


GOUVERNEUR MORRIS

OUVERNEUR MORRIS, eminent American statesman, financier and lawyer, was born at Morrisania, N. Y., Jan. 31, 1752, and died there Nov. 6, 1816. He was of a distinguished family and after graduating at King's College (now Columbia University), he studied law and was admitted to the Bar in 1771. Four years later, he sat in the Provincial Congress, where he attracted attention by a report and speech upon a new method of issuing paper money, his suggestions being afterward substantially followed by the Continental Congress. Morris was among those who drafted the state constitution of New York, a member of the Continental Congress, 1777-80, and in 1781 assistant superintendent of finance. In 1787, he took part in drafting the Federal Constitution, and was United States agent in London and minister to France, 1792-94. On one occasion during the French Revolution his carriage was followed in the streets of Paris by a mob calling after it "Aristocrat!" Thereupon Morris thrust his wooden leg out of the carriage window and shouted in his turn, "An aristocrat! Yes, one who lost his leg in the cause of American liberty," on hearing which the mob began to cheer. In the years 1800-03 he was United States Senator and as such he manifested remarkable ability and eloquently opposed the abolition of the judiciary system and spoke against the discontinuance of direct taxation and in favor of the Louisiana Purchase. He was an enthusiastic supporter of the New York canal system, and was chairman of the canal commission from 1810 until his death. Morris was a man of vast energy and great ability, and rendered important public service in the formative period of the American republic. He was however accustomed to use great freedom in the expression of his opinions. He was the author of "Observations on the American Revolution" (1791), and in 1838 his "Diary and Letters," edited by H. C. Morris, were issued. His elder brother Lewis (1726-98) was one of the signers of the Declaration of Independence.

SPEECH ON THE JUDICIARY

[Delivered in the Senate of the United States, on Jan. 14, 1802, on the motion, "Resolved that the act of Congress passed on the thirteenth day of February, 1801, entitled, 'An act to provide for the more convenient organization of the courts of the United States,' ought to be repealed."]

MR. PRESIDENT,—I had fostered the hope that some gentleman who thinks with me would have taken upon himself the task of replying to the observations made yesterday and this morning in favor of the motion on your table. But since no gentleman has gone
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so fully into the subject as it seems to require I am compelled to request your attention.

We were told yesterday by the honorable member from Virginia that our objections were calculated for the bystanders, and made with a view to produce effect upon the people at large. I know not for whom the charge is intended. I certainly recollect no such observations. As I was personally charged with making a play upon words, it may have been intended for me.

But surely, sir, it will be recollected that I declined that paltry game, and declared that I considered the verbal criticism which had been relied on as irrelevant. If I can recollect what I said, from recollecting well what I thought and meant to say, sure I am that I uttered nothing in the style of an appeal to the people. I hope no member of this House has so poor a sense of its dignity as to make such an appeal.

As to myself, it is now near thirty years since I was called into public office. During that period I have frequently been the servant of the people, always their friend; but at no one moment of my life their flatterer, and God forbid that I ever should be.

When the honorable gentleman considers the course we have taken he must see that the observation he has thus pointed can light on no object. I trust that it did not flow from the consciousness of his own intentions. He, I hope, had no view of this sort. If he had, he was much, very much mistaken. Had he looked round upon those who honor us with their attendance he would have seen that the splendid flashes of his wit excited no approbatory smile.

The countenances of those by whom we were surrounded presented a different spectacle. They were impressed with

the dignity of this House; they perceived in it the dignity of the American people and felt, with high and manly sentiment, their own participation. . . .

We are told that we may violate our constitution because similar constitutions have been violated elsewhere. Two States have been cited to that effect, Maryland and Virginia. The honorable gentleman from Virginia tells us that when this happened in the State he belongs to no complaint was made by the judges. I will not inquire into that fact, although I have the protest of the judges now lying before me: judges eminent for their talents, renowned for their learning, respectable for their virtue. I will not inquire what constitutions have been violated. I will not ask either when or where this dangerous practice began or has been followed; I will admit the fact. What does it prove? Does it prove that because they have violated we also may violate? Does it not prove directly the contrary? Is it not the strongest reason on earth for preserving the independence of our tribunals? If it be true that they have with strong hand seized their courts and bent them to their will, ought we not to give suitors a fair chance for justice in our courts, or must the suffering citizen be deprived of all protection?

