

Charles Cotesworth Pinckney, Speech in the South Carolina House of Representatives, 17 January 1788

Gen. CHARLES COTESWORTH PINCKNEY observed, that the honorable gentleman (Mr. Lowndes) who opposed the new Constitution had asserted that treaties made under the old Confederation were not deemed paramount to the laws of the land, and that treaties made by the king of Great Britain required the ratification of Parliament to render them valid. The honorable gentleman is surely mistaken in his assertion. His honorable friend (Chancellor **Rutledge**) had clearly shown that, by the 6th, 9th, and 13th Articles of the old Confederation, Congress have a power to make treaties, and each state is pledged to observe them; and it appears, from the debates of the English Parliament, that the House of Commons did not ratify, but actually censure, the peace made by the king of Great Britain with America; yet the very members who censured it acknowledged it was binding on the nation. [Here the general read extracts from the parliamentary debates of the 17th and 21st of February, 1784.] Indeed, the doctrine that the king of Great Britain may make a treaty with a foreign state, which shall irrevocably bind his subjects, is asserted by the best writers on the laws and constitution of England--particularly by Judge Blackstone, who, in the first book of his Commentaries, (ch. 7, p. 257,) declares "that it is the king's prerogative to make treaties, leagues, and alliances, with foreign states and princes, and that no other power in the kingdom can legally delay, resist, or annul them." If treaties entered into by Congress are not to be held in the same sacred light in America, what foreign nation will have any confidence in us? Shall we not be stigmatized as a faithless, unworthy people, if each member of the Union may, with impunity, violate the engagements entered into by the federal government? Who will confide in us? Who will treat with us if our practice should be conformable to this doctrine? Have we not been deceiving all nations, by holding forth to the world, in the 9th Article of the old Confederation, that Congress may make treaties, if we, at the same time, entertain this improper tenet, that each state may violate them? I contend that the article in the new Constitution, which says that treaties shall be paramount to the laws of the land, is only declaratory of what treaties were, in fact, under the old compact. They were as much the law of the land under that Confederation, as they are under this Constitution; and we shall be unworthy to be ranked among civilized nations if we do not consider treaties in this view. Vattel, one of the best writers on the law of nations, says, "There would be no more security, no longer any commerce between mankind, did they not believe themselves obliged to preserve their faith, and to keep their word. Nations, and their conductors, ought, then, to keep their promises and their treaties inviolable. This great truth is acknowledged by all nations. Nothing adds so great a glory to a prince, and the nation he governs, as the reputation of an inviolable fidelity to his engagements. By this, and their bravery, the Swiss have rendered themselves respectable throughout Europe. This national greatness of soul is the source of immortal glory; upon it is founded the confidence of nations, and it thus becomes a certain instrument of power and splendor." Surely this doctrine is right; it speaks to the heart; it impresses itself on the feelings of mankind, and convinces us that the tranquillity, happiness, and prosperity, of the human race, depend on inviolably preserving the faith of treaties.

