

MVB, Speech on the appointing power, 4 October 1821

Mr. Van Buren said he would briefly reply to some of the observations which had fallen from the honourable gentleman from Columbia, (Judge Van Ness,) and would also add a few words, in answer to the suggestion of his venerable friend from Queens, (Mr. King.)

The honourable gentleman from Columbia had examined and discussed the matter with a degree of zeal and ability proportionate to the very deep interest he naturally took in it: In one respect, he said, he fully accorded with him—that in the formation of a constitution of government, they ought to divest themselves of the influence of party. All agree in deprecating party spirit, and many have admonished us, that we cannot be too scrupulously cautious on this subject: He was well satisfied, that, if we all practised upon our own precepts—if we did, in fact, smother all feelings of party, it could not be possible that we should have so much difficulty in providing for the appointment of justices of the peace.

He could not suppress his apprehension that the immediate effect on the political interests of the state, of which his amendment was supposed susceptible, had called forth much of the opposition it had to contend with. He did not pretend to be more exempt from the influence of party feelings than others; but he would not fail on all occasions, to act openly and above board, and assign the true motives of his vote and conduct.

The gentleman from Columbia had said, that as yet, we had done nothing for the people—that we had not given them any greater share of influence in the selection of their local officers, than they had before enjoyed. That gentleman's solicitude for the privileges of the people is commendable: But, said Mr. V. B. is the assertion true, sir? If it was, it would be a matter worthy of serious consideration. But, he continued, it is not correct. In the first place, they had given to the people, the right of choosing more than eight thousand militia officers: Was this nothing? But we were told that the public care nothing about this right! In this respect, too, the gentleman was greatly in error. There was no subject on which men felt a more lively interest. Let a militia officer be improperly superseded or supplanted, and they would find that it was a matter of no small interest or concern with the people. What has induced our respective chief magistrates to travel out of the ordinary course, and indulge in the

granting of brevet commissions, if there was no solicitude in regard to military appointments? There was, he said, great anxiety on this subject.

There are, said Mr. Van Buren, about 6600 civil officers in this state. Of this number, by the report of the select committee it was proposed to leave three thousand six hundred, for which, in consequence of their liability to frequent changes, no constitutional provision was made by the committee, to be appointed in such manner as the legislature shall designate. Was this nothing? If the people desire to have these officers elected, they will send to the legislature, such men as will obey their wishes in this respect; if they are not made elective, it will be because the people do not wish it; and they can, in this way, bring home to themselves the choice of these three thousand six hundred officers.

With respect to the residue of the number, it was proposed to leave it with the supervisors of the counties, to nominate as many candidates for each town as there were magistrates to be appointed in them respectively: And that the judges of the courts of common pleas should in like manner nominate for each town; if they agreed, the officers on whom they so agreed, should be thus appointed, and so far only as they disagreed, the lists should be sent to the governor, from these lists it should be left to the executive to select. The list presented by the supervisors, would very generally be in accordance with the sentiments of the people, as it must be supposed that they would consult their wishes and views on the subject. And is this, asked Mr. V. B. giving chaff to the people?

We have, sir, continued he, challenged gentlemen to shew, why it would not be as fit, and proper to elect the higher judicial officers, as magistrates for the towns; no answer had been given to this enquiry, because none could be given. It must be perfectly obvious, that every consideration that would be urged in favour of electing justices of the peace, would apply in favour of having the judges of the higher tribunals also elective; and that even fewer objections exist to having those courts selected in this way; this had not been mentioned as a threat, that a proposition of that nature would be made; but as an argument to shew the impropriety of having any judicial officers elected, in order to test the sincerity of some gentlemen's solicitude for the people. In this we are consistent throughout: the inconsistency was on the part of those who were for having the higher judicial officers appointed, and the justices of the peace elected.

We do not, sir, said Mr. V. B. deny the competency of the people to make a proper choice; this argument has been unfairly and untruly stated. Those who oppose the election of justices, do not do so because they have any distrust of the people. The objection to having them elected, did not flow from that consideration; but was with respect to the officer elected. It was because the magistrate would of necessity be acquainted with all, who opposed and who supported him. This would more or less bias his mind in favour of those, to whom he owed his election. It would be giving the rich and powerful a great advantage over the poor; and even, if it did not, it would excite jealousy and suspicion of unfairness on his part; which in its operation, would be nearly as prejudicial to the public peace, as if real injustice was done. These were the reasons, which had led him, and others, to doubt the propriety of having magistrates elected. The gentleman from Columbia, however, has told us, that there can be no danger from a want of independence, or from the partiality of magistrates—he says their conduct will be watched, and they will not dare to act improperly. Watched by whom? By those whom they intend to favour, and who will be able, and willing to screen them from harm, and support them against the efforts of injured and oppressed poverty, to procure redress!! But the defendant may call a jury if he has not confidence in the justice: a mighty boon, truly! Am I to tell the gentleman from Columbia, how little advantage a jury is to a party, if the court is against them? How, sir, is he to get his facts, on which he relies, before the jury? Is not the court the crucible through which they have to pass, before they get there? And does not daily experience prove, that in civil cases, the court can in almost every case, regulate the verdict of the jury, by the exclusive power they possess, to decide all questions of law? Again, we are told that where injustice is done by the magistrate, the party injured, may obtain redress by means of a certiorari! This was a reason, he said, he had hardly expected to have heard from that quarter: the gentleman from Columbia, well knew, that the remedy by certiorari, would not reach one in twenty cases where injustice had been suffered.

