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FROM

*Peleg Sprague*







THE CRISIS:

OR,

*M. R. Perry,*

ESSAYS

ON THE

Usurpations

OF THE

FEDERAL GOVERNMENT.

BY

BRUTUS.

---

*Magna est veritas, et prevalebit.*

---

"BRUTUS had rather be a villager,  
Than to repute himself, a son of Rome,  
Under such HARD conditions, as THIS TIME  
Is like to lay on us." — *Julius Caesar.*

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CHARLESTON:  
PRINTED BY A. E. MILLER,  
No. 4 Broad-Street.

1827.

65-465-3.15

us 4991.5  
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11 June 1861  
Pella Spence

"All policy is very suspicious, (says an eminent statesman) that sacrifices the interest of any part of a community, to the ideal good of the whole; and those Governments only, are tolerable, where, by the necessary construction of the political machine, the interests of all the parties are obliged to be protected by it." Here is a district of country, extending from the Patapsco to the Gulf of Mexico, from the Alleghany to the Atlantic; a district, which, taking in all that part of Maryland, lying South of the Patapsco, and East of Elk river, raises five sixths of all the exports of this country, that are of home growth. I have in my hand, the official statements which will prove it, but which I will not weary the House by reading. In all this country! Yes, Sir, and I bless God for it; for with all the fantastical and preposterous theories about the rights of man. (the theories, not the rights themselves, I speak of) there is nothing but power that can restrain power. I bless God, that in this insulted, oppressed and outraged region, we are, as to our counsels in regard to this measure, but one man; that there exists on this subject, but one feeling, and one interest. We are proscribed, and put to the ban; and, if we do not feel, and feeling, do not act, we are bastards to those fathers who achieved the Revolution: then shall we deserve to be the bricks without straw.

There is no case on record, in which a proposition like this, suddenly changing the whole frame of a country's polity, tearing asunder every ligature of the body politic, was ever carried by a lean majority of two or three votes, unless it be the usurpation of the Septennial act, which passed the British Parliament, by, I think, a majority of one vote, the same that laid the tax on Cotton Bagging. I do not stop here, Sir, to argue about the constitutionality of this Bill. I consider the Constitution a dead letter: I consider it to consist, at this time, of the power of the General Government, and the power of the States—that is the Constitution. You may entrench yourself in parchment to the teeth, says Lord CHATHAM, the sword will find its way to the vitals of the Constitution. I have no faith in parchment, Sir; I have no faith in the Abracadabra of the Constitution; I have no faith in it. I have faith in the power of that Commonwealth, of which I am an unworthy son; in the power of those Carolinas, and of that Georgia, in her ancient and utmost extent to the Mississippi, which went with us through the valley of the shadow of death, in the war of our independence. I have said, that I shall not stop to discuss the constitutionality of this question, for that reason, and for a better; that there never was a Constitution under the sun, in which, by an unwise exercise of the powers of the Government, the people may not be driven to the extremity of resistance by force. For it is not, perhaps, so much by the assumption of unlawful powers, as by the unwise or unwarrantable use of those which are most legal, that Governments oppose their true end and object; for there is such a thing as tyranny as well as usurpation. If under a power to regulate trade, you prevent exportation: if, with the most approved spring lancets, you draw the last drop of blood from our veins; if, *secundem artem*, you draw the last shilling from our pockets, what are the checks of the Constitution, to us? A fig for the Constitution? When the scorpion's sting is probing us to the quick, shall we stop to chop logic? Shall we get some learned and cunning clerk to say, whether the power to do this, is to be found in the Constitution, and then, if he, from whatever motive, shall maintain the affirmative, like the animal whose fleece forms so material a portion of this bill, "quietly lie down and be shorn!"

JOHN RANDOLPH.

[Extract from Speech, delivered in the House of Representatives, on the Tariff Bill, April 15th, 1824]

Turnbull, Robert James

TO  
**THE PEOPLE**  
OF  
The "*Plantation States*,"

**THESE ESSAYS**

**ARE**

**Dedicated**

**AS A TESTIMONY OF RESPECT,**

*For their Rights of Sovereignty,*

**BY**

**THE AUTHOR.**

## ADVERTISEMENT.

THE numbers of "The Crisis" appeared a few weeks since in the columns of the "*Charleston Mercury*," and having attracted more attention than was anticipated, they are now re-published, together with eleven additional numbers, the publication of which, was prevented from a cause not now necessary to be noticed. The new numbers are No. 22 and No. 24, to No. 33, both inclusive. The two numbers signed "*Philo-Brutus*," which appeared at the same time, are not herewith published. They were not written by BRUTUS.

The Author was fully aware when he commenced these Essays, that they would meet with the *marked* displeasure of certain native gentlemen of Charleston, and he has not been mistaken. These gentlemen have freely bestowed upon them the harshest epithets; but as their influence does not actually extend beyond their own little *coteries*, their opinions are disregarded. From all other quarters of the State, they have met with a reception flattering to the Author. Brutus may possibly be wrong in his opinions. If he be so, let him be corrected by fair argument; but let him not be abused for vindicating the rights of his native Southern country to which he is attached by no ordinary ties; and in which his dust is likely to be mingled with that of father, mother, children and friends.

He regrets that an idea has gone forth, that he has received assistance in these numbers; and fearing that the odium (which some have attached to them) might fall on some unoffending and innocent person, he feels it to be his duty, distinctly to state, that whatever of patriotism or of treason, of merit or of blame, *moral or literary*, the present publication may be supposed to contain, it belongs to one person alone. The pieces are *all written* by Brutus. Between him and any other person there is *no* participation of authorship, and particularly as regards the *fifteenth* number. The design, the research, the arrangement and the *argument*, all belong to an individual who has no pursuit but Agriculture; and who, if he has a knowledge of his own heart, has had, from the beginning to the end, no other view than the good of his country.

Charleston, 22nd October, 1827.



# THE CRISIS.

*Magna est veritas, et prevalebit.*

## NO. 1.

**I**T is amongst the invaluable privileges of the citizen, as secured to him by the Constitution, that he has the right, at all times, to address his fellow-citizens, on the subject of their rights, their interests, or their safety. It is a right which has been freely exercised since the foundation of the government; and it is no trifling eulogy on the Constitution itself, and on the attachment of our citizens to those principles of civil liberty for which our patriots toiled in the Cabinet and bled in the field, that in almost every period of our history as an independent nation, no attempt has been made by Congress, or any disposition manifested by the people, to interrupt or abridge the *freedom* of the press. The *sedition* law of the elder ADAMS, it is true, was a memorable exception; and to this might be added some hasty proceedings on the part of the people, as in the case of the Baltimore mob in 1812. But these examples were of such short duration, and their occurrence so odious generally to the public feeling, that they rather serve to strengthen than to impair my position: that freedom of the press, is the universally recognized right of our people, and that in the uninterrupted practical enjoyment of this species of civil liberty, the United States stand pre-eminently distinguished above all the nations of the earth.

Undoubted, however, as is the right, and as unlimited generally as has been its exercise in our happy land, yet who can look back upon our history, and not deeply lament that it has often been productive of much public evil. Under the dominion of the press, private character has been wantonly assailed; the purest patriots have been denounced as traitors; and noisy and worthless demagogues have been elevated to power. But these were evils inseparable from this great palladium of our liberties; and amidst the devastation that has been made by the licentiousness of the American press, it is a consolation to reflect, that there *were* circumstances in some periods of our history, which may never again occur, and which, whilst they did exist, were calculated to give the bitterest character to political discussions.

Happily, however, these times have now passed away, never again to return. We now hear of no odious distinctions between one set of our citizens and another. The second war with Britain had the happy effect of uniting many, who before were divided, and at the last treaty of peace, all good men were as astounded, as they were

delighted, at the unexpected and abundant harvest of glory which was gathered for us in that war, and party and political animosity, in the aggravated forms in which they once existed, to the reproach of our country, has ever since gradually subsided and settled down into better feelings. The last Presidential election was of a character to revive and to excite party feeling, and the approaching one indicates, that there will be abundance of it brought to the contest. But yet it is not the envenomed feeling which once divided our people; and when we consider the magnitude of the contest and the exalted station and the pre-eminent honor, we ought to rejoice that there is not more of excitement. To us, in South-Carolina, it is an especial cause of congratulation, that on the subject of the last and the approaching Presidency, we have been nearly unanimous, and that we are able, for the first time in our history since the inauguration of Gen. WASHINGTON to the first honors of the Republic, to view men and measures with a dispassionate and an unprejudiced eye. The present is an era amongst us, in which we are all satisfied to forget and forgive our old bitter dissensions as Federalists and Republicans, and to regard merit and long services as the only legitimate claim to the favour and patronage of the people.

It is in this delightful and comparatively calm state of the public feeling, as calm as it can ever be expected to be, consistently with the freedom of our institutions; when we are in the full enjoyment of the blessings of peace, and with no prospect of their being interrupted from abroad; when each State has every motive to attend to its own local concerns, and when men are more disposed to look rationally and dispassionately into every subject connected with the welfare of the State; it is this period which I seize to address you on subjects of most vital importance to you as citizens of South Carolina, and to arouse you to a just and lively sense of the dangers that threaten your temporal prosperity and your domestic quiet. And in so doing, I ask of all who may peruse this and the succeeding numbers, to believe me sincere when I say, that I am not *hitched* to the car of any one set of politicians. At the last election, I was the advocate neither of ADAMS, or CRAWFORD, or CLAY, and when I gave my free and unbiassed vote for the hero of New-Orleans, it was not because I thought even this man, who has so "nobly filled the measure of his country's glory," as likely to avert the dangers that have long thickened around South-Carolina; but my vote was on political grounds totally distinct. The opinion I then held, I entertain at the present moment. But I beg in the outset to repeat, that as clear and as distinct as is my preference for Gen. JACKSON, yet my honest conviction is, that it will make no difference in the deplorable situation and prospects of the Southern States, whether JACKSON or ADAMS shall be called to preside over us. The dangers that threaten us are not attributable to Mr. ADAMS. They come from a period more distant than the recent era of his inauguration into power. They are dangers which will approach nearer and nearer to us, under every future Administration, and unless we take some decisive measures to shield ourselves, they must, in due time, bring

us to ruin. In my remarks on this subject, I shall fearlessly speak the truth and the whole truth—I have no motive beyond my country's good. I never did, nor do I now, seek office or honors. My feelings, I confess, are more *sectional* than they are *national*. "Not that I love Cæsar *less* but that I love Rome *more*." Not, because I am insensible to the glory and the proud distinction of the American name, but because I believe that to the predominance of these feelings above all others, we are in future to look for the preservation of Southern interests and Southern safety.

## NO. 2.

The subject which ought at this moment, to claim the attention of every South-Carolinian, is the tendency of the government towards a firm *consolidated* national government. This is no idle speculation. It is not a phantom which exists in the distempered minds of the weak, the timid, or the suspicious. It is not even the cry by which aspiring demagogues would climb into popular favour. But it has been for years past, the rational and the well settled apprehension of sober and reflecting men amongst us; of men who soar far above the unworthy, and the selfish motives of office hunters. It will be found to exist in the minds of some of our best and wisest men, and daily becomes to our citizens generally, a source of much inquietude. Perceiving that the Congress claims and exercises powers, never contemplated by the framers of the Constitution of the United States, they are *alarmed*, and justly alarmed for the situation of the Southern country, whose safety they feel to consist in the *integrity* and *sovereignty* of the individual States. And well may they be alarmed. Within the last six or seven years, Congress has made more rapid strides towards consolidation, than in the thirty previous years. During the whole period of the Federal Administrations, and of the Administrations of Messrs. JEFFERSON and MADISON, nothing ever occurred, of a nature similar to the attempts now made, to extend the powers of Congress, to almost every subject, which relates to the *internal* order and government of the States. Anxious as were the Federalists, to give strength and efficiency to a government then in its infancy, and to diminish the embarrassment which they erroneously thought it would experience from the State sovereignties, yet no decided system of measures was ever brought forward, threatening such results to the Southern States, as those now pursued by Congress. When the Bill to establish the first Bank of the United States, was before Congress in 1791, and the implied powers of Congress in relation to this subject considered, there was then no settled design amongst its friends, to lay a foundation, upon which they were to commence and continue to raise, great and extensive powers to the government. Had there been any such design, the manner in which the subject was discussed, and the great division of sentiment in Congress and in the Cabinet, was of itself sufficient to forbid a hope of continued and constant success. There were specious arguments to shew the expediency, at that time, of a National Bank, and the necessity of such an institution, as a mean

adapted to the end of the government in the collection and distribution of its revenue.

