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Attacks on constitutional form of government, circa 1958

Strom Thurmond

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Although this period in our lives is not the most promising we have known together, I am happy to be with you.

I am especially pleased because I can talk with you forthrightly as one Southerner to another, about the constitutional crisis which I am sure is foremost in your thoughts, as it is in mine.

In speaking to you as one Southerner to another, I do not wish to imply that the problems to which I shall allude are sectional. Let there be no misunderstanding, the constitutional crisis with which we are confronted poses an equal danger to every freedom-loving individual in the United States, and through them, to all people in the world who look to our great country for leadership. My sole reason for approaching this problem from the Southern viewpoint is that I am convinced that the South alone contains the combination of the firmness of conviction necessary for a staunch stand and the opportunity to assume the leadership in this fight.

As a preface, let me emphasize that no course of action, no endeavor, no matter how well planned, can possibly succeed without unity and resoluteness.

I stand second to none in my love and respect for individuality. It is the equality of character responsible for all progress; it is the principal ingredient essential to a strong and free nation. It must not be subverted, lest the cause be lost in winning the battle. But in a common cause, men of individuality can unite their efforts, each contributing the best of his talent to attain the common goal.

I also recognize, and even glory in, the individual sovereignty of the several States, in all the many objects not specifically delegated to the Federal Government in the Constitution. Incidentally
one of the objects not delegated is education. The Southern States, like the Southern people, however, are engaged in a common cause, driven by a tyrannical Federal Government to a defense of their very right to exist as separate entities. To the maximum degree consistent with the separate sovereign entities of the several States, the Southern States should plan together, work together and stand or fall together.

Unity, then, is a condition precedent to success.

Now, let us survey the situation to determine where we stand. We are confronted with a three-pronged attack on our constitutional form of government by the three branches of the Federal Government, spurred on by various groups interested solely in political aggrandizement.

The attack is led in the Supreme Court. Intoxicated by their own words and seeming success; supported, even encouraged, by an Administration motivated solely from pressure group politics; secure from a Congress unwilling to curb their abuses, these nine would-be oligarchs seek to impose their vicious and hypocritical ideology on a sovereign people in violation of the basic tenets of our republican form of government as expressed and limited in the Constitution of the United States. Their opinions have thwarted the efforts of Congress to insure internal security of the country. Their usurpations have practically reduced sovereign States to political subdivisions of a national oligarchy.

The Chief Justices of thirty-six States, speaking with a remarkable degree of restraint, expressed it in these words:

"It has long been an American boast that we have a government of laws and not of men. We believe that any study of recent decisions of the Supreme Court will at least raise considerable doubt as to the validity of that boast."
Wherein lies our hope?

There are those among our number who counsel against too strong an attack on the Court, maintaining that it may some day be our last defender, we having been reduced to the status of a minority. Such counsel is wishful thinking, born of a love for the status-quo and a fear of rocking the boat. For me, death itself could not be so bitter as an admission that supporters of a government of laws as contrasted to a government of men are a minority in the United States. Even were we a minority, the Court moves at such a rapid pace, that were we to postpone action to the day the Court came to our rescue, there would indeed be nothing left to rescue, for liberty would long since have perished in "the land of the Free."

Wherein lies our hope?

There are those among our number who counsel us to plan and wait for 1960. Some would have us work from within the Democratic Party organization; others would prefer an independent effort. Plan for 1960 we must -- adopting whatever course is in the best interest of our people.

As I will point out, the next two years will be eventful ones. Whatever decision is reached, it must be made in the light of events that occur between now and the hour of decision, as well as in light of those events now familiar to us.

I do know that in the next two years we will probably either stand or fall, win or lose, prevail or go down to inglorious and unconditional defeat. We must act now, while the conflict is still unresolved and we have a position of strength from which to deal.

There is but one rational conclusion -- without intermediate action, hope for improvement in the 1960 Presidential election falls into the category of "too little and too late."
Wherein lies our hope?

I believe it is in the Congress!

I am not overlooking the facts, nor do I deceive myself or seek to deceive you.

The 85th Congress which has only shortly adjourned has no claim to laurels from the South, or from advocates of constitutional government anywhere.

It was the 85th Congress which invaded the field of education and passed a general Federal aid bill pregnant with means for the Federal government to advance integration.

It was the 85th Congress which admitted Alaska to the Union, thereby setting the precedent for admission of other non-contiguous territories — territories peopled with persons who have no heritage in American political or religious philosophy.

It was the 85th Congress which supported such socialistic programs as integrated public housing and area redevelopment.

It was the 85th Congress, which in its second session alone, spent the country over $12 billion further into debt.

It was the 85th Congress which refused to come to the aid of victimized workers, although the Congress' own investigation was responsible for the revelation of repeated victimization of the working man.

It was the 85th Congress which refused to deal with a power-mad Court, lest it incur the wrath of the left-wing and minority pressure groups.

It was the 85th Congress which sat by in idleness while the Executive ruled an American city with American bayonets.

Worst of all, it was the 85th Congress which passed the first civil rights bill, so-called, in decades.
It is a miserable record; it could have been worse, I hate to admit; it will be worse, I warn, unless united, firm and resolute action is taken.

