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Address by Senator Strom Thurmond (D-SC) introducing resolution to establish a commission on federal and state jurisdiction on Senate floor, 1958 January 20

Strom Thurmond

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MR. PRESIDENT:

The profoundest issue touching on free government in the United States is as old as the Founding Fathers and the Constitutional Convention of 1787 and as new as tomorrow's decisions of the Supreme Court.

The issue is the maintenance of our constitutional equilibrium, the preservation of that system of checks and balances which has up to now been the principal guarantee of our heritage of freedom.

This system -- and consequently our freedom -- is now imperiled by two factors:

The first is the growing centralization of power in the Federal government at the expense of the rights and integrity of the forty-eight States -- the Federal usurpation of States' Rights.

The second factor is the usurpation by one of the three coordinate branches of the Federal government of powers rightfully belonging to the other branches -- the mounting violation of the principle of Separation of Powers.

If these trends are permitted to continue unchecked, the ultimate losers will be the people of this country.

The gainers profiting from this development, as centralization and encroachment win the ascendancy, are those in Russia and elsewhere who are looking confidently for the transformation of America into one form or another of the total state. I might remind you that only last June Mr. Khrushchev hopefully predicted a United States that in another
generation or two would be a twin sister to the Soviet Union. He said: "And I prophecy that your grandchildren in America will live under socialism." The Soviet leaders have been reasonably correct in their boasts. Are they this time?

Let me make it clear at the beginning, however, that I am not trying to sound the alarm against the imminent Communization of America. It is just this sort of exaggeration that has so successfully beclouded attempts at serious discussion of this issue in the past. Let us at the outset get rid of the notion that those who hold my views believe that Communism has already hammered its way into the White House and is now galloping up Pennsylvania Avenue like a cavalry charge, about to inundate the Congress.

It is not any Moscow-directed conspiracy promoting the Communization of our government that I mainly fear.

Nor do I fear that we will ever fall into quite the same sort of totalitarianism that was exemplified by Nazi Germany or Fascist Italy.

Then what is it that I fear?

What I fear is what is already visible. What I fear is the creation, subtly, law by law, decision by decision -- almost imperceptibly -- of the uniquely American version of the total state.

What I fear is this peculiarly American version of total or near-total Federal power.

The fact that so much of this dangerous growth has been built up, if not in accordance with a scrupulous regard for the Constitution, at least in accordance with the forms of law, is what makes the danger so difficult for many to perceive and to realize. The fact that such-and-such an act is passed by the Congress; the fact that the act is signed by our duly elected President; the fact that our Supreme Court, our highest judicial body, declares it constitutional -- these give
the amorphous growth of central power and the consequent weakening of States' Rights the marking of an American product.

But let us bear it in mind, Mr. President, that totalitarianism in a red, white, and blue package is still totalitarianism.

Before I set forth my specific proposition, embodied here in my proposed resolution, let me, at the outset, plead with all sincerity, that it is my purpose to bring this problem out for discussion and -- eventually -- decision, on the highest levels of statesmanship. Let me, to begin with, plead that we store away in the attic of forgotten recrimination the worn and beaten weapons of sectionalism that obscured and confused and distorted debate of these issues in the past.

I hope that I can convey something of the gravity of this question of States' Rights. I believe that the time has come for serious examination of the internecine struggle among the branches of the Federal government to encroach on one another's prerogatives. All that I seek is to open wide a reasonable but vigorous and definitive path to the discovery of the facts, with a view to having the Congress then operate on those facts legislatively, as the facts indicate.

THE STATE-FEDERAL PROBLEM

First, the matter of the relationship of the States to the Federal government. Let me interject here, for the benefit of those who may be recalling that several commissions and bodies have already been set up to study this problem, that the Commission which I am proposing here would, as I shall explain in a moment, proceed upon a completely different approach from that followed by these other bodies.

President Eisenhower put the problem very well in his address to the Governors' Conference at Williamsburg last year, and I should like to quote him briefly:
"Our governmental system, so carefully checked, so delicately balanced, with power fettered and the people free, has survived longer than any other attempt to conduct group affairs by the authority of the group itself. Yet a distinguished American scholar has only recently counseled us that in the measurable future, if present trends continue, the States are sure to degenerate into powerless satellites of the national government in Washington.