Burlamaqui, another writer of great reputation on political law, says "that treaties are obligatory on the subjects of the powers who enter into treaties; they are obligatory as conventions between the contracting powers; but they have the force of law with respect to their subjects." These are his very words: "Ils ont force de loi à l'égard des sujets, considérés comme tels; and it is very manifest," continues he, "that two sovereigns, who enter into a treaty, impose, by such treaty, an obligation on their subjects to conform to it, and in no manner to contravene it." It is remarkable that the words made use of by Burlamaqui establish the doctrine, recognized by the Constitution, that treaties shall be considered as the law of the land; and happy will it be for America if they shall be always so considered: we shall then avoid the disputes, the tumults, the frequent wars, we must inevitably be engaged in, if we violate treaties. By our treaty with France, we declare she shall have all the privileges, in matters of commerce, with the most favored nation. Suppose a particular state should think proper to grant a particular privilege to Holland, which she refuses to France; would not this be a violation of the treaty with France? It certainly would; and we in this state would be answerable for the consequences attending such violation by another state; for we do not enter into treaties as separate states, but as united states; and all the members of the Union are answerable for the breach of a treaty by any one of them. South Carolina, therefore, considering its situation, and the valuable produce it has to export, is particularly interested in maintaining the sacredness of treaties, and the good faith with which they should be observed by every member of the Union. But the honorable gentleman complains that the power of making treaties is vested in the President and Senate, and thinks it is not placed so safely with them as with the Congress under the old Confederation. Let us examine this objection. By the old Confederation; each state had an equal vote in Congress, and no treaty could be made without the assent of the delegates from nine states. By the present Constitution, each state sends two members to the Senate, who vote per capita; and the President has power, with advice and consent of the Senate, to make treaties, provided two thirds of the Senate present concur. This inconvenience attended the old method: it was frequently difficult to obtain a representation from nine states; and if only nine States were present, they must all concur in making a treaty. A single member would frequently prevent the business from being concluded; and if he absented himself, Congress had no power to compel his attendance. This actually happened when a treaty of importance was about to be concluded with the Indians; and several states, being satisfied, at particular junctures, that the nine states present would not concur in sentiments on the subject of a treaty, were indifferent whether their members attended or not. But now that the senators vote individually, and not by States, each state will be anxious to keep a full representation in the Senate; and the Senate has now power to compel the attendance of its own members. We shall thus have no delay, and business will be conducted in a fuller representation of the states than it hitherto has been. All the members of the Convention, who had served in Congress, were so sensible of the advantage attending this mode of voting, that the measure was adopted unanimously. For my own part, I think it infinitely preferable to the old method. So much for the manner of voting.

Now let us consider whether the power of making treaties is not as securely placed as it was before. It was formerly vested in Congress, who were a body constituted by the legislatures of the different states in equal proportions. At present, it is vested in a President, who is chosen

by the people of America, and in a Senate, whose members are chosen by the state legislatures, each legislature choosing two members. Surely there is greater security in vesting this power as the present Constitution has vested it, than in any other body. Would the gentleman vest it in the President alone? If he would, his assertion that the power we have granted was as dangerous as the power vested by Parliament in the proclamations of Henry VIII., might have been, perhaps, warranted. Would he vest it in the House of Representatives? Can secrecy be expected in sixty-five members? The idea is absurd. Besides, their sessions will probably last only two or three months in the year; therefore, on that account, they would be a very unfit body for negotiation; whereas the Senate, from the smallness of its numbers, from the equality of power which each state has in it, from the length of time for which its members are elected, from the long sessions they may have without any great inconveniency to themselves or constituents, joined with the president, who is the federal head of the United States, form together a body in whom can be best and most safely vested the diplomatic power of the Union.

General Pinckney then observed, that the honorable gentleman had not conducted his arguments with his usual candor. He had made use of many which were not well founded, and were only thrown out ad captandum. Why say, upon this occasion, that every thing would, in future, be managed by great men, and that great men could do no wrong? Under the new Constitution, the abuse of power was more effectually checked than under the old one. A proper body, immediately taken from the people, and returnable to the people every second year, are to impeach those who behave amiss, or betray their public trust; another body, taken from the state legislatures, are to try them. No man, however great, is exempt from impeachment and trial. If the representatives of the people think he ought to be impeached and tried, the President cannot pardon him; and this great man himself, whom the honorable gentleman pretends to be so much afraid of, as well as the Vice-President, and all civil officers of the United States, are to be removed from office on impeachment and conviction of treason, bribery, or other high crimes and misdemeanors. Then why make use of arguments to occasion improper jealousies and ill-founded fears? Why is the invidious distinction of "great men" to be reiterated in the ears of the members? Is there any thing in the Constitution which prevents the President and senators from being taken from the poor as well as the rich? Is there any pecuniary qualification necessary to the holding of any office under the new Constitution? There is not. Merit and virtue, and federal principles, are the qualifications which will prefer a poor man to office, before a rich man who is destitute of them. The gentleman has made a warm panegyric on the old Confederation. Can he possibly be serious, and does he really think it can secure us tranquillity at home, or respect abroad? Ask the citizens of Massachusetts if the Confederation protected them during the insurrection of Shays. Ask the crews of our vessels captured by the Algerines if respect for our government hath softened the rigors of their captivity. Inquire of our delegates to Congress if all the despatches from your public ministers; are not filled with lamentations of the imbecility of Congress; and whether foreign nations do not declare they can have no confidence in our government, because it has not power to enforce obedience to treaties, Go through each state in the Union, and be convinced that a disregard for law hath taken the place of order, and that Congress is so slighted by all of them that not one hath complied with her requisitions. Every state in the Union, except Rhode Island,