The political prognosticators assure us that the November elections will increase the number of radicals in Congress in both parties. The strongest integration zealots are favored in many contested elections. Let us not count on more numerical strength on our side in the 86th Congress than we had in the 85th Congress.

There is even less doubt about the important issues to be raised in the 86th Congress than about its philosophical make-up.

Senators Douglas, Humphrey, Clark, Javits, Case and their ideological bedmates have so warned us in a series of prepared speeches prior to the end of the last session.

Upon the organization of the Senate, the radicals will move to adopt new rules, with the stated intention of casting aside the rule concerning limitation of debate in the Senate. This rule, almost archaic from non-use, has nevertheless been a potent and effective weapon for the protection of constitutional government. Without it, we would have been overwhelmed long since. It serves the additional purpose of a forum for the influencing of the public opinion of the nation. Primarily, and of utmost importance, it is a cornerpost of a representative form of government, since it gives the right to the minority on any question to express its views and be heard; and the truth, if given a hearing, even when expressed by a minority, will ultimately prevail. The first fight, then, will be for the rule of the Senate controlling the limitation of debate, a right and heritage that cannot -- must not, be sacrificed.

On this first battle hangs the probable outcome of many subsequent contests. The Americans For Democratic Action, the
left-wing organization and for radicals, is a principal advocate of abolition of free debate in the Senate. If the radicals are successful in this trial, the ADA policies indicate that an effort to abolish seniority as a criteria for committee chairmanships will soon follow. So-called Civil Rights, wasteful government spending at home and abroad, and pure unadulterated socialism will be the issues on which the other legislation turns.

There have even been hints that the Executive will advocate a system of Federally-financed schools to insure integration. The President recently spoke of free public education as a basic human right. The question of appropriating money for this unconstitutional scheme might even be an issue.

These are the defensive battles we must face in Congress. Even were success attained on the defensive side, our plight will be severe unless we succeed in an offensive of our own.

The Supreme Court's tyrannical actions must be halted. The constitutional authority to restrict the court to its legal sphere of activity lies solely with the Congress, the most direct representative of the States and the people in the Federal Government.

The most direct approach to the problem lies in the passage of legislation to restrict the jurisdiction of the Court and to enforce the intent of Congress as expressed by Congress. This approach was attempted during the 2nd Session of the 85th Congress. The Senate Judiciary Committee reported the Jenner-Butler Bill and this bill was considered by the Senate in the form of an amendment on August 20, 1958. The amendment was defeated 49-41. The Jenner-Butler Bill, as reported by Committee, would have, first, withdrawn jurisdiction of the Supreme Court with respect to questions on admission of applicants to the bar of State Courts; second, provided that in contempt of
Congress prosecutions, Congress should be the sole authority to
decide the issue of pertinency of Committee questions to witnesses;
third, prevented pre-emption of State sedition laws by past or future
Federal acts; and fourth, provided that "theoretical advocacy" of
violent overthrow of the government, as well as "incitement to action"
would constitute sedition under the Smith Act.

Our closest approach to success in this field was with the Anti-
Federal Pre-emption Bill, H. R. 3, popularly known as the "States'
Rights Bill." This bill was passed by the House of Representatives
by a most substantial majority, and was considered by the Senate in
the form of an amendment on August 20 and 21, 1958. The Anti-Federal
Pre-emption Bill, written by Congressman Smith of Virginia, provided
that no Congressional Act should be construed to pre-empt the field
and thereby nullify state laws on the subject unless either first,
the Federal act specifically so provided, or second, there was an
irreconcilable conflict between the Federal Act and the State law.
The "States' Rights Bill" amendment was killed by recommittal to
Committee by a vote of 41-40.

It is imperative that these and similar purposed measures be
enacted by the 86th Congress. It behooves us, therefore, to
understand why these measures failed of passage so that we may avoid
the same errors in our next attempt.

I am convinced that the secret of our failure lay in timing and
procedure, not in the substantive content of these proposals.

Let me illustrate. The Jenner-Butler Bill, originated in the
Senate, was reported by the Judiciary Committee to the Senate
Calendar on May 15, 1958. The leadership never scheduled it for
consideration. On August 20, its authors, in desperation, offered it
as an amendment to a bill under consideration. This was only three
days before Congress adjourned, and it is noteworthy that only 90 votes of 96 were cast.

The "States' Rights Bill" was passed by the House of Representatives on July 17, 1958, by a vote of 241 to 155. Yet the bill was never reported by the Judiciary Committee and therefore was never scheduled for Senate consideration. Once again, the proponents of the measure were forced to offer the bill in the form of an amendment at the too late date of August 20, only three days before adjournment. Only 81 of the 96 possible votes were cast.

At the time both these bills were considered and defeated in the Senate, almost all "must" legislation had been disposed of. Many Senators faced contested elections at home. The opponents threatened and did engage in "extended debate." These factors of timing, coupled with the burden of having the legislation considered in the form of amendments, were decisive. It proves once and for all, that to succeed, the Southerners in Congress must have a strong voice in the leadership, which schedules bills for consideration.