The gentleman from Virginia has called our attention to certain cases which he considers as forming necessary exceptions to the principles for which we contend. Permit me to say that necessity is a hard law and frequently proves too much, and let the gentleman recollect that arguments which prove too much prove nothing. He has instanced a case where it may be proper to appoint commissioners, for a limited time, to settle some particular description of controversies. Undoubtedly it is always in the power of Congress to form a board of commissioners for particular purposes.

He asks, are these inferior courts, and must they also exist forever? I answer that the nature of their offices must depend on the law by which they are created; if called to exercise the judicial functions designated by the constitution they must have an existence conformable to its injunctions.

Again, he has instanced the Mississippi Territory, claimed by and which may be surrendered to the State of Georgia, and a part of the Union which may be conquered by a foreign enemy. And he asks, triumphantly, are our inferior courts to remain after our jurisdiction is gone? This case rests upon a principle so simple that I am surprised the honorable member did not perceive the answer in the very moment when he made the objection. Is it by our act that a country is taken from us by a foreign enemy? Is it by our consent that our jurisdiction is lost? I had the honor, in speaking the other day, expressly and for the most obvious reasons to except the case of conquest. As well might we contend for the government of a town swallowed up by an earthquake.

[Mr. Mason explained: he had supposed the case of territory conquered, and afterwards ceded to the conqueror, or some other territory ceded in lieu of it.]

The case is precisely the same; until after the peace the conquest is not complete. Everybody knows that until the cession by treaty the original owner has the postliminar right to a territory taken from him. Beyond all question, where Congress is compelled to cede the territory, the judges can no longer exist unless the new sovereign confer the office. Over such territory the authority of the constitution ceases and of course the rights which it confers.

It is said the judicial institution is intended for the benefit

of the people and not of the judge; and it is complained of that in speaking of the office we say it is his office. Undoubtedly the institution is for the benefit of the people. But the question remains, how will it be rendered most beneficial? Is it by making the judge independent,—by making it his office; or is it by placing him in a state of abject dependence, so that the office shall be his to-day and belong to another to-morrow? Let the gentleman hear the words of the constitution: it speaks of their offices; consequently, as applied to a single judge, of his office, to be exercised by him for the benefit of the people of America, to which exercise his independence is as necessary as his office.

The gentleman from Virginia has on this occasion likened the judge to a bridge and to various other objects; but I hope for his pardon if, while I admire the lofty flights of his eloquence, I abstain from noticing observations which I conceive to be utterly irrelevant.

The same honorable member has not only given us his history of the Supreme Court, but has told us of the manner in which they do business, and expressed his fears that, having little else to do, they would do mischief. We are not competent, sir, to examine, nor ought we to prejudge their conduct. I am persuaded they will do their duty, and presume they will have the decency to believe that we do our duty. In so far as they may be busied with the great mischief of checking the legislative or executive departments in any wanton invasion of our rights I shall rejoice in that mischief. I hope, indeed, they will not be so busied, because I hope we shall give them no cause. But I also hope they will keep an eagle eye upon us lest we should. It was partly for this purpose they were established, and I trust that when properly called on they will dare to act. I know this

doctrine is unpleasant; I know it is more popular to appeal to public opinion: that equivocal transient being which exists nowhere and everywhere. But if ever the occasion calls for it I trust that the Supreme Court will not neglect doing the great mischief of saving this constitution, which can be done much better by their deliberations than by resorting to what are called revolutionary measures.

The honorable member from North Carolina, sore pressed by the delicate situation in which he is placed, thinks he has discovered a new argument in favor of the vote which he is instructed to give. As far as I can enter into his ideas and trace their progress he seems to have assumed the position which was to be proved, and then searched through the constitution, not to discover whether the legislature have the right contended for, but whether, admitting them to possess it, there may not be something which might not comport with that idea. I shall state the honorable member's argument as I understand it, and, if mistaken, pray to be corrected. He read to us that clause which relates to impeachment, and comparing it with that which fixes the tenure of judicial office, observed that this clause must relate solely to a removal by the executive power, whose right to remove, though not indeed anywhere mentioned in the constitution, has been admitted in a practice founded on legislative construction.

That, as the tenure of the office is during good behavior, and, as the clause respecting impeachment does not specify misbehavior, there is evidently a cause of removal which cannot be reached by impeachment, and of course, the executive not being permitted to remove, the right must necessarily devolve on the legislature. Is this the honorable member's argument? If it be, the reply is very simple.