The decision, however, has been a most unfortunate one for the country; for thus was the foundation laid for augmenting, by *construction*, the powers of the general government, and upon this example, has a superstructure of implied powers been recently commenced, not by a Federal, but strange to say, by the Republican Administration of Mr. MONROE, which, if continued to be carried on, with the spirit and the industry manifested within the last five years, will very soon place our National Councils on an eminence of power; that will cause the Southern States to tremble for their safety.

It is here to be remarked, that in the long interval between the establishment of the Bank, and the accession of Mr. MONROE to the Presidency, there were occasionally, exercises of power by Congress which were not constitutional, but they were not of a nature to alarm. The most prominent of these for its unconstitutionality, and about which there was no difference of opinion, was the remarkable vote of \$100,000 for the relief of the distressed inhabitants of Caraccas, after its earthquake. No man would now rise in Congress, and say, that this appropriation was for "the general welfare of the people of the United States." The truth is, that it was done without reflection, and sprung from that laudable warmth of feeling and sympathy, which we all, in and out of Congress, possessed at the time the news of such an overwhelming calamity reached us.— There were also in the Administrations of Mr. JEFFERSON and Mr. MADISON, appropriations for roads in the Western country; but with the exception of that for the great Cumberland road, these appropriations were trifling. Upon the last mentioned road, upwards of a million of dollars had been expended. It was in Mr. JEFFERSON'S Administration, that this road was proposed to be opened, but the manner in which that measure was recommended by that statesman, evinced that he doubted the constitutional power of Congress to *construct* it. I pass over the *sedition* law—it caused the downfall of the men who passed it. But it was during the Administration of Mr. MONROE, that a bold and decided system was determined on in our country. The subjects of *tariffs* and *internal* improvement being earnestly recommended by the President to Congress, and that body having nearly exhausted all the ordinary subjects of legislation, for which the Constitution had provided, and having, in fact, little or nothing to do, being in a state of peace and friendship with all nations, was glad to hear, of new subjects, on which to exercise its powers, and at length resolved, that it could construct *military* and other national roads, make canals, improve inland navigation, promote manufactures, and appropriate money to *any* extent, for the purpose of promoting, what they would call, the general interests of the States. A new field of power has thus been opened to Congress, as boundless as space itself. All the guards which the framers of the Constitution, and the State Legislatures had cautiously provided, to keep the General Government within its prescribed and limited powers, have been discovered to be utterly useless. There is no

measure which concerns the general welfare, immediately, or most remotely, which Congress does not feel itself at liberty to adopt.

To many it may appear a remarkable circumstance in our political history, that when these discussions on the constructive powers of the government first commenced in Congress in 1791, the opposition was not confined, as at present it is, to any particular section of the country. The solution, however, is not difficult. The new constitution at that time, had not long been in operation. Its adoption, it is well known, had been most zealously opposed in every part of the Union, and particularly by the largest States in the North and in the South. The two parties which had divided the country on the question of the constitution, had not then entirely died away, but from them were furnished those elements, which, in connection with the effect of the French Revolution upon the public feelings of our citizens, gave rise in a very short time afterwards to those two political parties, the *Federalists* and *Democrats* of the United States. Distributed as were the friends and adherents of one or other of these parties, which were then in their infancy; but which afterwards became so distinct and tremendous, and whose convulsions we all remember, it was natural that the advocates and opponents of the Bank, or of any other national measure, should come from every quarter of the Union. But now that these political parties have passed away, and the people of each State begin to think of their own affairs, and in what way they can best promote their local prosperity by improvements amongst themselves, we observe, that in the Northern, Eastern, Middle, and Western States, the people have no fears whatever from the exercise of the implied powers of Congress on any subject; but it is in the *South* alone where uneasiness begins to manifest itself, and a sensitiveness prevails on the subject of consolidation. The cause is obvious. The more *National*, and the less *Federal*, the Government becomes; the more certainly will the interest of the great majority of the States be promoted, but with the same certainty, will the interests of the South be depressed and destroyed. Seeing, as we all do, the subject at this time, not through the mists of prejudice and embittered political animosity, but through the medium of truth, we must perceive at a glance, that the interests of the North and West, are diametrically opposed to the interests of the South, and that to this cause and this alone, are we to ascribe the general acquiescence of the great body of the people of the U. States, in the alarming progress of the General Government to consolidation.

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### NO. 3.

With all the advances of the government to consolidation, there is no man who at present apprehends, that it would venture, in our day, to encroach upon any of the acknowledged rights expressly reserved to the States. It would not presume to claim the appointment of the officers of the militia; or the authority to train them; or to infringe upon the right of the people in any state to bear arms; or to make any law respecting an establishment of religion, or pro-



hibiting the free exercise of religion ; nor would it attempt to abolish the trial by jury. On these and other subjects, which they are forbidden to touch, there is not present danger of encroachment. The people of the *North* as well as of the *South*, are materially interested in the preservation of all these *essentials* of liberty, and in the present state of society and of public opinion, it would be difficult to conceive that the government could even feel the desire to encroach upon the rights of State sovereignty, expressly reserved. The flame that would instantly be excited from one end of the Union to the other, by the undivided feeling of the public, is the surest pledge for the security of all these.

But far different will be the public feeling, where no vital principle of State government, or individual liberty, is involved in the measures of Congress, however clearly unconstitutional such measures may be. Should it happen that the usurpation of the government solely operates upon great and important *pecuniary* interests, and is founded on no open, *palpable* breach of an article in the Constitution, forbidding the exercise of the particular power claimed, but claimed merely as a power naturally incident to, and necessarily resulting from other powers specially granted, the public feeling in each State will be formed and fashioned *exactly as the measure shall affect its peculiar interests*. If, by the usurped power, any new stimulus will be given to the internal commerce, enterprise or industry of any one State, or number of States, or great local interests are thereby to be promoted, their statesmen and politicians will not be astute to inquire, whether the measure will be in strict conformity with the acknowledged principles on which the compact of the States was founded, or within the clear intent and meaning of the compact itself, but will rather be disposed to overlook all considerations of the kind. The States, on the other hand, whose prosperity will be retarded or impaired by the contemplated measure, will be found in opposition to it.

In the measures of the Congress for many years past, the people in some sections of the Union, indeed the majority of the people of the United States, have perceived a system of policy, which is to give active employment to the capital and industry of their particular States, and to carry them forward to aggrandizement, and to wealth. In another portion of the country, it promises to dry up the sources of their prosperity, and to bring on premature decay. For a discordance in the public sentiment so unhappy, and in a conflict of paramount interests so serious, I know of no peaceable remedy, unless Congress shall magnanimously retrace its steps and consent to carry on the government in future, upon the principles, and in the spirit in which it was so happily formed.

But is this probable? Let us not, my fellow-citizens, indulge in a hope which, however pleasing, must in the end prove fallacious. Let us only look to things as they are. To the North of the Potomac, and to the East and West of the Alleghany, what cause have the people to tremble at, or what possible motive to change, the measures or the policy of the government? What *constructive* power

can Congress claim to exercise, which can possibly affect these people to their inconvenience or their injury? I can conceive none. In domestic *manufactures* and in *monopolies*, they see their local interests cherished and fostered by the protecting and the powerful influences and resources of the whole nation. In *internal improvements*, they see that obstructions in their rivers are about to be removed, and new means of communication proposed, which are to open to the Middle and the Western States new and most profitable channels of commerce, and the cost of which is to be defrayed from the National Treasury, whilst we in the South, who furnish such means and such a revenue to the government, are to enjoy from that government no other advantage than protection from an external enemy.

The interest of the North and West consists, therefore, in *Usurpation*, and a departure from the social compact. The interest of the South, in the *preservation* of that compact. The interest of the North and West, is, that the government should become more and more NATIONAL. The interest of the South, that it should continue FEDERAL. The North, from principles of expediency and self interest, must for ever support every inordinate exercise of power, on the ground of construction or implication. The South, from considerations of primary interest and of safety, must for ever oppose the implied powers of Congress. But the North and the West constitute the majority of the nation. That majority *must* increase with every new census, and with the prospect of its being at some future day overwhelming, where shall we look confidently for the hope, that the government is to be arrested in the unconstitutional and arbitrary exercises of its power, when such exercises of power serve to gratify the feelings and promote the interests of that majority. In the claim to do any act, which in the opinion of Congress, can "promote the general welfare," can it be conceived; how, or in what way, the general government can ever come in collision with Northern views and Northern interests. Not, certainly, by a mode of taxation, by which we in the South are to look to no customers but themselves, when we buy or when we sell. Not, certainly, when their rivers are to be opened, and canals cut in every direction through their States, without any expense to themselves. Not, certainly, by the enormous expenditure and circulation of money, which is to arise from the appropriations which are constantly making for some new purposes, unknown to the constitution. Not, certainly, by any interference in their *domestic* and internal policy, to which there never can be a possible inducement.

But how different is it with the South. We hear of no project in Congress to tax the manufactures of the North, to support the agriculture of the South. We, indeed, are told of internal improvements, but to witness them we must travel Northwardly. We annually throw into the Treasury of the Nation from our Custom House, hundreds and hundreds of thousands of dollars, to be distributed and disbursed for the benefit of *all* the States. But for this rich remittance we receive nothing in return. All is expended Northward-

ly. We have no Navy Yard to repair the smaller vessels of the Navy, to which we contribute so much, and when we ask for one it is refused. If a ship's boat is to be built, or a sail repaired, necessity alone would cause it to be done here: all must be done in Northern ports. We know the general government, not by the kindnesses which it practises towards us, but by the taxes and the tribute money that it incessantly demands of us. Whilst we are at peace with all the world, and with no rational prospect, that there ever can be madness enough again in any foreign power to meddle with us, we are told of the preparations and measures "to provide for the common defence." We are reminded by Congress of the facility which ought, in case of war, to exist for the transporting of troops and munitions of war, and that these facilities are best promoted by great *National* and *Military* Roads and Canals. If we cast our eyes upon those sections of the United States, where the population is compact and dense, and where invasion is impracticable, we do indeed see United States' Engineers every where at work, and busy in their attempts to take summit levels, even on the Alleghany Mountains, and mighty projects are every where on foot. But, if we turn to the Southern Border, which is the weak and the vulnerable point of attack for a foreign enemy, easiest of access in time of war, with bad roads, and no facilities, but with every difficulty as to the transportation of troops, and artillery, and heavy ordnance: we shall there see no Navy Yards, no Military Roads, no Canals.