From this discussion, it has been my intention to show that Congress can, and probably will be, the determining force in the trial that confronts us. We are fortunate in this regard, for relative to the Judiciary and the Executive, our greatest strength lies in the Congress. Let us think for a moment about "balances of power." We realize that the minority groups concentrated in great population centers hold the balance of power in electoral votes. We, the eleven Southern States, hold the same kind of "balance of power" in Congress.

First, let us examine the make-up of the Senate, where the eleven Southern States have 22 Senators -- all Democrats. In the last Congress, the remaining 74 seats were divided between 47 Republicans
and 27 Northern Democrats. Undoubtedly there will be a change in this latter division, but it is most improbable that either the Northern Democrats or the Republicans will acquire a clear majority in the Senate.

In the House of Representatives, the situation is similar. The Southern States have 99 seats in the House. The Northern Democrats have 136 seats, and the Republicans have 199 seats.

Due to the admission of Alaska as a State, the Senate will have 98 seats in January and a majority, or 50 votes, will be needed to organize the Senate. It will require 218 votes to organize the House. The organizing group determines the leadership, committee assignments and committee chairmanships. It is obvious that a united South holds the balance of power in Congress.

It is equally obvious that the South has held this power in the past, yet we have not been notably successful in our efforts. Our power has not been employed in its full potential.

How can we best employ the full measure of our power? History, as it so often does, suggests the answer.

The balance of power in the Senate has been effectively wielded on several occasions to determine Committee Chairmanships and even organization. It is particularly interesting to note that the late Senator Ellison D. Smith was elected to Chairmanship of the Senate Interstate and Foreign Commerce Committee in January, 1924, after a month of casting 32 ballots, over Senator Cummings of Iowa, then President Pro Tem, by the switch of Independent Republican votes.

Independents in the Senate in the 47th, 66th, 70th and 72nd Congresses determined the organization of the Senate by exercise of their balance of power.

The House of Representatives also has its precedents. The
most interesting and historical occasion was in 1910, when a coalition of Democrats and Republicans deposed Speaker Joe Cannon as Chairman and member of the Rules Committee and of his power to appoint permanent committees and committee chairmen.

My proposal, then, is this: That prior to the time Congress convenes in 1959, the Southerners in each House of Congress should caucus separately from either political party; that the Southern caucus in each house then offer a coalition organization to whatever party or combination of parties will give the strongest commitment to our cause. It is inconceivable that the Northern Democrats and Republicans would join forces to organize Congress. One or the other; or members from both, would assent to a coalition with the Southern caucus.

What conditions would we demand as the price of our support?

On the specific side, at least a guarantee of a strong voice in the leadership, committee chairmanships according to our seniority and no change in the rules on extended debate.

On the general side, we should insist on a return by the Federal Government, in precept and practice, to the constitutional doctrine of limited Federal sovereignty; and a return by the Federal Government, in precept and practice, to the constitutional doctrine of separation of Executive, Legislative and Judicial powers.

Some may view this as a drastic proposal. They may express a fear of loss of committee chairmanships by Southern Legislators, and perhaps other party retaliation. This cannot happen, however, if the Southern caucus retains its balance of power, and it can only be lost if the Northern Democrats and the Republicans, or enough of each to constitute a majority, should join together, which as I have said, is inconceivable. If either party should seek to retaliate against
the Southern Members of Congress, we could then join with the other, and, as members of the majority coalition, control the organization of Congress. I am confident that the realization of this would prevent any party from attempting retaliatory measures.

This is no time to be faint-of-heart. The liberals in Congress, as I have noted before, have already given notice that they will move for a change in the rules on limitation of debate and possibly the selection of committee chairmen on a basis other than seniority. Without the benefit of extended debate, our loss of committee chairmanships would probably follow. Our best defense will have been lost.

In my opinion, the separate caucus is the most practical method by which we may bring the full force and effect of our balance of power in Congress into play.

Even though this were considered a drastic proposal, I would advance it nevertheless. We are faced with the possible loss of the very individual liberty and the governmental system of checks and balances for which our forefathers fought and died. We must not lose our heritage by default.

We must put our problem in proper perspective. Our adversaries have sought to have the courts resolve political questions, and the predetermined result has been political, not legal, decisions. Those who would destroy the Constitution seek to do so in the courts, for they know they cannot win with the rightful judges of political questions -- the people. Let us return the battle to the political arena where it belongs and fight with the weapon with which we can win -- power politics.

As a Senator, I am seeking to provide leadership through a definite proposal for action at the National level. Your course of
action at the State level must be provided by your elected officials at the State level. In this respect I can only urge that the people of the individual Southern States stand firm, work together and present a united front.

In conclusion, let me state that I do not claim to know all the answers. There may be other courses better adapted to achieve victory. They are not known to me. The time is short. If others have better proposals, now is the time to offer them.

The decision on a united course of action should not be left to the Southern Representatives alone, however. The sovereignty lies with the people of each State. It is the responsibility of each citizen to give sober and objective thought to our dilemma, reach a decision, and then make that decision known to his elected representatives. The choice of courses, in the final analysis, lies where it rightfully belongs, with the people.