Misbehavior is not a term known in our law; the idea is expressed by the word "misdemeanor;" which word is in the clause quoted respecting impeachments. Taking, therefore, the two together, and speaking plain old English, the constitution says:

"The judges shall hold their offices so long as they shall demean themselves well; but if they shall misdemean, if they shall, on impeachment, be convicted of misdemeanor, they shall be removed."

Thus, sir, the honorable member will find that the one clause is just as broad as the other. He will see, therefore, that the legislature can assume no right from the deficiency of either, and will find that this clause, which he relied on, goes, if rightly understood, to the confirmation of our doctrine.

Is there a member of this House who can lay his hand on his heart and say that consistently with the plain words of our constitution we have a right to repeal this law? I believe not. And if we undertake to construe this constitution to our purposes and say that public opinion is to be our judge, there is an end to all constitutions. To what will not this dangerous doctrine lead? Should it to-day be the popular wish to destroy the first magistrate, you can destroy him; and should he to-morrow be able to conciliate to himself the will of the people and lead them to wish for your destruction, it is easily effected. Adopt this principle, and the whim of the moment will not only be the law but the constitution of our country.

The gentleman from Virginia has mentioned a great nation brought to the feet of one of her servants. But why is she in that situation? Is it not because popular opinion was called on to decide everything until those who wore bayonets decided for all the rest? Our situation is peculiar.

At present our national compact can prevent a State from acting hostilely towards the general interest. But let this compact be destroyed, and each State becomes instantaneously vested with absolute sovereignty. Is there no instance of a similar situation to be found in history? Look at the States of Greece. They were once in a condition not unlike to that in which we should then stand. They treated the recommendations of their Amphictyonic council, which was more a meeting of ambassadors than a legislative assembly, as we did the resolutions of the old Congress. Are we wise? So were they. Are we valiant? They also were brave. Have we one common language and are we united under one head? In this also there was a strong resemblance. But by their divisions they became at first victims to the ambition of Philip, and were at length swallowed up in the Roman Empire. Are we to form an exception to the general principles of human nature and to all the examples of history? And are the maxims of experience to become false when applied to our fate?

Some, indeed, flatter themselves that our destiny will be like that of Rome. Such indeed it might be, if we had the same wise but vile aristocracy under whose guidance they became the masters of the world. But we have not that strong aristocratic arm which can seize a wretched citizen, scourged almost to death by a remorseless creditor, turn him into the ranks, and bid him, as a soldier, bear our eagle in triumph round the globe! I hope to God we shall never have such an abominable institution. But what, I ask, will be the situation of these States, organized as they now are, if by the dissolution of our national compact they be left to themselves? What is the probable result? We shall either be the victims of foreign intrigue and split into

factions, fall under the domination of a foreign power, or else, after the misery and torment of civil war, become the subjects of a usurping military despot. What but this compact, what but this specific part of it, can save us from ruin?

The judicial power, that fortress of the constitution, is now to be overturned. Yes, with honest Ajax, I would not only throw a shield before it, I would build around it a wall of brass. But I am too weak to defend the rampart against the host of assailants. I must call to my assistance their good sense, their patriotism and their virtue. Do not, gentlemen, suffer the rage of passion to drive reason from her seat. If this law be indeed bad, let us join to remedy the defects. Has it been passed in a manner which wounded your pride or roused your resentment? Have, I conjure you, the magnanimity to pardon that offence. I entreat, I implore you, to sacrifice those angry passions to the interests of our country. Pour out this pride of opinion on the altar of patriotism. Let it be an expiatory libation for the weal of America. Do not, for God's sake, do not suffer that pride to plunge us all into the abyss of ruin.

Indeed, indeed, it will be but of little, very little avail, whether one opinion or the other be right or wrong; it will heal no wounds, it will pay no debts, it will rebuild no ravaged towns. Do not rely on that popular will which has brought us frail beings into political existence. That opinion is but a changeable thing. It will soon change. This very measure will change it. You will be deceived. Do not, I beseech you, in reliance on a foundation so frail, commit the dignity, the harmony, the existence of our nation to the wild wind. Trust not your treasure to the waves. Throw not your compass and your charts into the ocean.

Do not believe that its billows will waft you into port. Indeed, indeed, you will be deceived. Cast not away this only anchor of our safety. I have seen its progress. I know the difficulties through which it was obtained: I stand in the presence of Almighty God and of the world; and I declare, to you that if you lose this charter, never! no, never will you get another! We are now perhaps arrived at the parting point. Here, even here, we stand on the brink of fate. Pause — pause — for heaven's sake, pause!!