

which shall be made, according to these rules; founded, as they profess to be, upon great principles of truth and justice. The peculiar objects of the protection and care of government, are those, therefore, who, without it, would be exposed to wrong and violence. The strong man armed needs no aid. He can determine for himself his own rights; he can defend and enforce them. It is to the *feeble*, to the *oppressed*, that government is necessary. It is the conviction of this necessity, which causes men to associate, to form societies for mutual protection, and to establish settled governments. Majorities are strong: they are able to redress their supposed wrongs, and enforce what they consider their rights. The *restraints* of government are felt by them, and required to *control* them. The rules of government—rules which protect the rights of all—are required for the protection *especially* of the humble, the obscure and the impotent—of those, in other words, who constitute the minority of a community.

Another view, which has been presented by the gentleman, of the doctrine of our declaration of rights, has no foundation in truth. The idea is, that the people—meaning thereby, a numerical majority—have the right to control the government, by becoming the actual agents in its administration, *without* the intervention of officers, agents, or trustees, by and through whom their delegated powers are to be exercised.

If a community of men choose to form such a government, one, by the terms of which, the whole mass is to be assembled, on every occasion, for the exercise of the functions of government, and in such mass meetings, and such alone, to decide upon every question which may arise; doubtless they have the *power* to do it. But what I maintain is this:—I maintain that such is not the spirit nor the letter of our system; neither countenanced by the declaration of rights, nor by the Constitution; nor was it thought of by those who constructed these noble monuments of political wisdom, nor indeed by any one since their day.

If the imputed and admitted sovereignty of the people is to be vindicated in such a case as the one before us, (the selection of a judicial department) only by taking into their own hands (the hands of a majority) the immediate and direct appointment of that department; if (as is alleged) it be a deprivation in any degree, of the rights of that sovereignty, to delegate the power of selection to agents appointed for that purpose; why is not this sovereignty assailed and impaired, by delegating to *agents* the power to perform any *other* duty, which the people themselves can do when assembled *in mass*?—The direct and legitimate result of such a theory is, to require a dissolution of all society into an absolute, unqualified, unmixed democracy, such as can exist only in a community composed of some few families of men. If such a doctrine be at all tenable, then in short, the people are not to elect a judge. No, sir, they—that is, a *majority of the people*—must act as judge. If the people's sovereignty is made to consist, not

in organizing and forming their own government, distributing their powers between the different departments required for its administration; if to delegate power to agents and officers, whether that power be to make appointments of other agents, or to perform *any other* duty; if this be to abridge the rightful power of the people—*then* the delegation of the power to judge and decide upon questions, which constantly occupy the courts, and form the subjects of their ordinary jurisdiction, is equally—*equally*—an infringement of the people's rights. Yes, sir. And then also are we here, usurping the just rights of the people. For we, too, are delegated by the people to perform at least, in part, a duty very much more appropriately within the sphere of action suited to the *mass* of a community, than the appointment of a judicial officer, or the exercise of judicial functions. Such a doctrine would impeach every act and measure of the government not only of Maryland, but of every other State in this Union; yes, sir, of every civilized government that has ever existed! In all it has been, and ever will be, found necessary to organize departments, and to vest them with appropriate administrative powers, executive, legislative and judicial. The American doctrine is not only that the sovereign power of the people is adequate to direct, "regulate," control this distribution of power; not only that the sovereignty of the people is the fountain of all power; but that the people have "the *sole* and *exclusive* right of regulating it," according to the letter of our well-expressed bill of rights. It is the *government* they are to *regulate*; it is not for them to execute, (in mass) the duties and offices created *by* the government. Government is the compact, or system agreed upon, or (if you prefer the term) *devised* by men associated in civil societies, which, in a country blessed like ours, with a written Constitution, prescribes certain organic laws or rules, as fundamental articles of association; and provides the machinery necessary to execute, and enforce these organic laws, and such others as may be found essential. The machinery, without which an administration of these laws would not be possible, consists of the various departments, and their incidental details. The organization must be complete; the machinery must be of a character to operate effectually. When it is found defective, the sovereign power—the people—may remodel, may again organize, again "regulate" the "government;" and having done so, again leave it to be worked out, in all its completeness, by the administrative branches constructed for that purpose, by their agents and officers. To require the sovereign power—the people *in mass*—to perform these duties of administration, would dispense with the necessity of government altogether. If such a thing were indeed practicable, all constitutions, all laws, all formal governments could no longer exist. If we suppose their existence possible, they would at least be *useless*.

The sovereign power of the people would be embodied whenever action was to be had, and