was so thoroughly convinced that our government was inadequate to our situation, that all, except her, sent members to the Convention at Philadelphia. General Pinckney said, it had been alleged that, when there, they exceeded their powers. He thought not. They had a right, he apprehended, to propose any thing which they imagined would strengthen the Union, and be for the advantage of our country; but they did not pretend to a right to determine finally upon any thing. The present Constitution is but a proposition which the people may reject; but he conjured them to reflect seriously before they did reject it, as he did not think our state would obtain better terms by another convention, and the anarchy which would, in all probability, be the consequence of rejecting this Constitution, would encourage some daring despot to seize upon the government, and effectually deprive us of our liberties.

Every member who attended the Convention was, from the beginning, sensible of the necessity of giving greater powers: to the federal government. This was the very purpose for which they were convened. The delegations of Jersey and Delaware were, at first, averse to this organization; but they afterwards acquiesced in it; and the conduct of their delegates has been so very agreeable to the people of these states, that their respective conventions have unanimously adopted the Constitution. As we have found it necessary to give very extensive powers to the federal government both over the persons and estates of the citizens, we thought it right to draw one branch of the legislature immediately from the people, and that both wealth and numbers should be considered in the representation. We were at a loss, for some time, for a rule to ascertain the proportionate wealth of the states. At last we thought that the productive labor of the inhabitants was the best rule for ascertaining their wealth. In conformity to this rule, joined to a spirit of concession, we determined that representatives should be apportioned among the several states, by adding to the whole number of free persons three fifths of the slaves. We thus obtained a representation for our property; and I confess I did not expect that we had conceded too much to the Eastern States, when they allowed us a representation for a species of property which they have not among them.

The numbers in the different states, according to the most accurate accounts we could obtain, were--

- In New Hampshire, ... 102,000
- Massachusetts, ... 360,000
- Rhode Island, ... 58,000
- Connecticut ... 202,000
- New York, ... 233,000
- New Jersey, ... 138,000
- Pennsylvania, ... 360,000
- Delaware, ... 37,000
- Maryland, (including three fifths of 80,000 negroes,) ... 218,000
- Virginia, (including three fifths of 280,000 negroes,) ... 420,000
- N. Carolina, (including three fifths of 60,000 negroes,) ... 200,000
- S. Carolina, (including three fifths of 80,000 negroes,) ... 150,000
- Georgia, (including three fifths of 20,000 negroes,) ... 90,000

