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THE PROTEST AGAINST EXPUNGING.

IN THE SENATE OF THE UNITED STATES,

MONDAY, JANUARY 16, 1837.

The Senate having under consideration the Resolution, moved by Mr. BENTON, for *expunging* from the Journal of Proceedings of the Senate, for March, 1834, a Resolution declaring the opinion of the Senate concerning the illegality of the removal of the public money from its lawful place of deposite, the Bank of the United States; and the Debate thereon having come to a close, and the question being about to be taken on agreeing to the said Resolution—

Mr. WEBSTER rose and addressed the Senate as follows :

Mr. PRESIDENT: Upon the truth and justice of the original resolution of the Senate, and upon the authority of the Senate to pass that resolution, I had an opportunity to express my opinions at a period, subsequent to the adoption of that resolution, when the protest of the President was before us. Those opinions remain altogether unchanged.

And now, had the constitution secured the privilege of entering a PROTEST on the journal, I should not say one word on this occasion ; although, if what is now proposed shall be accomplished, I know not what would have been the value of such a provision, however formally or carefully it might have been inserted in the body of that instrument.

But, as there is no such constitutional privilege, I can only effect my purpose by thus addressing the Senate ; and I rise, therefore, to make that PROTEST in this manner, in the face of the Senate, and in the face of the country, which I cannot present in any other form.

I speak in my own behalf, and in behalf of my colleague; we both speak as Senators from the State of Massachusetts, and, as such, we solemnly PROTEST against this whole proceeding.

We deny that Senators from other States have any power or authority to expunge any vote or votes which we have given here, and which we have recorded, agreeably to the express provision of the constitution.

We have a high personal interest, and the State whose representatives we are, has also a high interest in the entire preservation of every part and parcel of the record of our conduct as members of the Senate.

This record the constitution solemnly declares shall be *kept*; but the resolution before the Senate declares that this record shall be *expunged*.

Whether subterfuge and evasion, and, as it appears to us, the degrading mockery of drawing black lines upon the journal, shall or shall not leave our names and our votes legible, when this violation of the record shall have been completed, still the terms "to expunge," and the terms "to keep," when applied to a record, import ideas exactly contradictory, as much so as the terms "to preserve," and the terms "to destroy."

A record which is *expunged*, is not a record which is *kept*, any more than a record which is *destroyed* can be a record which is *preserved*. The part expunged is no longer part of the record; it has no longer a legal existence. It cannot be certified as a part of the proceeding of the Senate for any purpose of proof or evidence.

The object of the provision in the constitution, as we think, most obviously is, that the proceedings of the Senate shall be preserved, in writing, not for the present only, not until published only, because a copy of the printed journal is not regular legal evidence; but preserv-

ed indefinitely ; preserved, as other records are preserved, till destroyed by time or accident.

Every one must see that matters of the highest importance depend on the permanent preservation of the journals of the two Houses. What but the journals show that bills have been regularly passed into laws, through the several stages ? What but the journal shows who are members, or who is President, or Speaker, or Secretary, or Clerk of the body ? What but the journal contains the proof, necessary for the justification of those who act under our authority, and who, without the power of producing such proof, must stand as trespassers ? What but the journals show who is appointed, and who rejected by us, on the President's nomination ; or who is acquitted, or who convicted, in trials on impeachment ? In short, is there, at any time, any other regular and legal proof of any act done by the Senate than the journal itself ?

The idea, therefore, that the Senate is bound to preserve its journal only until it is published, and then may alter, mutilate, or destroy it at pleasure, appears to us one of the most extraordinary sentiments ever advanced.

We are deeply grateful to those friends who have shown, with so much clearness, that all the precedents relied on to justify or to excuse this proceeding, are either not to the purpose, or, from the times and circumstances at and under which they happened, are no way entitled to respect in a free Government, existing under a written constitution. But, for ourselves, we stand on the plain words of that constitution itself. A thousand precedents elsewhere made, whether ancient or modern, can neither rescind, nor control, nor explain away these words.

The words are, that "each House shall KEEP a journal of its proceedings." No gloss, no ingenuity, no specious interpretation, and much less can any fair or just reason-

ing reconcile the process of expunging with the plain meaning of these words, to the satisfaction of the common sense and honest understanding of mankind.

If the Senate may now expunge one part of the journal of a former session, it may, with equal authority, expunge another part, or the whole. It may expunge the entire record of any one session, or of all sessions.