What has brought about all this? The answer is—**USURPATION and CONSOLIDATION.** Congress is exercising powers which belong not to it, and if the Southern States continue to acquiesce as they hitherto have done, in the Tariffs, Internal Improvements, and other schemes of the Northern People to improve their country at our expense, we shall soon find that we shall be for them "hewers of wood and drawers of water," and we may discover that under the phraseology of the term "general welfare" in the Constitution, Congress may be propelled by the public opinion of the North, to regulate our domestic policy. Let the People look to it. This is not fancy—The idea is serious with many, and the time perhaps is not very distant. It rests with ourselves only to place it at what distance we please. **By firmness WE STAND—by concession WE FALL.**

#### NO. 4.

It is not only on the subject of Tariffs and Internal Improvements that the people in the four great divisions of the United States are divided in sentiment. It is our misfortune that we differ on points ten thousand times ten thousand more important, than all that has been discussed in Congress. We are, and we must be, in perpetual conflict with our Northern friends, on a point of most vital importance to our security and comfort as a society, to our prosperity as a country, and to our existence as a State! To believe that this conflict of feeling can ever cease, is egregiously to deceive ourselves; and to conceal our opinions, when we do not believe it, is to deceive others. Nature, interest, education, prejudice and feeling, have

drawn a strongly marked line of distinction between the North and the South. It may be delightful for us, to talk of our being as one family, the members of which are mutually affectionate and kind.—The patriot may dwell with extacy on the thought, and our orators and poets may make it the constant subject of their themes and of their songs. But the idea exists, only in the imaginations of those, who love to indulge in the pleasing illusions of fancy. It is not founded in truth. We are an united people it is true—but we are a family united only for external objects; for our common defence, and for the purpose of a common commerce; sharing, in common, the dangers and privations of war, and the glory and renown, with which our arms have been crowned, when wielded in the defence of our liberties and our independence. The wise framers of our Constitution, never designed or contemplated more than this. When they met together in convention, they brought with them opposite sentiments, and they represented a people, whose pursuits, occupations, and interests varied, according to the section of the country in which they lived. They were aware of a *substantial* distinction as to interest between the States. It was in Convention that Mr. MADISON declared, that “the great danger to the general government, was the *great Southern and Northern interests* of the continent being *opposed to each other*. Look to the votes in Congress, and most of them stand *divided by the geography of the country*, not according to the size of the States.” As opposite too as were our feelings, yet as regards these, we were then in our Halcyon days. Though our sentiments and our policy were not in accordance with the views of our Northern friends; yet, in that day, there was nothing of that fanaticism, that morbid sense of humanity, or that vituperation and constant vulgar abuse of Southern institutions, which now prevails.—Judging of the future by the past, and one and all believing that the Constitution would bind us together in firmer friendship, and cause us to approximate in kind feeling, rather than to diverge, we consented to the Union upon terms, which time and experience, and the decisions of the Supreme Court of the United States, daily prove to be disadvantageous to us in the extreme.

We have been deceived in all our expectations on this head. The good feeling upon which we then relied, has vanished. Instead of approximating in a friendly and liberal feeling, as we advance in our history, we approximate only for conflict and collision. Year after year, Congress proclaims its omnipotence by some new usurpation; year after year, new presses vomit forth their anathomas against our systems, and their reviews and periodical journals, edited by the first talents of the country, denounce in the most angry terms, our policy. Insurrectionary doctrines are promulgated in a thousand ways, even from the Pulpits of the Ministers of the Gospel of Peace.

Our jealousy of the North has, in consequence, been augmented ten and an hundred fold to what it was; and considering the present state of the world, and the unceasing extravagance and tendency of public opinion, to interfere with the policy which feeds and sus-

tains us, who regrets that there is such a jealousy? What can preserve us but constant jealousy? What but a sensitiveness on the subject of these our rights, so acute, as to burst forth into a general flame of excitement and indignation, the moment these rights are touched by unhallowed hands: what but this can save us from the mighty arm of such a destroyer, as the Congress of the United States must and will be, with no other limitation to its powers than its will, and with no restraint but its discretion? Will confidence in our Northern friends give us peace? Will apathy on our part? Will a tame and a quiet submission to usurpation upon usurpation, give us any claim upon Congress? Will it exempt us from further tribute money? Or will it lessen the perpetual disposition which exists to interfere with our peculiar policy, as evidenced by such constant expression of the public sentiment of the North, in and out of their State Legislatures? No, my fellow-citizens, no! It is the apathy and indifference of our citizens, on the subject of the encroachments of Congress on the rights of the States, which has invited the aggressions already made upon our rights of property, and it is apathy on our part, which will strengthen the unceasing efforts of the Northern folks to tax us still more, and in due course of time to extirpate from the body politic, what is regarded by them as a crying evil and as a canker. It is apathy that will tempt them more and more to trample to the dust the Federal Constitution, and with it the hopes and the safety of the South. It is our apathy heretofore which has fed and nourished the avarice and false philanthropy and fanaticism of the North. Apathy, in a word, must ultimately lead to events, that will dissolve the Union: but firmness and constant jealousy in the South will preserve it.

I am not insensible that these sentiments, and this train of feeling, may not be approved by all. It may well suit such passengers on board, as have no interest in the cargo, and whose hopes and fears are not identified with the perilous ship, to rely upon their own activity, and their ability at any time to seize upon the boats, and secure their safety. It may suit such as these, not to be alarmed at the present aspect of affairs, and to denounce as alarmists, those who would warn their fellow-men of their danger. But to many of us, whose property and whose helpless families are all embarked, and who have no means of escape, and no hopes of safety, but in the prudence and skill of the pilot, it is natural that we should contemplate and awfully watch the coming and the howling of the tempest. It is the misfortune of South-Carolina, that there are too many amongst us already, who do not feel on this subject, as the crisis demands — too many politicians who feel it their policy and their interest, to frown down any thing in the nature of sectional feeling, as if our existence as a State, does not depend upon sectional feeling alone, and that of the most ardent kind.

I am not one of those desponding mortals who think, that the system of the South must ultimately, and as a matter of course, give way to the daring attacks in preparation against them; and I envy not those, who by instilling in conversation such sentiments into the



common mind, would unnerve the public arm. I fear nothing from without—the enemy is amongst ourselves, and let us only discover and remove from our confidence the promulgators of such opinions, and I think I know enough of my fellow-citizens to believe, that when the time shall come, to test their devotion to their common safety and their dearest interests, our neighbours, the people of the North, will discover, that we are not like dependent West India Colonists, with no arm to lean upon, but that of an unnatural parent—but, that we are amply furnished with the means of protecting ourselves, and of perpetuating our policy under any emergency, and without needing any assistance from them.

### NO. 5.

We have seen, that the people of the North and the South are influenced by interests and feelings as opposite in their character as the two poles are asunder, and the motives which would incline the former to support the general government in all its advances to usurped power by means of construction or implication, must compel the latter as a matter of necessity and self-existence, to resist it. The idea of resistance of any one State, or number of States, to the acts and the measures of the government, is a measure that can never be contemplated but with pain. It is so contrary to the spirit in which the Constitution was formed, and to the expectations of the patriots who founded our Republic; so repugnant to the feelings of every lover of his country, and of every friend to the civil liberties of mankind, which seem to hang upon the destinies of these States, that there are few of us, who would not be willing to exhaust to the dregs, the cup of remonstrance and conciliation, rather than put at hazard the peace of the Union, if by reasonable concession we could preserve it.

The union of the States is the prosperity and safety of the States. It is in Union, that our agriculture flourishes, and our commerce enlivens and whitens every sea—it is by Union, that we take our high rank among the nations of the earth. In Union has our army, in the two Punic wars, gathered its harvest of laurels! and in Union has our star spangled banner waved our fame into every land, and our brave tars wrested the trident from the proud Mistress of the Seas. In Union is the bright, and the glorious hope of perpetuating those principles which have been, and will continue to be a light to lighten mankind to their rights and to their liberties. But Union, with all its blessings; with the protection it gives to agriculture; with the riches that it brings to our commerce; with the defence it provides for our country; and with the deeds that it records, and the achievements it emblazons on the proud tablet of our history—these, and all these, cannot be dearer to us, than those great and fundamental principles of American liberty, for which our fathers toiled and bled. The usurpations and tyranny of Great-Britain were not resisted, that the Colonies might be United; but that the Colonies might be FREE. A common danger inspired the illustrious Patriots of the Revolution, with a common and a corres-

ponding feeling, and when before the Supreme Judge of the world they resolved to dissolve the political connection with the mother country, they solemnly declared, that they were *of right*, and ought to be *free and independent States*. The Confederation recognized each State as "retaining its sovereignty, freedom and independence;" and in entering into the present Federal Union, great as are the powers delegated to the Federal Government, yet the sovereignty and independence of the States is still preserved. It has been well remarked, that the present Union "is distinguished from the Confederation, not so much the increase of powers conferred on it, as by the invigoration of those before possessed." With the exception, indeed, of the new power to regulate commerce, there is no material new power conferred by the people on their rulers.

The Confederation, it must be remembered, had been formed in a time of war, and for a state of war and danger. No fixed principles of Union had been agreed on till nearly two years after the Declaration of Independence. The defence of the States against the common enemy at that time, was the sole motive to the Union of the States. With the old Congress, the States were therefore willing to entrust the *sword*, but the purse was substantially withheld. It had no revenue, and it had no power to collect one. It had been proposed that the Congress should be invested with the power to lay an impost of 5 per cent. on foreign merchandize, and this failing, it was content to ask for a grant of this power for a limited period, and this also failed. It was not until the war was ended, and the great object of the Confederation attained, to-wit, the independence of the States, that its inadequacy to the proper government of the country in a time of profound peace, became evident. How could it be otherwise? There was no system of general revenue which the Congress could succeed in putting into successful operation. The public debt was to be paid, but the States could not agree as to the best mode of apportioning their debt. There were *importing* States, and there were *consuming* States. There were jarring interests, which in various ways impeded the operations of the government, and the consequences were, the violation of the public faith, and the consequent depreciation of the public debt.

But among all the causes which in those days embarrassed the United States, there were none which brought upon the country such a deluge of evils, as the obstructions which commerce received. To commerce, every State looked, as the source of its future and its permanent prosperity. But there was *no common head* to regulate commerce. Each State having exclusively the right to regulate its trade, there was of course no *uniformity* of action as regarded foreign nations. When foreign governments laid heavy restrictions on our trade, there was no general power to counteract the effects of these restrictions, by *retaliatory* laws, so as to meet the views and interests of all the States; and when to this was added the evil of the consuming States, being obliged to submit to the exactions and heavy imposts laid on foreign goods by the importing States, the distress became general. Hence, a general anxiety and

desire for a government, which should regulate and protect the general commerce of the country in a state of peace, as well as to defend it in a time of war.

Thus arose the present Union of the States. The sole motive to this Union was first COMMERCE, and secondly, the COMMON DEFENCE. The Constitution of the U. States never would have existed had it not been that the States sorely felt the evil of not having a head to regulate commerce. The old Confederation had been rapidly passing away by the disregard of many of the States to its recommendations. It was the common and the severe pressure of an obstructed, ill-managed, foreign trade upon the States, which was about to involve the whole country in accumulated distress and ruin, which formed the great inducement for a firmer and better Union; and it is not hazarding too much to say, that had it not been for this pressure alone, the present Federal Government would never have been called into existence. It was called into existence to regulate commerce. This is no speculation—it is history. All who lived in those days know it; and, let the compact itself be looked into; let it be analyzed with care; let the proceedings of the Convention be referred to, and it will be seen that the Constitution of the United States is a government of specified or enumerated powers, expressly provided not for internal, but for *external* objects, viz:—the purposes of defence and commerce. Any construction, therefore, which would extend the powers of the government to the encouragement of domestic manufactures, and the construction of national roads and canals, is to extend its sovereignty to objects which are not within the proper sphere of its action, and therefore illegitimate, and all the acts of the government in the exercise of these powers, is *Usurpation*—and must be put down by the Southern States, if, as will hereafter be seen, it is not their determination to be put down themselves.

## NO. 6.

It cannot be too strongly impressed on the minds of our citizens, that the Government of the United States is a Government instituted for *external*, and not *internal* objects. This is the language of the Federalist, which is the best commentary on the Constitution, and as such, its authority is acknowledged in our courts. “The powers (says the Federalist) delegated by the Constitution to the General Government, are FEW and *defined*. Those which remain to the State Governments are *numerous* and *undefined*. The former will be exercised on EXTERNAL objects, as *war*, peace, negotiation, and foreign *commerce*, with which last the power of taxation will, for the most part, be connected. The powers *reserved* to the States, extend to *all the objects* which, in the ordinary course of affairs, concern the lives, liberties and properties of the people, and the INTERNAL order, IMPROVEMENT, and prosperity of the State.”