The first House of Representatives will consist of sixty-five members. South Carolina will send five of them. Each state has the same representation in the Senate that she has at present; so that South Carolina will have, under the new Constitution, a thirteenth share in the government, which is the proportion she has under the old Confederation: and when it is considered that the Eastern States are full of men, and that we must necessarily increase rapidly to the southward and south-westward, he did not think that the Southern States will have an inadequate share in the representation. The honorable gentleman alleges that the Southern States are weak. I sincerely agree with him. We are so weak that by ourselves we could not form a union strong enough for the purpose of effectually protecting each other. Without union with the other states, South Carolina must soon fall. Is there any one among us so much a Quixote as to suppose that this state could long maintain her independence if she stood alone, or was only connected with the Southern States? I scarcely believe there is. Let an invading power send a naval force into the Chesapeake to keep Virginia in alarm, and attack South Carolina with such a naval and military force as Sir Henry Clinton brought here in 1780; and though they might not soon conquer us, they would certainly do us an infinite deal of mischief; and if they considerably increased their numbers, we should probably fall. As, from the nature of our climate and the fewness of our inhabitants, we are undoubtedly weak, should we not endeavor to form a close union with the Eastern States, who are strong? And ought we not to endeavor to increase that species of strength which will render them of most service to us both in peace and war?--I mean their navy. We certainly ought; and by doing this we render it their particular interest to afford us every assistance in their power, as every wound that we receive will eventually affect them. Reflect, for a moment, on the situation of the Eastern States; their country full of inhabitants, and so impracticable to an invading enemy by their numberless stone walls, and a variety of other circumstances, that they can be under no apprehension of danger from an attack. They can enjoy their independence without our assistance. If our government is to be founded on equal compact, what inducement can they possibly have to be united with us, if we do not grant them some privileges with regard to their shipping? Or, supposing they were to unite with us without having these privileges, can we flatter ourselves that such union would be lasting, or that they would afford us effectual assistance when invaded? Interest and policy both concurred in prevailing upon us to submit the regulation of commerce to the general government. But I will also add, justice and humanity require it likewise. For who have been the greatest sufferers in the Union, by our obtaining our independence? I answer, the Eastern States. They have lost every thing but their country and their freedom. It is notorious that some ports to the eastward, which used to fit out one hundred and fifty sail of vessels, do not now fit out thirty; that their trade of ship-building, which used to be very considerable, is now annihilated; that their fisheries are trifling, and their mariners in want of bread. Surely we are called upon by every tie of justice, friendship, and humanity, to relieve their distresses; and as, by their exertions, they have assisted us in establishing our freedom, we should let them, in some measure, partake of our prosperity. The general then said he Would make a few observations on the objections which the gentleman had thrown out on the restrictions that might be laid on the African trade after the year 1808. On this point your delegates had to contend with the religious and political prejudices of the Eastern and Middle States, and with the interested and inconsistent opinion of Virginia, who was warmly opposed to our importing more slaves. I am of the same opinion

now as I was two years ago, when I used the expressions the gentleman has quoted--that, while there remained one acre of swam-land uncleared of South Carolina, I would raise my voice against restricting the importation of negroes. I am as thoroughly convinced as that gentleman is, that the nature of our climate, and the flat, swampy situation of our country, obliges us to cultivate our lands with negroes, and that without them South Carolina would soon be a desert waste.

You have so frequently heard my sentiments on this subject, that I need not now repeat them. It was alleged, by some of the members who opposed an unlimited importation, that slaves increased the weakness of any state who admitted them; that they were a dangerous species of property, which an invading enemy could easily turn against ourselves and the neighboring states; and that, as we were allowed a representation for them in the House of Representatives, our influence in government would be increased in proportion as we were less able to defend ourselves. "Show some period," said the members from the Eastern States, "when it may be in our power to put a stop, if we please, to the importation of this weakness, and we will endeavor, for your convenience, to restrain the religious and political prejudices of our people on this subject." The Middle States and Virginia made us no such proposition; they were for an immediate and total prohibition. We endeavored to obviate the objections that were made in the best manner we could, and assigned reasons for our insisting on the importation, which there is no occasion to repeat, as they must occur to every gentleman in the house: a committee of the states was appointed in order to accommodate this matter, and, after a great deal of difficulty, it was settled on the footing recited in the Constitution.

By this settlement we have secured an unlimited importation of negroes for twenty years. Nor is it declared that the importation shall be then stopped; it may be continued. We have a security that the general government can never emancipate them, for no such authority is granted; and it is admitted, on all hands, that the general government has no powers but what are expressly granted by the Constitution, and that all rights not expressed were reserved by the several states. We have obtained a right to recover our slaves in whatever part of America they may take refuge, which is a right we had not before. In short, considering all circumstances, we have made the best terms for the security of this species of property it was in our power to make. We would have made better if we could; but, on the whole, I do not think them bad.

Jonathan Elliot, ed., *The Debates in the Several State Conventions, on the Adoption of the Federal Constitution*, Vol. 4, Philadelphia: J.B. Lippincott and Company, pp. 277-86