It seems to us inconceivable how any men can regard such a power, and its exercise at pleasure, as consistent with the injunction of the constitution. It can make no difference what is the completeness or incompleteness of the act of expunging, or by what means done; whether by erasure, obliteration, or defacement; if by defacement, as here proposed, whether one word or many words are written on the face of the record; whether little ink or much ink is shed on the paper; or whether some part, or the whole of the original written journal may yet by possibility be traced. If the act done be an act to expunge, to blot out, to obliterate, to erase the record, then the record is expunged, blotted out, obliterated, and erased. And mutilation and alteration violate the record as much as obliteration or erasure. A record, subsequently altered, is not the original record. It no longer gives a just account of the proceedings of the Senate. It is no longer true. It is, in short, no journal of the real and actual proceedings of the Senate, such as the constitution says each House shall keep.

The constitution, therefore, is, in our deliberate judgment, violated by this proceeding in the most plain and open manner.

The constitution, moreover, provides that the *yeas and nays*, on any question, shall, at the request of one-fifth of the members present, *be entered on the journal*. This provision, most manifestly, gives a personal right to those members who may demand it, to the entry and preserva-

tion of their votes on the record of the proceedings of the body, not for one day or one year only, but for all time. There the *yeas and nays* are to stand, for ever, as permanent and lasting proof of the manner in which members have voted on great and important questions before them.

But it is now insisted that the votes of members, taken by *yeas and nays*, and thus entered on the journal, as matter of right, may still be expunged; so that that, which it requires more than four-fifths of the Senators to prevent from being put on the journal, may, nevertheless, be struck off, and erased, the next moment, or at any period afterwards, by the will of a mere majority; or, if this be not admitted, then the absurdity is adopted of maintaining, that this provision of the constitution is fulfilled by merely preserving the *yeas and nays* on the journal, after having expunged and obliterated the very resolution, or the very question on which they were given, and to which alone they refer; leaving the *yeas and nays* thus a mere list of names, connected with no subject, no question, no vote. We put it to the impartial judgment of mankind, if this proceeding be not, in this respect also, directly and palpably inconsistent with the constitution.

We protest, in the most solemn manner, that other Senators have no authority to deprive us of our personal rights, secured to us by the constitution, either by expunging, or obliterating, or mutilating, or defacing the record of our votes, duly entered by *yeas and nays*; or by expunging and obliterating the resolutions or questions on which those votes were given and recorded.

We have seen, with deep and sincere pain, the Legislatures of respectable States instructing the Senators of those States to vote for and support this violation of the journal of the Senate; and this pain is infinitely increased by our full belief, and entire conviction, that most, if not

all these proceedings of States had their origin in promptings from Washington ; that they have been urgently requested and insisted on as being necessary to the accomplishment of the intended purpose ; and that it is nothing else but the influence and power of the Executive branch of this Government which has brought the Legislatures of so many of the free States of this Union to quit the sphere of their ordinary duties for the purpose of cooperating to accomplish a measure, in our judgment, so unconstitutional, so derogatory to the character of the Senate, and marked with so broad an impression of compliance with power.

But this resolution is to pass. We expect it. That cause, which has been powerful enough to influence so many State Legislatures, will show itself powerful enough, especially with such aids, to secure the passage of the resolution here.

We make up our minds to behold the spectacle which is to ensue.

We collect ourselves to look on, in silence, while a scene is exhibited which, if we did not regard it as ruthless violation of a sacred instrument, would appear to us to be little elevated above the character of a contemptible farce.

This scene we shall behold, and hundreds of American citizens, as many as may crowd into these lobbies and galleries, will behold it also : with what feelings I do not undertake to say.

But we PROTEST, we most solemnly PROTEST, against the substance and against the manner of this proceeding, against its object, against its form, and against its effect. We tell you that you have no right to mar or mutilate the record of our votes given here, and recorded according to the constitution ; we tell you that you may as well erase the *yeas and nays* on any other question or resolu-

tion, or on all questions and resolutions, as on this ; we tell you that you have just as much right to falsify the record, by so altering it as to make us appear to have voted on any question as we did not vote, as you have to erase a record, and make that page a blank, in which our votes, as they were actually given and recorded, now stand. The one proceeding, as it appears to us, is as much a falsification of the record as the other.

Having made this PROTEST, our duty is performed. We rescue our own names, character, and honor from all participation in this matter ; and whatever the wayward character of the times, the headlong and plunging spirit of party devotion, or the fear or the love of power, may have been able to bring about elsewhere, we desire to thank God that they have not, as yet, overcome the love of liberty, fidelity to true republican principles, and a sacred regard for the constitution, in that State whose soil was drenched, to a mire, by the first and best blood of the Revolution. Massachusetts, as yet, has not been conquered ; and while we have the honor to hold seats here as her Senators, we shall never consent to a sacrifice either of her rights, or our own ; we shall never fail to oppose what we regard as a plain and open violation of the constitution of the country ; and we should have thought ourselves wholly unworthy of her if we had not, with all the solemnity and earnestness in our power, PROTESTED against the adoption of the resolution now before the Senate.

Faint, illegible text, likely bleed-through from the reverse side of the page. The text is mirrored and difficult to decipher.

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