"That this forecast does not suffer from lack of supporting evidence all of us know full well. The irony of the whole thing is accentuated as we recall that the national government was itself not the parent, but the creature, of the States acting together.

....

"Four years ago at your Seattle conference" -- I am still quoting from the President's address -- "I expressed the conviction that unless we preserve the traditional power and responsibilities of State government, with revenues necessary to exercise that power and discharge those responsibilities, then we will not preserve the kind of America we have known; eventually, we will have, instead, another form of government and, therefore, quite another kind of America.

"That conviction I hold just as strongly today."

In order to make a start toward remedying the situation, the President called for the creation of a Joint Federal-State Action Committee, whose purpose was to make a study looking to the transfer of certain limited powers back to the State governments.

This Joint Federal-State Action Committee was not the first body set up to study problems of Federal-State relationship. In addition to valuable studies made by the Council of State Governments, by university groups, and by private individuals, there was the Commission on Intergovernmental Relations, also a project of President Eisenhower's This Commission made a two-year study of our federal system, reporting to the President in 1955, said to have been "the first official undertaking of its kind since the Constitutional Convention in 1787."

The Commission, under the chairmanship of Mr. Meyer Kestnbaum, submitted its report with the hope that the latter would "... be
regarded as the beginning rather than the end of a contemporary study
of the subject of intergovernmental relations, and that it will
stimulate all the levels of government to examine their respective
responsibilities in a properly-balanced federal system."

I am very glad that the Commission termed its report only a
beginning and that it urged further study of the problem.

I say this because, in my opinion, despite the valuable research
done by this Commission, its conclusion — which I shall quote briefly
in a moment — contains a major fallacy, a fallacy which my resolution
is designed to avoid.

This fallacy is one which also shows up in the report of the
Joint Federal-State Action Committee as well as in many of the private
reports on this subject. The fallacy lies in the fact that these
various reports are fundamentally in error in their basic approach to
the problem. They approach the question of Federal-State jurisdiction
primarily from the standpoint of policy, rather than from a constitu­
tional standpoint.

This is the great distinction between that which I am proposing
and those studies which have been made up to now. My resolution, it
will be noted, emphasizes that the study shall be made of "the
respective powers of the Federal government and the State government
under the Constitution" and of "the respective powers of the three
branches of the Federal government under the Constitution." The
reports resulting from these previous studies, on the other hand,
have, as I have said, based their recommendations largely on
considerations of policy — principally administrative efficiency
and economy.

Let me illustrate what I mean by quoting a few short passages
from these reports.
The Commission on Intergovernmental Relations insisted that these Federal-State problems are today political rather than constitutional in that: "The limits of the delegated and implied national powers fix the maximum range of national action. The existence of such constitutional bounds is probably more important than their exact location for the purpose of maintaining the federal nature of our governmental system ..."

"Under current judicial doctrine, there are still limits on the coercive powers at both levels, but the national powers are broad and the possibilities by means of spending are still broader... Which level ought to move? Or should both? Or neither? What are prudent and proper divisions of labor and responsibility between them? These are questions mainly for legislative judgment, and the criteria are chiefly political, economic, and administrative, rather than legal."

The Honorable John H. Stambaugh, a staff director of the Joint Federal-State Action Committee, recently explained the approach of the Committee as follows:

"The only consideration before the Committee is whether a given function can logically be assumed completely at the State and local level and be carried on with even greater effectiveness than under present arrangements. Local control and local decisions over as many of these programs as possible are desirable and necessary. Many of these programs can be enriched by the diversified administration of State and local governments; can be handled more effectively and responsively; and the States should and can obtain resources to finance these programs."

In a similar vein, a member of a House Government Operations Subcommittee on intergovernmental relations applauded the Committee's recommendations that certain functions be returned to the States, and
here again policy considerations were stressed: "It's the thing to do," said Representative Hoffman. He declared that the States will get "better results and better construction for less money if they handle their own programs."