Thus we see, how exactly this exposition of the Constitution, coincides with the history of the times, in which it was framed, as noticed in my last number. The sole motive to the present Union of the

States, as I there stated, was *defence and commerce*. On "*war, peace, negotiation, and commerce*, (says Mr. HAMILTON,) the *few and the defined* powers of the government are to operate." But do they, my fellow-citizens, operate on these subjects, and these alone? Let us look at the government as it has been administered since Mr. MONROE's accession to the Presidency, and ask ourselves, if Congress has not been in the exercise of some of the most important of the *numerous and undefined* powers, which, according to this commentary, are reserved to the States? Has it not extended its power to the "*internal order, improvement, and prosperity of the States?* What are its roads and canals, but measures of internal improvement and prosperity of particular States? Are they called at Washington by any other names than "measures of internal improvement?" What are its tariffs? Are they measures of general interest to all the States; or are they schemes for employing capital to revive the languishing industry of *particular* States, and thus promoting the "*internal prosperity of those States?* And what will be the appropriations out of the National Treasury for the Colonization Society, when they shall be made, of which there can be no doubt? Will these appropriations be referred to the objects of "*war, peace, negotiation, and commerce?*" Or do they naturally belong to the objects which concern the "*internal order*" and government of the *black* population of the United States, and the *LIVES, liberties and properties*" of the *WHITE* people of the Southern States?

To all such questions there is an easy answer. The above picture given us of the Constitution of the United States, as it was in 1787, when it was presented to, and accepted by the States, is precisely the reverse of that, which is now held up to us as the rule and guide for our conduct. It is for Congress that are now reserved, those "*numerous and undefined* powers which concern the lives, liberties, properties, and internal order, improvement, and prosperity of the States;" and to the sovereign individual States, belong the *few and the defined* powers of legislating on all subjects of ordinary interest, as long as such legislation shall not clash or interfere with any act or measure which Congress shall, at its discretion, deem as a means most immediately, or most remotely, connected with the regulation of commerce, or the promotion of the general welfare of the United States.

And is this state of things to continue? Are the great and vital interests of sovereign States to be in danger of being swept from their foundations by the furious tempests of construction and implication, without one single effort to save them? Let us hope not!—Let us believe that when our citizens shall see the subject in its true light, and shall test the meaning of the Constitution, by the plain rules of common sense, and call to their aid all the circumstances which are connected with the rise, progress and perfection of the Federal Constitution, they will see at a glance, that the government of the Union, is a government for defence and commerce, and that it has no power to promote this or that particular interest, or regulate this or that branch of domestic industry, or to legislate on any sub-

ject whatever, in which every State has not an *immediate* and a *direct* interest. It is a government instituted expressly to do that, to which each State is separately incompetent, to wit, the regulation of trade with foreign nations and between themselves, for their mutual benefit, and to the defence of all the States against a common enemy. This being the legitimate end of the government, any act passed by Congress, which is not naturally connected with the defence of the country, or the regulation of its trade, beneficially for every part of the Union, is (with one or two trifling exceptions, provided for by the Constitution) an usurped power. But Congress is not at liberty, *arbitrarily* to assume, as a pretext for exercising any particular power, that it is a *means* adapted to the proposed end of the government. If the connection between the *means* and the end, be not a real and a natural connection, it is still an usurpation. It is conceded on all hands, in and out of Congress, that the Federal Government is a government of limited powers, and that "every sovereign power not delegated, is retained by the States or the people." It results then, that before Congress can exercise any great substantive powers, it must place its finger upon that clause of the act of enumerated powers, which clearly confers the grant of power contended for, or it must shew, that the particular power claimed as incidental, is a mean so *necessarily* and so *properly* adapted to the end, for which the sovereign power was given, that without its exercise, the grant itself would be nugatory and void. If it cannot do the one, or the other, it usurps the power.

I am sensible that this is not the doctrine of the Supreme Court of the United States. But I hope, in its proper place, to support this opinion, and to shew that it is the doctrine of plain sense; and moreover, that this was the sense of those who framed the Constitution, and of those who accepted it from the hands of the Convention. If I can satisfy my fellow-citizens, as to the true and unequivocal intent of that instrument in 1787, my purpose will be answered, for the meaning of the people of these States, as collected from the proceedings of the Convention, must, and will prevail, over the sophistry and ingenuity of the Bar, or the metaphysical learning of the Bench, and particularly when vital interests are at stake.

Where can Congress look for the power to construct national roads and canals, and to impose upon the Agriculturists of the South perpetual tribute and extortion. If we look to the enumeration of power, as set forth in the Constitution, we look in vain for powers of such magnitude. The power to tax indefinitely being first given, there is not one of the seventeen enumerated powers, with the exception of that which gives Congress jurisdiction over the District of Columbia, and that of the power to give patents and copy rights, which does not relate either to commerce or defence; thus confirming my position, that it is a government for *External* objects alone. Looking at this list of specified powers, it is preposterous to say, that in any other wants, than the necessity of a Federal head to regulate our commerce, and a Federal arm to defend us in time of war, did the present government originate. It is absurd to say, that the people ever did want, or ever can want a general government for any other purposes. These are the only wants common to all the people of the United States: In Commerce, we are all equally interested, and we all stand in need of defence. But on every other subject, be that subject what it may,



the wants, the feelings, and the interests of the people of the United States are substantially opposite and dissimilar, and to the end of time, in all probability, they will remain so. To have entrusted Congress, therefore, with a power to legislate at its discretion, upon any subject, which it might conceive would promote the general welfare, excepting in the modes specified, would have been to confer on it a most tremendous power of legislation—such a legislation as never could be a safe or a just one in their hands. The Sages who penned the Constitution, were aware of this. They no doubt contemplated, that the legislation which might promote the interests of one section of the country, might operate to the injury of other States. They probably were aware, that the time would come, when the surplus capital of the Northern and Middle States might be profitably employed in Manufactures, and that if there was not a limitation to the power of Congress, the people of those States, who would, in time, constitute a great majority, would promote their local interests at the expense and the ruin of the Southern States, the people of which had no interest but that of Agriculture and Commerce. To guard therefore against any species of legislation, in which all the people had not an undivided interest, was their care; and it is impossible to look at their work, (the Constitution of the United States,) without being struck with the circumspection, with which power is dispensed from the States, and from the people, to their rulers, and without perceiving with what a free and liberal spirit, they dispense every power necessary to defence and commerce, and withholding, at the same time, every thing else. And yet this government, whose limits of power are so plainly marked, and so precisely defined, that he who runs may read them, is now in the exercise of some of the greatest powers that belong to a Sovereign unrestricted in his views, and unlimited in his will.

What power, I ask, can be more *substantive*, primary, or paramount, than the power to construct national roads and canals. If to cut up the country in every direction, by works of this nature, is not to claim sovereign dominion in the States, I know not what is meant by dominion. Can a power which involves jurisdiction over the territory and soil of our citizens, be claimed as incidental to, or as derivative from enumerated powers, none of which are greater than the power in question? What power again, indicates more complete sovereignty, than that, by which, at the will of the Sovereign, the paramount interests of one part of an Empire, can be prostrated, in order that extensive immunities and monopolies should be conferred on particular classes? Can it be possible, that the same body of men, who seriously and soberly thought, that a specific grant of power was necessary to enable Congress to exercise jurisdiction over its forts, magazines and dock yards, could intend to give them the unlimited jurisdiction which the opening of roads and digging canals naturally confers on those who have the power to construct them? Can it be true, that the same body of men, who believed, that Congress could not “promote the progress of science and the *useful arts*” by a patent or a copy right, unless there was an express grant for that purpose ever contemplated, that they should promote the progress of manufactures, which rank foremost amongst the “*useful arts*”? Did these men ever dream of Congress having its committees on the useful arts, its committees on agriculture, and on *manufactures*, or that it would contemplate a colony on the

coast of Africa? No, my fellow-citizens: No more did they contemplate it, than that Congress should establish a national university, or a national observatory, or have its academy of fine arts, or its gallery of paintings, or its own national museum. These subjects were before the convention, but so far from the power being given, it was refused. All the late measures of Congress, therefore, whether in the shape of appropriations for roads and canals, or in the still more odious shape of tariffs, are neither more nor less than so many schemes devised by the people of the North for improving, enriching, and aggrandizing their own states out of the general treasury, or for giving employment to their own people at our cost and charges. They are the devices resorted to by the majority, to live by the labour and industry of the minority. They are the acts of those, whose interest it is to extend the government beyond the limits for which it was created, regardless of all consequences to their Southern brethren. A government which, in the days of its purity, never has been as protecting and as paternal to us in the South, as we had a right to expect, considering the contributions it levied upon us, but which, in these later times assumes an undisguised hostility to our dearest interests. The General Government imparts to us none of that genial warmth, which brings into life and vigour, the industry and enterprise of the merchants and agriculturists of a country; but it is about to dry up, by the scorching fires of construction, all those sources of our prosperity, which, under any other system, would make us a flourishing, a great, and a happy State. Our trade is diminished, real property is depreciated; our mechanics are without employment—many of them emigrate to the North. Confidence is lost, and despondency and gloom universally prevail. With resources that few countries can boast of, we are, nevertheless, becoming to the North, what Ireland is to England. Capital is removed from us; our incomes are spent abroad, and our great export trade in cotton and rice, the only hope of our planters, the bread that is to sustain us all, even this trade, so important to us, to protect which was the very end of the Union, is now first to be interrupted, and next to be annihilated, that the Websters and the Everetts, the *Tythe* men, the worse than *Tythe* men, the *Tariff* men of the North, may riot and fatten upon our substance. What is the cause of all this? It is CONSOLIDATION—it is USURPATION. The enemies of the confederacy and of the republic, are in the chair of state. They are in the chambers of the senate and of the representatives, and will continue there. They possess the entire capitol.

## NO. 7.

The subject of the *constructive powers* of Congress, is one of intense and increasing interest to the people of the Southern States. It comprehends, in its consequences, not merely the welfare of all, but the safety and existence of many of the States. To South-Carolina, and to the other great cotton growing States, it is peculiarly interesting, and speaks its own importance. If it has not hitherto occupied our serious attention, it is full time, that every citizen should bestow on it, that share of his thoughts to which it is so justly entitled. Our planters especially, may be assured, that they cannot be better or more profitably employed, than in contemplating the measures of the General Government, in all their bearings and tendencies, to the interests of Southern agriculture, and to seek for all the

lights, which can conduct them to a proper estimate of the effects of these measures upon the entire policy of the State. Fortunately, the subject is not without its lights. It has been discussed with ability, in and out of the halls of Congress, and I do not know that I can refer my readers to a better defence of the rights of the States, than to the celebrated report of Mr. MADISON, to the Virginia Legislature, in 1799, and to that of Mr. GILES, to the same body, in 1827. If the reasonings contained in these reports, be not sufficient to satisfy them, that Congress is in the exercise of usurped powers of a most dangerous character to us, I can have but little hope, that the views which, I may, from time to time, add to what are there so luminously given; can effect any change or conviction in their minds.

By the debates in Congress at different periods, and other discussions elsewhere, it would seem that the advocates of tariffs and internal improvements, have not been generally agreed, as to what clause or part of the constitution it is, that they derive the authority of Congress to adopt these measures. Whilst some few would contend, that under the first enumerated power, to "raise taxes, to provide for the common defence, and the general welfare," &c. an authority is given to provide for the general welfare, as well as to raise taxes, and that Congress can accordingly, adopt any measure of general interest, to which there is no express prohibition in the Constitution; by far the greater portion of persons more cautiously maintain, that it can only provide for the general welfare, under this clause, *as far as an application of money can promote* such an object, and no farther. A third, and a numerous class of persons again contend, that it is under the power "to regulate commerce with foreign nations and between the States," that Congress can construct roads, and make canals for facilitating commerce, and can encourage domestic manufactures by protecting and prohibitory duties.