It is, said Mr. V. B. very desirable to restore peace and quiet to the community: he was willing to do all in his power to promote so worthy an object. But how was this to be done? Will the election of justices by the people, have a greater tendency to remove strife, than the project to have them selected in the manner proposed by the amendment he had submitted? He thought not.

The gentleman from Columbia, says, this nomination by the supervisors would create violence and strife in their elections, when it is known, that they were to

present the candidates to be appointed. But if the election of those, who are merely to nominate, will create this violence and strife, he could not perceive why there should be less difficulty, when the officers themselves, were to be directly elected by the people. That they are important offices, the gentleman has himself told us; and he has also told us that their election will call to the polls, all the farmers, and men who have an interest in the due administration of justice; and yet he would have us believe, that the election of magistrates will produce no strife or angry contests: This, said Mr. V. B. I cannot comprehend! It was generally supposed that the degree of warmth and strife at elections, was in proportion to the interest felt by the electors in the result.

He would add one word in reply to the remarks of the honourable gentleman from Queens. He would have the people select the candidates by ballot, and that the names of those having the highest number of votes, as also of those who had the next highest, should be presented to the courts of common pleas, who should be authorized to appoint the requisite number from among the names thus presented. The consequence of this would be, that in every town, there would be two sets of nominations of different politics, and it would create a strong temptation for the judges to decide purely on party grounds; and so far, therefore, from this being the means of allaying strife, it would greatly increase it. But if the selection should be made by the supervisors and the judges of the courts of common pleas, it was morally certain that in a vast majority of cases, the same persons would be recommended by both, because they would be of the same politics. We may, said Mr. V. B. speak of the practical operation of this measure, founded on what we all know will happen from the partiality and attachment, which men of the same political sentiments have for each other, without incurring the censure of being influenced by party motives in bringing forward this proposition. It would operate sometimes in favour of one party, and sometimes of another; the great object was to direct these party attachments to the selection of good men, and to secure the independence of the magistrates—that the laws may be administered without partiality, or suspicion of partiality. Where the supervisors and judges were of the same politics, they would be cautious to recommend none but men of fair characters, and such as were competent; and where they differed, the governor would select; and in making this selection he would consider himself bound, on all occasions, to take those who were of the same politics with himself; he would most likely be disposed to deal liberally with his opponents.

The gentleman from Queens, says we must cut asunder all connexion between the executive and the local authorities. I am, sir, said Mr. V. B. in the habit of receiving his opinions with great respect and deference, but on the present occasion he was constrained to differ with him. Why, he asked, should this be done? Is it for the purpose of keeping out of his hands a patronage which would add too much to his power? It was not for the benefit of the chief magistrate that he would confer on him this qualified power in the appointment of magistrates, but for the advancement of the public good. Past experience had proved, that power of this kind added nothing to the stability of the executive; it gave him no strength, but, on the contrary, was calculated to weaken him. We have seen several examples in this state, where the possession of the power of appointment has destroyed its possessors. It was the case in 1807, 1811, 1813, and again upon a very recent occasion. If these officers could be elected by the people, consistently with their necessary independence, and the due administration of justice, he would, without hesitation, vote for it; but he felt a strong conviction that it was wrong in principle to elect judicial officers, and he was very confident its practical operation would be unfavourable to the public interest.

Such being his sincere opinion, he could not unite with his honourable friend from Queens, to separate the executive entirely from the magistracy of the state, for the sole purpose of destroying patronage and avoiding political influence. That power would be put in the hands of the executive, not for himself, but to secure to the majority of the people that control and influence in every section of the state to which they are justly entitled. The executive is but their agent to carry their wishes into effect, and this he does upon great responsibility. That supremacy of the majority which it is proposed to surrender, is of vital importance to them. It is the just reward of their fortitude, their patriotism and fidelity, in war and in peace. It has been hardly earned and fairly won, and they ought to enjoy it. My feelings, sir, do not lead me to such a course. My constituents have not authorized me to make such a surrender, and I have no idea of usurping it.

Look at the general government: All its officers are appointed by the general appointing power; no inconvenience has grown out of this practice there—and we have not heard that any one wished to have any change in this part of the constitution of the United States. The United States' officers, might be well chosen in the different states; still it never has been supposed proper to do so, for the sole purpose of stripping the executive of power and influence.

He was, he said, not only satisfied that it was proper that there should be this connexion between the executive and these local officers, but that the due administration of justice, and the preservation of the public peace, required it. He is charged with the execution of the laws; he must execute them through the agency of magistrates: and would not, he asked, this connexion promote this object? He would call the attention of gentlemen to the state of things which existed during the late war; he would not do so for the purpose of reviving any improper feelings; but to illustrate and enforce the propriety of the sentiments he had advanced. It would be recollected by all, what difficulties and embarrassments had been occasioned by this want of connexion between the executive and the magistracy of the state. The council of appointment were at that time of different politics with the executive, and all the officers of their appointment were opposed to the war and its prosecution. The prejudice which those collisions produced to the public service, and the unceasing and unavailing complaints of the executive, of a want of co-operation of the public officers, surely cannot so soon be forgotten.

I am, therefore, said Mr. V. B. inasmuch as this power must be vested somewhere, forgiving the control to the majority of the state. If, in consequence of the avowal of this sentiment, I subject myself to the charge of intolerance, I submit to it. My conscience acquits me of any such motives. I feel that I may with safety appeal to my political course for an ample refutation of such imputations; and I cannot but think that the number of my political adversaries, who would be constrained to exonerate me, would not be inconsiderable. But, sir, these are matters with which the committee have no concern; they will be no longer troubled with them—the question must be tested by other considerations.

#### Document Information

Date:

4 October 1821

Object Type:

[Speech](#)

Author:

[MVB](#)