As a final illustration of what I call the policy (as opposed to the constitutional) approach, I should like to quote a few sentences from a volume of very interesting essays on the subject, "The States and the Nation" by Leonard D. White (Baton Rouge, Louisiana State University Press, 1953):

"These essays are not a study of constitutional law. I consider the constitutional issue settled conclusively against the states. The national government can now go a long way under the interstate commerce clause and the general welfare clause; and by grants-in-aid it can buy whatever additional authority Congress believes desirable. The future of the states rests not on constitutional protection but on political and administrative decisions.... The issues of the future in this area are consequently political and administrative in nature."

Mr. President, this matter of considering the constitutional issue settled conclusively against the States and resting the whole future of the States on administrative policy and political decisions rather than on constitutional protection is, in my opinion, a very dangerous procedure. I cannot over-emphasize how strongly opposed I am to any such approach to this problem. I should almost prefer that no commission at all ever be set up to study Federal-State relations rather than that one should carry out its study from this approach, for this policy approach confirms the States, at the outset, as mere subdivisions of an all powerful central government. This approach accepts the idea that the States, constitutionally, have no case, that there are no such things as States' Rights. For, if certain powers and functions should be assigned to the States, purely
on a policy basis, is it not clear then that the National government could, at its whim, take back these functions and powers from the States, for reasons -- or excuses -- of policy?

We should encourage the transfer back to the States of certain functions now performed by the Federal government. On this point, most of those who have studied the matter seem to be in agreement; but the principal reason for doing so should not be the question of policy -- as Mr. Stambaugh, for example, urged, because it is "desirable," because the "programs can be enriched," "can be handled more effectively and responsively." He is right, of course, in that it is desirable from a policy standpoint: These programs can be handled more effectively and more responsively by the States. But the real reason why we should assign these functions to the States is that in so doing we would be restoring the balance prescribed by the Constitution.

Any division of State and Federal powers that exists merely at the whim or sufferance of the National government is of no lasting significance. True, the administration of these governmental functions by the States instead of by the Federal government might -- in most cases, definitely would -- work out better, from a policy standpoint; but as far as affording any real protection to the basic rights and freedoms of the individual citizen (which is in the long run the policy consideration which should be paramount over all others) -- as far as protecting these rights is concerned, such an approach is worthless, because the States' powers and functions would be predicated not on constitutional right but on mere considerations of administrative policy or economy. In other words, they would be held only at the sufferance of the National government.
WHY STATES’ RIGHTS?

This brings us to the heart of the matter, to the compelling reason why we must protect and restore the powers of the separate States, as we are commanded to do anyway by the Constitution. This brings us, indeed, to considerations of policy—not short range, relatively unimportant details of administrative efficiency, but long range, fundamental policy—in short, the basic practical human consideration which makes it so necessary, so vital, that, in this question of Federal-State relationship, we adhere to the course which the Constitution prescribes.

I refer, Mr. President, to the matter of individual rights—civil liberties. I refer to those basic human freedoms, individual liberties, which Western man has for so many centuries bled and suffered and struggled to secure. Basically, these are the fundamental liberties at stake in the question of States’ Rights. It is essential that we look at States’ Rights in a dispassionate way, that we see the principle of States’ Rights in perspective. For many years the issue at stake has been beclouded, because many people tended to dismiss States’ Rights as being simply a cloak for Southern separatist aspirations, or a device to facilitate the exploitation of racial minorities. This is false and false to the core. States’ Rights is an enduring and valid principle, which transcends the issue of race and which has existed since long before there was a South.

For States’ Rights is but the American term for the principle of local self-government, a principle with which the peoples of Ireland and of Finland, of Czechoslovakia and of Poland—and of Hungary—are tragically familiar, and for which over the centuries they have fought and struggled and died.
The right of **local** self-government is as old as history itself. It is a fundamental and inalienable human right. It existed prior to the advent of written constitutions, and in Europe and most parts of the globe, it exists today independently of constitutions. Even though, in many quarters, the exercise of the right has been ruthlessly suppressed by Red force, the right itself still exists and some day will be reasserted by the subject peoples.