The first of these opinions is so absurd, as scarcely to need a refutation. The second was asserted by ALEXANDER HAMILTON, in his celebrated report on manufactures, in 1791. The same doctrine was advanced by many Southern members in Congress in 1824, and even by some of our own statesmen, but they have lived, I hope, to see the error of opinions most honestly formed at the time, and without the most distant expectation that they would be productive of the abuses which have followed their promulgation.

The third or last opinion, was, at the same time, urged by Mr. CLAY, and also by Mr. M'LANE; who, as far as the power to make canals was claimed, agreed with Mr. CLAY on this ground.

But we cannot turn to the masterly productions of MADISON and GILES, without being forcibly struck with the facility with which men, wielding the weapons of constitutional rights and state sovereignty, can put down their antagonists, who can scarcely agree amongst themselves, as to the particular clause in the Constitution, which gives a power, which, in its operations, is about to destroy the Southern States.

It is in the celebrated report of 1799 that the Committee demonstrate, that any other construction would be to convert the States into a consolidated government, the inevitable tendency of which consolidation, would be to transform the *republican* system of the United States, into a MONARCHY. And, it is true. Who can doubt for a moment, that when the General Government shall go on, step by step, in its exercise of that greatest of

all powers—the power to raise money for any, and every purpose, which it shall pronounce to be for the common defence or the general welfare. it will not extend the sphere of its legislation, to almost every object of civil government—to all the *numerous* and *undefined* objects, in fact, which were reserved for the States to act upon—thus making the individual States, as petty corporations, and conservators of the peace in their respective communities, and repairers of parish roads and bridges? Who can say, that with the patronage such a government must constantly acquire, by its capacity, hereafter, to give an hundred offices where it now gives one—with its army and its navy officers and contractors—with its custom houses and their collectors, clerks, and dependents—their tax collectors—their excisemen—their judges and clerks, and marshals—their commissioners of bankruptcy—their contemplated colony on the coast of Africa, with their colonial governors, judges, and retinue of servants and dependents—their brigade of civil and military engineers and surveyors—their post offices, and their thousands of contractors—their land offices—their seminaries of literature—their national institutes, and their universities—their academies of the arts, and their galleries of paintings—their national museum, and Mr. ADAMS' light houses in the skies, their national observatories—their military and naval schools—their hundreds of professors—their astronomers royal, and their expeditions to the poles—their missions to Panama—their public institutions, rewards and immunities for manufactures—their pecuniary bounties—their premiums—their splendid honors, and allurements held out as bribes to the first talents of the country—and last though not least, their command of the American Press, that shall cry out sedition and *treason*, and *disunion*, and come down as with a giant's blow upon the patriot, that shall dare to maintain the cause of the sovereignty of the States, of the republic, and of the world. Who can say, that with these, and a thousand such means of patronage, that the Government shall not attain a moral power, aye, and that soon, and put out such roots as to enable it to withstand all efforts to keep it within its bounds. This is no exaggerated picture. The limits prescribed to the legislation of Congress are passed. A boundless field lies open before it. The government feels itself without restraint or limitation. It has dared, even in our day, to talk of putting down a State, by the bayonets of its SOLDIERS.

But we are told by the Tariff men, that under every Administration, Congress has acted upon that construction of the Constitution, which is the basis of those measures, that now divide public opinion in these States. We will examine this—

The first exercise of any important power by implication, was in the case of the Bank in 1791, as I have already stated in a former number. But this power was not pretended to be derived from that clause in the Constitution, which enables Congress to appropriate money for the general welfare. It was claimed merely as incidental to some enumerated powers, and particularly as a means of collecting and distributing the revenue, and borrowing money for the purposes of war and defence: and the opponents of the Bill resisted it, on the ground, that though a convenient, it was not a *necessary* means, and therefore, not within the letter or spirit of the Constitution. The whole ground of dispute was as to incidental powers. It was ALEXANDER HAMILTON, as I have already stated, who first advanced the doctrine, that as far as an appropriation of money could promote it, Con-

gress could provide for the general welfare, in any way it pleased. Upon the belief that Congress possessed the power to encourage Manufactures, did he recommend, what our Tariff men now advocate, to wit—protecting and prohibitory duties. This was in 1791. His report, however, was never acted upon in any way by Congress. Certainly no vote was taken, and no opinion ever was expressed on the subject of this report; and it does seem strange, that though the Federal Administration continued until 1800, not a word was ever more said by Mr HAMILTON, or his friends.—His report, and his manufacturing doctrines and opinions went to sleep, and remained asleep, until they were roused from their slumbers by the Tariff men, during Mr. MONROE's Administration. As I have already stated in a previous number, there were some other occasional abuses of power under previous Administrations, but they are not worth noticing.—They probably passed *sub silentio* :—As no vital interest of the States was affected, there probably was little or no opposition to them.

It is clear, then, that with the exceptions mentioned, the Government of the United States did not, within the first thirty years of its existence, make any inroads on the Constitution, and certainly during the same period, no such advances to usurpation, as seriously to affect the paramount interests of particular States. It was reserved for Mr. MONROE to commence that system of policy, which the present Administration is now pressing upon the Southern States; and which, if persevered in, will convulse this Union to its very centre. It was during Mr. MONROE's Administration, that a bold, a decided, and a systematic plan of constructive and usurped powers, was determined on by Congress.

It was then, that we went back to the *ultra* principles of ALEXANDER HAMILTON, which had slept in their graves for a third of a century, and proclaimed such a devastating and such an overwhelming doctrine, as that of "*the general welfare.*" Did the Southern advocates of this system reflect, that their doctrines would serve as a foundation, on which Congress would build, in after periods, scheme upon scheme, for enlarging its legislation, increasing its occupation, and for converting sovereign States into petty municipalities? Did they reflect, that in less than five years from the time that we were furnished with this exposition of the general phrases in the Constitution, that even the American Colonization Society, a disorganizing body in the midst of the States, "a nucleus around which, are daily forming all the worst elements of discord"—did they reflect, that this Society too, would demand the aid of the National Treasury, to enable it the better to disturb the peace of the Southern States? And yet such are amongst the beginnings, from this sweeping doctrine of the general welfare. This Abolition Society has already petitioned Congress, and is to petition again to be supported from the Treasury, and their President, Judge WASHINGTON, of the Supreme Court of the United States, is busy with his printed circulars, calling upon the people of the States, to send memorials to Congress, to promote what he terms, a "national interest." And is it to come to this? Was it for purposes like these, that South-Carolina entered into the Union, and gave up such an active portion of her sovereignty? Must her Representatives stand by, and see Committees from Abolition and Negro Societies, crowding the lobbies of the House, soliciting, and provoking the discussion of subjects, which, to us, in these States, will be productive of evils, which language is inadequate to describe? It would be bet-

ter, my fellow-citizens, that a foreign army should invade your territory, and take you unprepared, than that you should permit the Congress of the U. States, to touch or disturb this subject, without regarding them at once, as "Enemies in War, and ENEMIES IN PEACE."

### NO. 8.

I now propose to give some popular views, on the question of the *constructive* powers of Congress, which, in my humble judgment, are not without weight. I am aware, that they are opposed to the opinions of men of no ordinary minds, and that they are even repugnant to the doctrines of the highest tribunal in our land—the Supreme Court of the United States. This circumstance, however, does not discourage me. I reverence as much as any man, the decisions in general of this Court, and as far as these decisions determine questions of ordinary interest between one State and another, or between a State and the United States, I yield to them my perfect homage. The Supreme Court may give to Congress the power to have a National Bank. It may decide that the insolvent laws of this or that State, interfere with the general power of Congress on the subject of Bankruptcies; or it may deny to a State, the power of giving to its own citizens, the exclusive right to the navigation of its own rivers by Steam Boats. Were I to differ with such a Court, on these and other subjects, yet as a good and virtuous citizen, I would be governed by their opinions. By so doing, I yield none of my privileges as a freeman. No vital principle of individual liberty is involved in the decision—no right of State sovereignty taken away, and no important State interests impaired or destroyed. But far different will be my feelings, when the question becomes one of *disputed* sovereignty; and the contest involves the great interests, and the existence of States. I should then feel myself at liberty, to canvass the opinions of these Judges, as freely, as if they had been delivered elsewhere, and by other men. I have the less reluctance too, when I consider, that it is natural, that on questions of disputed powers of sovereignty, between the United States and an individual State, the Federal Judges should lean towards, and support the authority of the General Government. It is the General Government that appoints and maintains them, and to that Government they must look for their promotion and their honors. To expect that such a tribunal will not extend the powers of the Government, where they can do it, without a flagrant violation of some express provision in the Constitution to the contrary, is to betray an ignorance of human nature, and of what has been passing in our own country for the last ten years. To the Supreme Court of the United States, it is, that we are to look, as the source, whence the extensive implied powers of the Government have flowed, and will continue to flow. It is the Chief Justice of that Court, who is the Master Architect of the extended Government of the United States. It is he who has already built up, and is constantly building up, a superb national Government over the heads of our citizens. In the memorable words of Mr. JEFFERSON, "the JUDICIARY BRANCH is the instrument, which, *working like GRAVITY*, without intermission, is to press us at last, into one CONSOLIDATED mass." This was not an opinion pronounced in a period of embittered political feelings, but they are the sentiments of the Sage of Monticello, pronounced in his retirement from

busy life, and when every thing that came from him, might be considered "in its nature, as *testamentary*."

The decision of the Supreme Court in the case of the Bank, would have been unimportant to us, were it not, that the principles upon which that decision is founded, must encourage the government to believe, that it can do any act it pleases, which it is not expressly forbidden by the Constitution to do. The field of constructive power opened to Congress, is no longer susceptible of definition. The talent too, the incomparable talent, displayed in this decision, a decision, which I acknowledge for strength and acuteness of intellect, and force of argument, will for ever remain a master piece of judicial composition; the talent I repeat here displayed, is calculated to force from us, at first, the confession, that Congress could establish a corporation. But the decision, I maintain, is not in consonance with the views of those men who framed the Constitution. Sound as is the reasoning of the Chief Justice, in the abstract, it is nevertheless clear, and there are abundant evidences from which we can be assured, that no such construction could have been anticipated when the Constitution was formed. If I can shew this, my purpose will be answered.

When States differ as to the true intent of a league or compact, involving a deep question of important sovereignty, they are not to seek for the aid of black letter lawyers, who merely look at the instrument as they would at a deed, but they must go into all the motives to the compact, and collect from the particulars of the negotiation, what the objects and views of the contracting parties were. It is from the history of the proceedings of the Convention which formed the Constitution, that we are to expound the meaning of particular clauses. Fortunately for us, such sources of safe interpretation are within our reach. These, and these alone, are to be resorted to. Should the parties, with all these advantages, still unfortunately differ, I know of no tribunal that can decide between them. When the States agreed to that article in the Constitution, which provides that the Supreme Court should take cognizance "of all controversies to which the United States is a party," it cannot be conceived, that more was intended, than to provide a tribunal to decide cases of ordinary interest, or cases of disputed territory, which all the parties might be disposed to leave to such a Court. It cannot be believed, that any State would submit a question of *vital* sovereignty or interest, to any arbiter on earth. No sovereign has a right so to do, without violating his obligations and his duties, to his own subjects. Inherent rights upon which the safety and existence of the people depend, are not to be put at hazard in this way. They must be adhered to under all circumstances.

