President will be considered in conformity with sound political principles. But suppose it to be conceived that the rules of Parliament are those of the Senate, when not overruled by its own positive acts, still, two questions would remain: first, whether the 7th rule of the Senate, by a sound construction, does not restrain the Vice-President from exercising the power, by limiting it to the members of the Senate? and, secondly, whether the practice of the House of Lords, or that of the Commons ought, in this particular, to prevail? Both of these points have already been incidentally considered, and a single remark will now

* This opinion of Mr. Jefferson's is probably founded on the latter part of the 6th rule, which strongly supports it. The rule is as follows: "When a member shall be called to order, he shall sit down until the President shall have determined whether he is in order or not; and every question of order shall be decided by the President, without debate; but if there be a doubt in his mind, he may call for the sense of the Senate."

suffice. Whether we regard the nature of the power, or the principles of our system of government, there can be no doubt that the decision ought to be against the practice of the House of Commons, and in favor of that of the House of Lords.

It may not be improper to notice an opinion which, if I mistake not, has, in no small degree, contributed to the error which exists as to the decision of the Vice-President. There are many who are far from agreeing with your absurd and dangerous positions as to the inherent powers of the Vice-President over the freedom of debate, but who have, I think, a vague conception that he has the right in dispute, as presiding officer, but a right subordinate to, and dependent on, the Senate. They concede to the Senate the right of determining their rules, and that this right comprehends that of determining what is, or what is not, disorderly conduct, and how the same shall be noticed or inhibited; but they have an idea that the *ex officio* duty of the Vice-President to regulate the proceedings of the Senate according to their own rules, extends to cases of the freedom of debate. The amount of the argument, as far as I can understand it, is, that, where there is a rule of the Senate, the Vice-President has, *ex officio*, the power of regulating the proceedings of the Senate by it, without any express authority in the rule to that effect. All this may be fairly conceded, but it decides nothing. It brings back the question to the inquiry, Is there, or is there not, such a rule? which has been fully considered, and, I trust, satisfactorily determined in the negative. I will not again repeat the arguments on this point: I do not deem it necessary. It is sufficient to remark, if there be a rule, let it be shown, and the question is at an end. There is none.

As connected with this part of the subject, I do not think it necessary to meet the ridiculous charge of inconsistency which you make against the Vice-President in the exercise of his power, and which you endeavor to support by reference to the stale and false accounts of his conduct in the case of Mr. Dickerson. It is sufficient that Mr. D. has repelled the charge of injustice, and you exhibit but a sorry and factious appearance in defending a Senator from oppression, who is not conscious of any injustice having been inflicted.

Having demonstrated that the powers which you claim for the Vice-President do not belong to him as presiding officer of the Senate, and that they are not conferred on him by the rules or usage of the Senate, or those of Parliament, I may safely affirm that it does not exist, and that, so far from censure, Mr. Calhoun deserves praise for declining to exercise it. He has acted in the spirit that ought to actuate every virtuous public functionary—not to assume doubtful powers—a spirit, under our systems of delegated authority, essential to the preservation of liberty, and for being guided by which he will receive the thanks of the country when the excitement of the day has passed away.

I have now completed what may be considered the investigation of the subject; but there are still several of your remarks that require notice. You have not only attacked the decision of Mr. Calhoun, but you have impugned his motives with licentious severity. The corrupt are the most disposed to attribute corruption, and your unprovoked and unjustifiable attack on Mr. C.'s motives speak as little in favor of your heart as your arguments do of your head. Fortunately for the Vice-President, his general character for virtue and patriotism shields him from the imputation of such gross abuse of power, from such impure motives as you attribute to him. He could not decide differently from what he did without being at war with the principles which have ever governed him. It is well known to all acquainted with him, publicly or privately, that the maxim which he holds in the highest veneration, and which he regards as the foun-

dation of our whole system of government, is, that power should be controlled by the body over which it is exercised, and that, without such responsibility, all delegated power would speedily become corrupt. Whether he is wrong in giving too high an estimate to this favorite maxim is immaterial. It is, and long has been, his, and could not fail in having great influence in the decision which you have so seriously assaulted. Had his principles been like yours, as illustrated in your essay, it is possible he might have taken a different view of the subject; but, as he has decided in conformity with principles long fixed in his mind, there is something malignant in the extreme to attribute his decision to motives of personal enmity. You not only attack Mr. C.'s motives for this decision, but also his motive for the constitution of the Committee of Foreign Relations. You think it a crime in him that the venerable and patriotic Macon should be placed at the head of the committee. I will neither defend him nor the other members of the committee. They need no defence; but I cannot but remark, that the election of Mr. Macon President pro tem. of the Senate is a singular comment on your malignant attack on the Vice-President.