In the establishment of our Union, we recognized this right of self-government, we incorporated it in our written Constitution, and we gave it its American name of States' Rights. Through delegation by the States of certain of their powers, the right of local self-government was voluntarily limited to some extent, it is true — in certain specified particulars. But on the other hand, the basic right itself was formalized, that is to say, it was formally recognized by the Constitution; and, lest there should have arisen any possible shred of doubt about it, the Founding Fathers took pains to reaffirm the principle in the 10th Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

It has become the fashion in late years to ignore the 10th Amendment, to dismiss it (as one Justice did) as a "mere truism." *But events point more and more clearly every day* to the compelling necessity for us — if we are to remain a free people — to re-examine this Amendment and to re-dedicate ourselves to the principle of States' Rights — local self-government — which it guarantees, for, individual rights, in the long run, depend squarely on States' Rights, upon the concept of local self-government. Far from being antithetical to each other, as certain parties have tried to portray them, the one principle depends upon the other.
It is unfortunate that so many of those who have labored so zealously in behalf of the cause of individual rights and civil liberties have done so, not merely in neglect but often in actual derogation, of the rights of the States. In order to obtain some temporary and usually illusory advance in the field of individual rights, (generally where a minority group complication is involved) these "human rights" advocates have sought to curtail and cut down the powers and rights of the States and, in fact, to reduce the States to meaningless administrative subdivisions. In so doing, they are actually doing the worst possible disservice in the long run to the cause of human rights; for, at the expense of the States, they are helping to build up a vast concentration of power in Washington.

They are creating a centralized governmental apparatus against which the States first, and later the individual citizen, will be completely powerless. And when that day arrives — and, Mr. President, if we do not halt and reverse this trend in our Government, it will not be long in arriving — human rights, minority rights, individual liberties will be in the most mortal danger they could ever be in. When all power is concentrated in the central government, without effective State governments existing as a check, the end is near for the rights of the individual. When the principle of States' Rights — local self-government — goes down the drain, individual rights will follow close behind. In our American system, the surest bulwark of individual liberty is the principle of States' Rights.

The Founders knew this, and that is why they established this right of local self-government as one of the twin pillars of their carefully-devised system of checks and balances. They deliberately set up this system of checks and balances, and made States' Rights one of its two bulwarks, in order to prevent the rise of a centralized and
tyrannical power-apparatus, before which the individual citizen would be helpless.

PROBLEM OF THE THREE BRANCHES OF THE FEDERAL GOVERNMENT

The other major device set up by the Founders in their establishment of the checks and balances system—and this is the second matter with which the Commission here proposed would deal—was the principle of Separation of Powers; that is, the independence of the three branches of the Federal Government. States' Rights alone is not enough. It is necessary that within the Federal Government itself there be a strictly-maintained balance among the three branches, the legislative, the executive, and the judicial. This balance can be maintained only by an unceasing and unyielding resistance to any and all attempts on the part of any one branch to usurp powers rightfully belonging to one of the other branches. In addition to marking the constitutional line between Federal and State powers, it would be the proposed Commission's function to study and locate and set forth the proper boundaries of these three Federal branches. And again, of course, to establish their respective jurisdictions under the Constitution, and not simply to determine what boundaries might be most expedient from a policy standpoint.

The pressing need of keeping these three branches within their proper bounds I shall not elaborate on to any great extent. I think that this need is obvious and clear to most, if not all, of those present. This body, in particular, should be well aware of certain trends which in recent years have seriously threatened the balance. I will not detail the rash of court decisions which have caused concern in this body, among Northern, Southern, and Western members alike, as well as among members of the American Bar and among private citizens. Suffice it to say that a dangerous trend is in motion and
that this time, fortunately, a large body of responsible opinion seems at least to have perceived the danger.