If any other doctrine than this were admitted in South-Carolina, what might not be the consequences. Congress, some fifteen or twenty years hence, may, for aught we know, think proper to decide that the *gradual* emancipation of the slaves in the United States ought to take place, as essential to "the general welfare" and the public safety, and they may begin to pass laws on the subject. Is there any son of the South, who would be wilking to submit to any judges, much less the judges of the United States, whether such a law was constitutional or not, and to stand *pledged* to abide by *their* judgment? It would be madness. The decision of a bench of judges might be by the casting vote of a single judge. What! a single judge to decide, whether the fundamental policy of our

State, immemorially established, shall be altered or subverted? Shall the voice of one man—poor, imperfect, mortal man, decide the momentous question, whether we, the people of South-Carolina, shall remain undisturbed in our domestic quiet, according to the usages of our fathers, or be harassed to the end of time, by the interferences of the National Legislature—a Legislature, in its feelings, as decidedly foreign to us, in a matter of this kind, as is the Parliament of England? But some may say, this is an extreme case. I reply it is not an extreme—it is a probable case. The firebrand resolutions of RUFUS KING, which he laid on the table of the Senate, some few years since, are but pioneers to other propositions which will be made, if no resistance is anticipated. But if the case be *possible*, my end is answered. There *may* be a case then, in which the *sword* alone shall be the only argument.

But let us take the instance of the Tariff. Our citizens generally believe, that the system of the “American policy,” as it is termed, by destroying our foreign trade, and prostrating our agricultural interests, will bring ruin upon our country, if it is persevered in. Who is there then that would leave it to any judge to decide, whether Congress can impose such a system of tribute upon our citizens? Let the question of the Tariff come when it will before the Supreme Court of the United States, it must be decided against us! The question for that Court will not be whether Congress can “promote the growth of domestic manufactures,” but whether the National Legislature can pass a law, which, however, obviously designed for other purposes, yet purports in its name, provisions and language, to be merely a means of raising a revenue. The Tariff Bill is in its *form* and *colour*, a *revenue* bill. In *substance*, it is a bill for rendering the South *tributary* to the North. The Supreme Court will not, and cannot with propriety, inquire into the motives of those who passed the bill, and therefore will and must decide, that it is competent for Congress, to pass a law “*imposing additional duties* upon woollen goods.” But to us it is really immaterial, in what shape such a question may come before the United States’ Courts. Let the odious measure throw off the garments in which it is disguised, and appear in its true and proper character. Let the question come fairly and openly before the federal judges, whether Congress can promote domestic manufactures, and the probability, the certainty is, that it will be decided against us. The Supreme Court, if it remains true to the principles it has already promulgated on the Bank question, must support the authority of the National Legislature in this particular. Those principles, we shall see, are not in consonance with the views of those who framed the Constitution, or of the States who accepted it from the hands of the Convention, and therefore ought never to be recognized by a South-Carolina Legislature.

## NO. 9.

The great basis upon which the Supreme Court places the authority of the Federal Government, to exercise its constructive powers to the utter destruction of State rights, is, that every power vested in the United States Government by the people, is, in its nature, *sovereign*, and involves a power to employ “all the means which are appropriate, and which are plainly applicable to the attainment of the end of such power, and which is not prohibited by the Constitution; and if a certain means to carry into



effect any of the powers of the government be *appropriate*, the *degree* of its necessity is a question of legislative *discretion*, and not of judicial inquiry." Let us examine this proposition. It is a proposition, I confess, which at first rapidly sweeps away the mind to a conviction of its undeniable soundness. But, formidable as it appears in the abstract, it will nevertheless be found to fall before the irresistible power of truth and of common sense, when subjected to the severe test of the plain letter and spirit of the American Constitution. The proposition, if it means any thing, goes the length (from the reasonings of the Court) to establish the principle, that if there be *ANY* relation whatever, between the *measure* and the *end*, the discretion of the Legislature is to be the supreme law, and the Court will not interpose its authority, and thus tread upon legislative ground.

This construction of the instrument, I conceive, is wholly repugnant to the views of the sages who framed the Constitution. That these men never designed that Congress should be left at liberty to range at large into the boundless fields of implied powers, is evident from several considerations, which I shall notice in this, and some succeeding numbers.

In the first place, they judiciously restricted the National Legislature to the enacting of such laws as were *necessary* and *proper*, for the execution of the delegated powers. The words *necessary* and *proper*, in the Constitution, have a peculiar force. Ingenious men may amuse us with their nice and their subtle distinctions—Philologists may puzzle us with their varied criticisms—but there is no need of skilful critics or refined reasoning, in a matter of this kind. The words *necessary* and *proper*, are in constant use among men. They have a plain and obvious import, and a popular signification. They are no sooner pronounced, than they strike us like a *sensation*, and that sensation instantly excludes from the mind, the idea of an *unlimited* choice of means. The means to be adopted by Congress, must not be simply *appropriate*, or fit, or adapted to the end, but they must be *necessary*, as well as *proper*. The words are not *necessary* or *proper*, but *necessary and proper*. Had it been the intention of the Convention to have given Congress unlimited discretion to have selected from the vast mass of incidental powers, any and whatever means it might decide to be *proper*, such an intention to confer a choice, might have been better expressed, and would have been expressed in other words.—They would have said, and "to use and exercise all other powers incidental to the foregoing powers." But the clause as it stands, is *clearly* a limitation on the implied powers of Congress. The Chief Justice, however, thinks not. He decides, that the clause is sufficiently explicit, and gives the National Legislature the most ample powers to accomplish the ends of the government, by any means which have a relation to the objects entrusted to its management. In fact, he is of opinion, that this power, "to make all laws, which shall be necessary and proper, to carry into execution" their other powers, was designed to *enlarge*, and not to abridge, the discretion of the Legislature. His reasons are,

First—That it is placed amongst the powers, and not the limitations of the powers of Congress: and, secondly—That its terms *purport* to enlarge, not to diminish the powers of the Government." No reason," adds he, "has been, or can be assigned, for thus *concealing* an intention to narrow the discretion of the Legislature, under *words* which *purport* to en-

large." These are the words of the decision of the Supreme Court of the United States.

Now, let us see, how far this opinion is supported by the proceedings of the Convention. The journal of these proceedings, it is well known, has been published under the authority of Congress, since this opinion of the Supreme Court was delivered, and published no doubt, with the intention of shewing, the "rise, progress, and present condition of the Constitution of the United States." We can, therefore, resort to no higher source, nor to a more indubitable authority, for expounding ambiguous passages in the Constitution, if there be any, than this journal.

What then is the history of the clause in question? The first notice we have of it, is, in "a proposed draft of a Federal Government," submitted to the Convention, as soon as it was ready to proceed to business, by Mr. CHARLES PINCKNEY, on the 29th May.\* The clause, as it stands, at the end of the enumerated powers, in Mr. PINCKNEY'S draft, reads thus:—"And to make ALL Laws for carrying the foregoing powers into execution."

The committee of detail, to whom this draft was referred, together with Mr. RANDOLPH'S plan or resolutions, (after those resolutions had been the subject of daily debate for about two months, in committee of the whole and in convention) on reporting "a draft of a Constitution," agreeably to the resolutions as amended, on the 6th of August,† altered this clause so as to read—"And to make *all* laws, *that shall be necessary and proper*, for carrying into execution the foregoing powers, and all other powers vested by this Constitution, in the Government of the United States, or in any department, or officer thereof." Now, if the addition of the words, "*necessary and proper*," to Mr. PINCKNEY'S clause, did not *abridge* the discretion of Congress, there certainly is no meaning in the English language, or in the acts of the Convention. Mr. PINCKNEY'S proposition was as unqualified as words could make it. It was a power to make *all* laws *whatever*. The amendment of the committee, is to make "all laws that shall be *necessary and proper*." Does not every man, who is blessed by his Creator, with plain good sense, perceive at a glance, that the words "*necessary and proper*," here introduced, *control* the general sentence; that they are altogether used in a *restrictive*, and not an *enlarged* sense; and that the plain, unequivocal intention of the Convention, by their alteration of the clause, was *to narrow the discretion* of Congress, as to the selection of its means in exercising its enumerated powers. Can any man in his sober senses, believe, with the Supreme Court, that the terms of this clause, "*purport to enlarge, und not to diminish* the powers vested in the Government," or that it was not "*a restriction on those already granted*." In the words of the Supreme Court, I say, "*it is too apparent for controversy*."

But that it was understood in Convention as a restriction, is evident also, from this circumstance:—The draft of the Constitution

\* Journals 71. † Journals 216.

reported by the committee of detail, was the subject of daily debate from the 6th of August to the 17th of September, when the Convention finished its work, and yet this clause, as amended by the committee, never was altered, or proposed to be altered. It stands this day in the Constitution, as it was then written. It cannot, surely, be believed, that if any one man in the Convention, had thought with the Supreme Court, that this clause would be held to be an enlargement of the powers of Congress; or, that under its phraseology, were lurking all those powers which Congress are now exercising, to the destruction of the State Governments, and which it calls implied, though some of them are as great, and greater than any of the specially delegated powers, it cannot, I repeat, be believed, that there would have been no opposition to it. The jealousy existing in the minds of the members from the small States, was too strong, and too sensitive, to admit of such an idea.

But, says the Chief Justice, "This power is placed amongst the powers of Congress, and not the limitations on those powers." This remark is deprived of some of its weight, if we consider that in Mr. PINCKNEY'S draft, in which the clause first appeared, the powers and the limitations on the powers, are all in the same article—his Constitution being divided into articles alone. But, waving this view, upon which I place but little reliance, it will yet be seen, that the clause, as a restriction, stands exactly where it ought to stand.

It seems to be admitted on all sides, that were this clause entirely struck out of the Constitution, that the power to *pass all the laws*, which might be requisite to carry into execution, powers conferred on the legislative body, would have resulted to that body by *unavoidable* implication. It would have been absurd, to create a Government with legislative, executive, and judicial powers, if the Legislature could not make laws to *execute the powers of the government*. A power to lay and collect taxes, excises and imposts, would be nugatory, if it did not involve the power to pass laws, to appoint the officers, and to regulate the mode of collecting those taxes, and to punish individuals for the infraction of revenue and other laws. All this is too plain to require illustration. The insertion, therefore, of Mr. PINCKNEY'S clause, "to make all laws," &c. was not an act which either enlarged, or diminished the powers which preceded it; it was simply a *declaratory* clause.—It was declaratory of that authority, which in the absence of such a provision, Congress would have possessed. Congress without it, would have had precisely the same powers which, by some, the clause is supposed to give. Even Mr. HAMILTON, in his *Federalist*, (No. 33) in defending this part of the Constitution, does not agree with the Supreme Court, that this clause enlarges the powers of Congress. Such an admission would have defeated his end. He considers it, and calls it "a *declaratory* clause," and says, "that the introduction of it, could only have been done for greater caution, and to guard against all cavilling refinements in those, who might feel a disposition to curtail and evade the legitimate authorities of the Union." Mr. PINCKNEY'S clause then, being declaratory, stood in its proper position in the Constitution.

With all due deference to the Supreme Court, I maintain, that the proper place for a clause, declaring the sense of the Convention, as to the powers which are to result from other powers, expressly and previously given, is *at the end* of the enumerated powers so given; nor, could the *restricted* sense, in which the Convention would have its views expressed in such a clause, make such an essential difference, as to have warranted the transfer of the clause from its position, to be placed amongst the limitations on the powers of Congress—some of which limitations, annihilate their powers on certain subjects. The design of the clause in question, was, not *so to restrict*, as almost to *annihilate* the rights of the National Legislature, as to its means of executing its powers, but simply to declare, that in the choice of its means, it *must* prescribe to itself, necessary and reasonable bounds. The clause is declaratory, and is in its proper place.

