

## James Madison Speech in the Virginia Convention, 19 June 1788

Mr. Chairman.—I am persuaded that when this power comes to be thoroughly and candidly viewed, it will be found right and proper. As to its extent, perhaps it will be satisfactory to the Committee, that the power is precisely in the new Constitution, as it is in the Confederation. In the existing Confederacy, Congress are authorised indefinitely to make treaties.—Many of the States have recognized the treaties of Congress to be the supreme law of the land. Acts have passed within a year, declaring this to be the case.—I have seen many of them. Does it follow, because this power is given to Congress, that it is absolute and unlimited?—I do not conceive that power is given to the President and Senate to dismember the empire, or to alienate any great essential right.—I do not think the whole Legislative authority have this power. The exercise of the power must be consistent with the object of the delegation.

One objection against the amendment proposed, is this—that by implication it would give power to the Legislative authority to dismember the empire—a power that ought not to be given, but by the necessity that would force assent from every man. I think it rests on the safest foundation as it is. The object of treaties is the regulation of intercourse with foreign nations, and is external. I do not think it possible to enumerate all the cases in which such external regulations would be necessary. Would it be right to define all the cases in which Congress could exercise this authority? The definition might, and probably would be defective.—They might be restrained by such a definition, from exercising the authority where it would be essential to the interest and safety of the community. It is most safe therefore to leave it to be exercised as contingencies may arise.

It is to be presumed, that in transactions with foreign countries, those who regulate them, will feel the whole force of national attachment to their country. The contrast being between their own nation and a foreign nation, is it not presumeable they will, as far as possible, advance the interest of their own country? Would it not be considered as a dangerous principle in the British Government, were the King to have the same power in internal regulations, as he has in the external business of treaties? Yet, as among other reasons, it is natural to suppose he will prefer the interest of his own, to that of another country, it is thought proper to give him this external power of making treaties. This distinction is well worthy the consideration of Gentlemen. I think the argument of the Gentleman [Francis Corbin] who restrained the supremacy of these to the laws of particular States, and not to Congress, is rational. Here the supremacy of a treaty is contrasted with the supremacy of the laws of the States.—It cannot be otherwise supreme. If it does not supercede their existing laws, as far as they contravene its operation, it cannot be of any effect. To counteract it by the supremacy of the State laws, would bring on the Union the just charge of national perfidy, and involve us in war.

Suppose the King of Great-Britain should make a treaty with France, where he had a constitutional right; if the treaty should require an internal regulation, and the Parliament should make a law to that effect, that law would be binding on the one, though not on the

other nation. Suppose there should be a violation of right by the exercise of this power by the President and Senate; if there was apparent merit in it, it would be binding on the people:—For where there is a power for any particular purpose, it must supercede what may oppose it, or else it can be no power.—For instance, where there is a power of declaring war, that power as to declaring war supercedes every thing. This would be an unfortunate case, should it happen:—But should it happen there is a remedy, and there being a remedy, they will be restrained against abuses. But let us compare the responsibility in this Government to that of the British Government. If there be an abuse of this royal prerogative, the Minister who advises him, is liable to impeachment.—This is the only restraint on the Sovereign.—Now, Sir, is not the Minister of the United States under restraint?—Who is the Minister?—The President himself, who is liable to impeachment. He is responsible in person. But for the abuse of the power of the King, the responsibility is in his adviser. Suppose the Constitution had said, that this Minister alone could make treaties, and when he violated the interest of the nation, he would be impeached by the Senate; then the comparison would hold good between the two Governments. But is there not an additional security by adding to him the Representatives and guardians of the political interest of the States? If he should seduce a part of the Senate to a participation in his crimes, those who were not seduced would pronounce sentence against him; and there is this supplementary security, that he may be convicted and punished afterwards, when other Members come into the Senate, one-third being excluded every second year:—So that there is a two-fold security.—The security of impeachment and conviction by those Senators that may be innocent, should no more than one-third be engaged with the President in the plot; and should there be more of them engaged in it, he may be tried and convicted by the succeeding Senators, and the upright Senators who were in the Senate before.

As to the case of the Russian Ambassador I shall say nothing.—It is as inapplicable as many other quotations made by the Gentleman [Patrick Henry]. I conceive that as far as the Bill of Rights in the States, do not express any thing foreign to the nature of such things, and express fundamental principles essential to liberty, and those privileges which are declared necessary to all free people, these rights are not encroached on by this Government.—(Mr. *Madison* added other remarks which could not be heard.)

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