I believe that there is an increasing awareness on the part of Members of both Houses of the dangers inherent in this growing imbalance within the structure of the Federal government. If in this address I dwell in more detail on the State-Federal problem, it is only because I feel that Congress is perhaps less aware of the danger there, or less concerned over it, and not because I attach any less importance to the problem of the balance of the three Federal branches. Indeed, in view of the steadily shrinking power of the States, it is more imperative than ever that the principle of Separation of Powers among the three Federal branches be scrupulously preserved.

FINAL WORD ON THE STATES' RIGHTS PROBLEM

But to return once more to the States' Rights half of the problem. Some will point out that the States themselves are in large measure responsible for their present weakened position; that the State governments themselves are willing parties to the present trend; that far from making any serious effort to reverse the trend, State officials continue to seek more and more Federal grants and hand-outs which they know full well will result in increasing Federal control; and these people may take the view that since the States apparently are unwilling to save themselves, why should we, the Congress, initiate any move to save them?

With the first part of that argument I find myself in at least partial agreement. It is quite true that some of the blame for their present plight rests with the States themselves. For one thing, the lure of Federal money has often been too strong for the States to resist. State political leaders, eager to boast of extra services provided, yet desirous of keeping State and local taxes down, have
been all too willing to turn to the Federal Treasury—and, in so doing, to hitch ever more tightly to their States/the reins of Federal control.

It is also true that, by neglecting certain fields in which large segments of their populations wanted governmental action taken, the States made very easy/the task of those who were seeking to centralize power in Washington at the expense of the States. President Eisenhower put this very well in his Williamsburg speech, if I may quote him further:

"The tendency of bureaucracy to grow in size and power/does not bear the whole of the blame for the march of political power to Washington. Never, under our Constitutional system, could the national government have syphoned away State authority without the neglect, acquiescence, or unthinking cooperation of the States themselves.

"The Founding Fathers foresaw and attempted to forestall such a contingency. They reserved to the people, and they reserved to the States, all power not specifically bestowed upon the national government.

"But, like nature, people and their governments are intolerant of vacuums. Every State failure to meet a pressing public need/has created the opportunity, developed the excuse/and fed the temptation/for the national government to poach on the States' preserves. Year by year, responding to transient popular demands, the Congress has increased Federal functions. So, slowly at first, but in recent times more and more rapidly, the pendulum of power has swung from our States towards the central government."

Like the President, I agree that the States themselves deserve much of the blame; I agree that the States seem little disposed/to take any effective action to resist Federal encroachment, by rejecting further Federal financial aid. But even if the States apparently cannot/or will not/help themselves, it does not follow that this Congress should stand aside/and watch the dissolution of our federal form of government. The very fact that within the States themselves there are so many factors and currents—social, economic, and
especially political — which tend to invite Federal encroachment, makes it doubly necessary that steps be taken now to preserve the balance intended by the Constitution. We are not interested in preserving States' Rights just because we wish to do a favor to State governments as such. Nor are we interested in the preserving of a political tradition merely for its own sake. The Congress should be interested in preserving States' Rights because the preservation of States' Rights is essential to the maintenance of our federal form of government, and is, therefore, vitally necessary to the well-being of the people of the United States.

CONCLUSION

Mr. President, I hope that in this brief talk I have been able to convey some sense of the urgency which I feel in regard to this matter. I hope that I have been able to make it clear why a survey of the boundaries of State and Federal jurisdiction is needed. I hope that I have been able to point out with sufficient clarity what I think is the basic fallacy involved in the previously undertaken studies of Federal-State relationship — namely, the emphasis on considerations of policy rather than on constitutionalism. I hope, therefore, that you will agree that this proposed Commission on Federal and State Jurisdiction is a vital necessity to the preservation of our federal form of government and of our free institutions. I hope that you will support the resolution.

Much has been said on the floor during the past few days about the dangers facing us from abroad. Let us face firmly and resolutely this foreign threat; but at the same time let us look to the preservation of our freedom at home.

In taking every step necessary to maintain, or to restore, our system of checks and balances, let us all bear in mind these words of
our first President, George Washington, spoken in his Farewell Address:

"The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasions of the others, has been evinced by experiments ancient and modern; some of them in our country, and under our own eyes. To preserve them must be as necessary as to institute them....Let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed."

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