Had the original clause of Mr. PINCKNEY been adopted without alteration or amendment, there might have been some ground for the broad principle laid down by the Supreme Court, that “let it [the end] be legitimate, and within the scope of the Constitution, and certain means designed to be used, be appropriate, that the degree of the necessity is a question of legislative discretion alone.” But, even then, I would submit, that the true exposition of such a clause, in reference to certain amendments in the instrument, and to the peculiar circumstances which gave rise to the Constitution, and which are anomalous in the history of the world, would have been, that Congress could only pass such laws as had a simple, a *direct*, a natural, and an *obvious* relation to the subjects on which they were to legislate; a relation, so plain, as to be generally acknowledged; not such a relation as is to be established by an ingenious construction. It cannot be conceived, that under a general authority, to pass laws for executing certain delegated powers, it was ever designed, that powers should be used as *means*, between which and the end proposed, there is a connection it is true, but the connection distant and not immediate, remote and not simple or direct. The construction must be such, as not to divest the States, of those numerous undefined powers, which they reserved to themselves, when they entered into the compact.

But no sooner does Mr. PINCKNEY's proposition come from the hands of the committee of detail, than the character of the declaratory clause becomes changed. It is not an immaterial change in phraseology—it is not a bare transposition of words, making no essential variation in the sense of a paragraph, that is here introduced. It is an alteration in *substance*. It alters and controls the sense of the whole clause. It causes that declaration which might have been taken in an unqualified, to be used in a *restricted* and a *qualified* sense. As largely as Congress might before have claimed the liberty of ranging in the wide and extensive fields of construction and implication, culling and gathering for the use or the ornament of the Government, their choicest fruits and fairest flowers, yet, now it is cautiously forbidden in its rambles, to touch any but those which, whilst they are essential to nourish and sustain in health, the great

body politic of the General Government, yet do not diminish the supply, which is to keep up the same healthy action in every individual member of the confederacy. The Chief Justice admits, that had the clause been in another place, and worded, "In carrying into execution the foregoing powers, and all others, &c. no laws shall be passed, but such as are necessary and proper," that in such case, the clause would *have unquestionably* been restrictive in *form*, as well as *effect*." Now, in the name of common sense, my fellow-citizens, where is the difference, between the case put by the Chief Justice, and the case, as it *actually did occur* in the Convention. A. in the Convention, proposes that Congress, in executing its powers, "shall pass *all laws* whatever." B. objects to it, unless the words *necessary and proper*," be substituted. The amendment of B. is adopted. Is not this precisely the same thing, as if the Convention had said, in executing your powers, you may pass laws, but such laws *must be necessary and proper*. Let us not quarrel about words, but look to the plain intents of men, as evidenced by their acts. The clause is a restriction, both in *form* and in *effect*. If there be any distinction, it is a distinction without a difference. The decision of the Supreme Court, in this view, is unsound. If the rights of sovereign States are to be wrested from them, and the supremacy of the General Government, to rest on principles, with no more solid foundation than those promulgated by the Supreme Court, there is an end of the Federal Union. If Congress can create so great a corporation, and so tremendous a monied engine, in the hands of any Government, as a National Bank, and call it "a *necessary* and a *proper* law" for "*collecting taxes*," it will be in vain for us to say, that internal improvements and tariffs, and other systems of extortion and tribute, are not necessary and proper laws "to regulate commerce." If our people acquiesce in this, as sound law, there is no course left for us, but to submit and to be ruined.

## NO. 10.

The Supreme Court, in contending for its extended construction of the Constitution, would draw a distinction between that instrument and the old confederation, which certainly cannot be maintained on the grounds it assumes. It would impress upon us, that the *exclusion* of the word "*expressly*," in the one compact, and the *insertion* of it in the other, included or excluded in either, the idea of *implied* powers. The words of the 10th amendment to the Constitution are, "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." In the confederation, it is thus expressed: "Each State *retains* every power, jurisdiction and right, *not expressly* delegated to the United States."

Let me here premise the distinction, which must forever exist between the case of a people emerging from a state of revolution, without any government, and assembled to form one; and a case, where the people already are associated, in so many independent political communities, each having its own regular government. In

the one case, it is intended, *ex necessitate rei*, that all powers should be vested in their new rulers, with certain limitations. What is not here reserved as a bill of rights to the people, is clearly designed to be given. But, in the other case, where the people are governed in so many distinct sovereignties, and are willing to divide the sovereignty with a common head to direct the whole, it becomes necessary to state, *not* what powers are *withheld*, but what powers are *given*. In the first case, the powers given are *general*, with certain exceptions—in the second case, the powers are altogether *special*. In the one case, every thing that is not retained is *actually* surrendered—in the other, nothing can be claimed that is *not clearly* given. The tenth amendment, therefore, to the present Constitution, and the second article in the confederation, already quoted, were only *declaratory* clauses. To the States, or to the people, were reserved, as a matter of course, all powers which were not surrendered. There is no need to distinguish here between express and implied powers. Where any power is surrendered to a legislative body, the power to make the laws necessary to execute that power, is also surrendered. To these positions all men must give their unqualified assent.

In point of *construction* then, the Supreme Court is in error when it supposes, that had the word "*expressly*" been inserted in the tenth amendment to the Constitution, that any difference whatever could have been created in the relative rights of the parties to that compact; and in point of *fact* it is equally and most egregiously wrong, in asserting that the insertion of *that word* in the old confederacy, caused embarrassments to the old Congress "by excluding incidental or implied powers." The Court might to have known, that the confederation languished from time to time, not from any want of power, over the subjects which were entrusted to it; but because for the execution of those powers in practice, it was made, by the *terms of the compact*, to depend too much upon the *individual States*.—Though their power to raise money, by requisitions upon the States, was indefinite, yet they had no power to enforce their requisitions, when the States were backward in complying with their quotas, except they were to do it by the sword. The confederation failed, not because it was deprived of power by *implication*, (for the fact is otherwise) but because it had no power of *direct legislation upon the people*.

But the Old Congress *did* possess implied powers, (that is as far as language could convey such power, and exercised them too,) and in a much greater degree than is given to Congress under the present Constitution. It had the "*sole and exclusive right and power*" of determining on peace and war: the *sole and exclusive right and power*, over the post-office, and over the regulation of coin, and every other subject confided to its government, without one single exception. In the present compact, there are no such words in the enumerated grants of power, excepting in that clause, which gives to Congress *exclusive* legislation at the Seat of Government, and over its forts, dock yards, &c. Were it not, that there are express limitations on the power of the States in other articles of the instrument,

who can doubt but that the power of the States, as to raising armies in peace, issuing coin, and laying impost and export duties would have been *concurrent* with Congress, on account of the grant of power in these cases not being "*sole and exclusive*." Even Mr. HAMILTON does not doubt, but admits it. [Fed. No. 32.] The power of the States, at this moment, to tax indefinitely, by excise, by stamps, or by any other duty, (provided it be not on imports or exports,) though such taxes might even interfere with, and *greatly embarrass the fiscal operations of the General Government*, is according to the expositions in the Federalist, as unimpaired as ever. The decision of the Supreme Court admits that there is a *concurrent jurisdiction* in the States, in the article of taxation, though not to the extent to which Mr. HAMILTON is understood to maintain those doctrines. Mr. HAMILTON tells us [Fed. 33] that "though a tax for the use of the United States, would be supreme in its nature, and could not legally be opposed or controlled; yet, a law, abrogating or preventing the collection of a tax laid by the authority of a State, (unless upon imports or exports,) would not be the supreme law of the land, but an *usurpation* of a power not granted by the Constitution." The State of Maryland no sooner taxed the Bank of the United States, under the above exposition, than the Supreme Court decides it to be unconstitutional.—A memorable triumph this of metaphysical learning over the plain intent of the Constitution.

But I am digressing. If there be a difference between the old and the new compact, the difference is in favour of the confederation, and destructive of the reasonings of the Court. The confederation, I repeat, had implied powers. If, for instance, a surrender of the "*sole and exclusive right and power*" over each enumerated subject of power in this compact, did not deprive the States of a *concurrent* power, in any way, over such particular subject, to what intent is language taught? If the States are deprived, from the words of the grant, of all power over the subject matter, do not the minor or implied powers go from them, as well as the original and substantive powers? To whom else could the minor powers belong, if they belonged not to the Old Congress?—They must belong to the States or to the Congress. To the States they could not belong; for they surrendered all jurisdiction whatsoever over the subject.—The Congress, on the contrary, shews a grant, in such words, as embrace the *incidents* as well as the *power* itself.

Hence, the weakness of the argument, that, because the States under the old compact, retained *every jurisdiction and right* not expressly relinquished, that the Old Congress had no implied powers. The Congress could pretend to no implied powers, but what belonged to subjects *acknowledged as within its sole jurisdiction*, and the States retained, without dispute, all implied, as well as original powers, on subjects not given away by them. But the Old Congress did exercise implied powers. It is not necessary to cite the instances—one will be sufficient. It created and incorporated the Bank of North America, and as a measure indispensably necessary to the exigencies of the Union; and it passed, I believe, with

but one dissenting vote. The Supreme Court would not say this was not an implied power; nor can any one pretend that there was not a greater necessity for it than the present Bank. The indubitable fact is, that the Confederation would have died a quiet and a natural death, whether this magic word of the Supreme Court, this word "expressly" had been omitted or retained. In all the addresses of the Old Congress to the States—in all its appeals to their patriotism for a change of the articles of Confederation, (the last appeal, I believe, was in April 1783,) there is not a hint of its embarrassment, or its difficulties, as proceeding from the want of implied powers. Its powers on the parchment, were as great and as paramount, as it could desire them to be on such subjects. But it wanted that, which gives life and vigour to every other power, and without which no Government can go on, to-wit—the power of raising money by taxing the people, instead of depending upon the States to raise its ways and means. This power of taxing it could not possibly exercise as an implied power, because, in the eighth article of the compact, there was an express provision that the States should supply the National Treasury. It was the want of a power to lay imposts of which it complained. It had no power to regulate commerce. It solicited over and over again, that the States would permit it to lay certain imposts for a limited time, so as to produce some little certain revenue.—Some consented, and others fettered their grants with such restrictions; New-York, particularly, as to make the power useless. It was in the situation, of the famous Confederacy of 1570 between the United Provinces, or rather in a worse situation, for there a small power to raise imposts was given. In that Confederacy, the States were not punctual in obeying the recommendations of the Common Council. Holland bore the burthen of that league, and so here some States paid three or four times their quotas. Two States, it was said, paid nothing. Holland settled her business in part, by marching an army into one of the provinces to compel payment.—Our Old Congress had not the power of settling matters by the sword. It wanted money, and it had no power to tax; and had it taxed, it would not have been paid. The want of a power to regulate commerce, was the sole cause of the inefficiency of our old Government, and not the want of implied powers, as is asserted by the Supreme Court. This is history, and this is fact.

Why then does the Supreme Court say, that there is *that* in the articles of Confederation, which *excluded* incidental or implied powers? And why, in the second place, does it assert, that it is the *omission* of this word "expressly" in the tenth amendment "*that leaves the question open*, whether the particular power which may become the subject of contest, has been *delegated* to the *one* government, or *prohibited* to the other?" The question, I aver, is not more open by the omission, than it would have been by the insertion of the word. The Court might have known, that even if the powers of the Old Congress were not sole and exclusive, and, that the phrase there might have been so expressed, as to exclude the idea of implied



powers; yet, that its omission in the present compact, could not even in *that view*, give to the present Congress, any powers which it did not possess without it. There is a distinction which is manifest upon the Court's own view of the subject. In the present Constitution, there is an *express* clause, giving to Congress the power of making the *necessary laws* to execute its powers; and therefore recognizes, thus far, implied powers. In the old Confederation, there is no such express provision. How, therefore, the Court, which rears its whole superstructure of implied powers upon *this* express clause in the Constitution, which it regards as designed to *enlarge* the powers of Congress, can condescend to lay any stress upon, or even to notice the omission of a most insignificant word, is most extraordinary. Could such a word, if it were inserted, strip the government of its powers, when, according to the Chief Justice's exposition of the phrase, "*necessary and proper*," the Government has an unlimited choice of means under an express power—unquestionably it cannot.