It would have been impossible that you should steer clear of the cant of your party, and we accordingly have a profusion of vague charges about Mr. Calhoun's ambition. The lowest and most mercenary hireling can easily coin such charges; and while they deal in the general, without a single specification, it is utterly impossible to meet or refute them; but, fortunately, they go for nothing with the wise and virtuous, saving only that, on the part of those who make them, they evince an envious, morbid mind, which, having no real ground of attack, indulges in vague, unmeaning abuse. It is highly honorable to Mr. C. that, in the midst of so much political enmity, his personal and public character stands free from all but one specific charge—which is, that he has inclined, in his present station, *too much against his own power, and too much in favor of the inestimable right of the freedom of debate.* That he has been indefatigable in the discharge of his duty; that he has been courteous to the members, and prompt and intelligent, all acknowledge. Not a moment was he absent from his post during a long and laborious session, and often remained in the chair, without leaving it, from eight to twelve hours. He has, however, committed one unpardonable sin which blots out all. He did not stop Mr. Randolph. This is the head and front of his offending. And who is Mr. Randolph? Is he or his manners a stranger in our national councils? For more than a quarter of a century he has been a member of Congress, and during the whole time his character has remained unchanged. Highly talented, eloquent, severe, and eccentric; not unfrequently wandering from the question, but often uttering wisdom worthy of a Bacon, and wit that would not discredit a Sheridan, every Speaker had freely indulged him in his peculiar manner, and that without responsibility or censure; and none more freely than the present Secretary of State, while he presided in the House of Representatives. He is elected, with a knowledge of all this, by the ancient and renowned commonwealth of Virginia, and takes his seat in the Senate. An immediate outcry is made against the Vice-President for permitting him, who has been so long permitted by so many Speakers, to exercise his usual freedom of discussion, though, in no respect, were his attacks on this administration freer than what they had been on those of Mr. Jefferson, Mr. Madison, and Mr. Monroe. Who can doubt, if Mr. Calhoun had yielded to this clamor, that the whole current would have turned; and that he would then have been more severely denounced for, what would have been called, his tyranny and usurpation, than he has been for refusing to interfere with the freedom of debate? His authority would have been denied, and properly denied. The fact

that Mr. R. had been permitted, by all other presiding officers, for so long a time, to speak without restraint, would have been dwelt upon; and the injustice done to the Senator, and the insult offered to the State that sent him, would have been painted in the most lively colors.

These considerations, we are satisfied, had no weight with the Vice-President. Those who know him, know that no man is more regardless of consequences in the discharge of his duty; but that the attack on him is personal, in order to shake his political standing and prostrate his character, is clearly evinced by every circumstance; and, with this object, that he would have been assaulted, act as he might, is most certain. It is for the American people to determine, whether this conspiracy against a public servant, whose only fault is, that he has chosen the side of liberty, rather than that of power; and whose highest crime consists, in a reverential regard for the freedom of debate, shall succeed.

ONSLOW.

APPENDIX.

CORRESPONDENCE

Between Gen. Andrew Jackson and John C. Calhoun, President and Vice-President of the United States, on the subject of the course of the latter, in the deliberations of the cabinet of Mr. Monroe, on the occurrences in the Seminole War.

[NOTE.—While the Works of Mr. Calhoun would be incomplete without the following correspondence, the Editor has felt some hesitation in deciding whether, in the imperfect state in which it here appears, and in which it was originally laid before the public, it would not have been better to have incorporated it among other materials relating to the same subject in the Memoirs of the illustrious statesman now being prepared for the Press. A large mass of correspondence connected with this most infamous intrigue remains unpublished. It was, no doubt, suppressed by Mr. Calhoun from considerations connected with the political condition of the country at the time, and from an unwillingness to implicate others who, at the hazard of losing all prospects of preferment, had voluntarily stepped forward to vindicate him from charges so wantonly and falsely preferred against him. Conduct so noble and generous on their part, while it might have strengthened his defence (if it, indeed, needed such aid), would certainly have insured their political destruction: for no motives however pure, no virtues however exalted, no services however eminent—no love of country or of truth and justice, were allowed as an excuse, much less as a justification, for opposing the purposes of the Chief Magistrate. He had determined that Mr. Van Buren should be his successor, and this correspondence was gotten up by him for the sole purpose of destroying his supposed rival.