I have said that the word is insignificant. It is a word in my view, so harmless, that whether it be inserted or excluded from the tenth amendment, no possible alteration can be produced in the rights of either party. For A. to say to B. "The power I do not give you is retained by me," is certainly as strong and as expressive for all purposes, as if he had said, what I do not *expressly* give you, I retain—The first phrase is the better of the two—it is more simple and expresses as much. In a deed of conveyance of land, would the grantor *give* more, or the grantee *receive* more, by using the words "doth *absolutely* and *expressly*, and *clearly*, and *unequivocally* grant, bargain, sell and convey," than if the words were, "doth grant, bargain, sell and convey."—It is too plain.

When the State Legislatures sent in their ratifications of the Constitution, and proposed their amendments, they expressed, their sense as to implied powers, in various ways—Massachusetts, New-Hampshire, South-Carolina and Rhode Island, used the words "all powers not *expressly* delegated"—Virginia and North-Carolina left out the word—New-York expressed it thus, "all powers not *clearly* delegated"—Rhode-Island in the Bill of Rights has it, "*not clearly delegated*," and in the amendments proposed by the same State; we find the word "*expressly*" used. As soon as the first Congress was convened under the Constitution, it considered all the amendments proposed by the States—it took the substance of them, and made out from the whole, twelve amendments to be submitted to the State Legislatures, ten of which were accepted, and two rejected. At a subsequent period, two more were proposed and adopted, and thus stand the twelve amendments to the Constitution, In submitting the tenth amendment in question, it was submitted as it now reads, omitting the word "*expressly*."—A motion was made in the lower House of Congress to reinstate the word, but lost—only seventeen votes in the affirmative. A similar motion was lost in the Senate. The omission of this word could not, and did not make the difference of a hair in the rights of Congress and the States;

had it been important, the motions would not have been negatived by large majorities.

From all that has been said, in this and the preceding number, it must be seen by all who are not wilfully blind, that Congress has no means of executing its implied powers, but what it derives from an express grant to that effect in the Constitution. Had there been no express grant, it might have had some ground to claim by implication of law, the liberty of ranging at large into many incidental powers, which the restrictive terms of the grant decidedly forbid.—The design of the grant, or the declaratory clause, with the restrictive phrases, was, as I trust I have shewn, to forbid Congress from selecting any means but what were *direct* and *simple*. Congress has not sovereign means for executing its powers. Sovereign means are the means ordinary and extraordinary, which belong to complete and undivided sovereignty, in the selecting of which, there is no restraint, as to the free use of any, and every measure, which bare convenience may suggest, and where the unlimited discretion of the sovereign is the only rule, and his will the only law—Congress is not that sovereign. The principle of the Supreme Court is true as a general proposition, that the grant of a sovereign power includes the grant of all sovereign means, applicable to the end of such power—but it is not true in the case before us. A restriction has been placed by the Convention, upon the implied powers of Congress. It is not simply a restriction according to the plain and obvious *import* of the words, but it is a restriction *in fact*, the evidence of which fact, is to be found in the journals of the Convention.

What then becomes of the decision in *M' Culloch, vs. the State of Maryland*. The ground of the Supreme Court, that the declaratory clause enlarges rather than abridges the powers of Congress has failed, and thus must fall to the ground, that huge pile or pyramid of constructive powers, which the industry of the Chief Justice, with the aid of all his transcendant powers of reasoning, has been rearing to throw into the shade the sovereignty of the States. The Court, too, is wrong, decidedly wrong, when it pronounces, that without such a liberal construction as its own, to the clause in question, "the Constitution would be a **SPLENDID BAUBLE**." Experience and fact boldly contradict this assertion. Abolish the Bank to-morrow, as it was abolished once before. Call in the **BRIGADE** of Civil and Military Engineers, who have been taking their summit levels all along the great Alleghany ridge of Mountains, with a view to defend us against the British. Stop all further appropriations for Canals and other National works, which are drawing the life blood of the South, and enriching the North. Leave the great Cumberland road, upon which upwards of a million of dollars have been expended, to be hereafter repaired by Maryland, or by Pennsylvania, who have such an interest in it, and who are struggling for the trade of the West. Leave the American Negro Colony on the coast of Africa to take care of itself, or to be eaten up by the Savages. Put out of Congress, all the petitions and memorials of Judge Washington's Colonization, or Insurrection Soci-

ety. Cast into the waters of eternal oblivion, the speeches of some of our own Statesmen on Internal Improvements and Military Roads; and all the ultra and sweeping doctrines of the "general welfare." Repeal the Tariff Laws, and disclaim all pretence to the exercise of great substantive sovereign powers, under the flimsy pretence of their being implied means of carrying into effect other powers. In a word, proclaim from Passamaquoddy to Cape Florida, that the "*means to an end*," and the whole decision of the Supreme Court is an absurdity—and who besides the Supreme Court will venture to say, that for the want of a power to do all these things, our Constitution would be a bauble. No, my fellow-citizens, the Government for thirty years was respected at home and respected abroad. Without a National or other Bank, we achieved our independence. Without a Bank, and Military Roads, and Canals, and Tariffs, we waged a successful war a second time against the greatest power in the world, and we have arrived to our splendid rank amongst the nations of the earth, by the exercise of powers, which *we all agree the Government possesses*, and about which, there never was, at any time, the least difference of opinion. If an adherence in good faith, to the true principles and spirit of the compact, (with but few exceptions) from the foundation of the Government, (to the accession of Mr. MONROE, and the introduction of the "AMERICAN POLICY,") was upon that construction of the instrument, which would make it a mere bauble, it was exactly that sort of BAUBLE, which of all others, we in the South want, and ought to have, and MUST have.

Take away all the powers which Congress have usurped within the last eight or ten years, and let us go back to the time of Mr. JEFFERSON, and so far from the Government of the Union being embarrassed in any way by the *safe* and the *rational* construction here contended for, against that of the Supreme Court, I will be emboldened to say, that it will daily become more and more firmly rooted in the affections of the people—the peace and harmony of the Union will be more and more consolidated, and the arm of the country for commerce and defence more strengthened, and invigorated; whereas under the construction of the Supreme Court, the importance of the States will be daily diminished, as the patronage and power of the General Government shall be augmented, and their sovereignty and independence will be endangered and finally destroyed; and thus will perish, perhaps, the best hopes of the friends of civil liberty in both hemispheres.

## NO. 11.

That Congress in executing its delegated powers, was not to possess, *all the diversified* means, which belong to sovereign powers generally, is not only evident from the restriction imposed on their means, as already noticed, but it may be made apparent by another consideration, which is, that had such a doctrine been entertained, many of the provisions in the Constitution, would have been rank surplusage, and from such a reproach, I presume, we all agree, the

Convention was exempt. But the doctrine of the Supreme Court, was not the doctrine of 1787. The Constitution speaks no such language. On the contrary, the instrument abounds with examples, which clearly indicate an opposite purpose. Where can it be manifested more strongly, than when it confers, as distinctly enumerated powers, those powers, which, throughout the world, are understood and acknowledged, as only *means* for executing other powers already given.

For example:—Let us take the power “to make war.” Are not the “raising of *armies*,” “providing and maintaining a *navy*,” and “the power to call out the *militia* of the United States,” all *incidental* to the waging of war? What, in the language of the Supreme Court, can be more requisite, and “more *fairly* and *plainly applicable* to the *end* of war,” than the means just stated? All of these are every where, the usual and acknowledged means of war. According, then, to the decision of the Court, the power to declare war, carried with it every other power having a relation to war. But, the members of the Convention did not think so, for it appears, that they gave a distinctly enumerated power—1st, to raise armies; 2dly, to provide a navy; and 3dly, to call out the militia. Again—let us take the two enumerated powers to raise an army and a navy, would we not suppose that such powers as these, would give also the power to *discipline* the army and navy? And yet the Convention give a separate power to “make rules for the government and regulation of the land and naval forces.” What makes it stronger, is, that this clause was not in the reported draft of the Constitution, but afterwards solemnly introduced as a *seventeenth* power. Again—what can be more necessary to war, and to armies and navies, than for the Government which possesses the sovereign power on such subjects, to possess, at the same time, “exclusive authority over its forts, magazines, arsenals, dock yards, &c.” and yet the Convention did not think that the power to the one, necessarily gave the power to do the other, for it confers this power by a separate article. Let us go farther, and take the power “to coin money.” Would not, nine men out of ten, pronounce, that according to the decision of the Supreme Court, the power “to protect that coin from counterfeits,” was necessarily and naturally implied; but the Convention did not think so, for it gave a distinct power “to *provide* for the punishment of *counterfeiting* the current coin of the United States.” Take the power to “borrow money on the credit of the United States”—what power is there, that can be more incidental to this power, as a *means* to an *end*, than to protect Government securities from discredit by forgery, by punishing those who counterfeit them. Ask the Chief Justice, if the Government, which is so sovereign as to borrow money, and bind the people, to any extent, can pass a law to provide for the punishment of counterfeiting the securities of the public debt, and he would smile at your ignorance; and yet, the sages of 1787, were so ignorant, that the one power naturally gave the other, that they *unnecessarily* provided for *both*. Let us take the power to “regulate commerce with foreign nations,” &c. Here is a general

power, susceptible of an extensive definition, if we choose to plunge head and ears into implication. Few of us, however, can differ as to what was really meant by the regulation of commerce. Such a power, it is universally admitted, embraces every subject connected with the arrivals and departures of vessels, such as imports and exports, navigation laws, tonnage, pilotage, light-houses, (not "of the skies,") &c. But that the States did not, by the power to regulate commerce externally and internally, intend to surrender to Congress, a legislation over every subject connected with commerce, directly or indirectly, is evident, from their deeming it necessary, to confer distinct powers on some subjects, which are manifestly commercial. What subject, for instance, can be more purely commercial, than the subject of Bankruptcy. But that the States did not consider a Bankrupt law as incident to the regulation of commerce, appears by their providing for such a law, by a separate power. Coining money, and regulating its value, both domestic and foreign—fixing a standard of weights and measures—defining and punishing piracies and offences against the law of nations—establishing and regulating a post-office—laying imposts—all these are naturally allied to the regulation of commerce: and yet, there is to be found in the Constitution, a separate power for each. Now, who can doubt, but that if none of these last enumerations of power were to be found in the Constitution, and the Supreme Court had been called on to decide, whether under the great sovereign power to "regulate commerce foreign and domestic," Congress could establish a post-office, or a Bankrupt law, or have a national coin, fix a standard of weights and measures, or punish pirates, &c.: but that the Chief Justice would be astounded, that the power of a Government so sovereign, should be doubted in these instances. If I have ten grains of sense, or if my readers have as many, they must forcibly see, that a post-office, or a bankrupt law, or a standard of weights and measures, has an affinity to the regulation of "commerce between the States," as a *means*, fully as close as that of a Bank to the "collection of taxes," and for a plain reason. Taxes were gathered before the Christian era; and were collected in our country, as they now are in some countries, without the aid of Banks. But it would be difficult to find a country strictly commercial in the modern sense of the term, in which there is not a bankrupt law, and a post-office, and an uniformity in weights and measures.

To say, then, that the people of the States, when they were conferring sovereignty on their new rulers, entertained the opinion, now ascribed to them, by the Supreme Court, viz.—That "every power given by them was intended to be so sovereign, that it necessarily carried with it, *every other appropriate* power, which, in the *discretion* of Congress, it should regard as applicable to the end of such power," is not true. Had such been their meaning, there would not be found the useless provisions, with which, in such a view, the instrument must be pronounced to abound. Armies and navies, and forts, magazines, and dock yards, and coining and borrowing money, &c. are all the acknowledged means of making war upon foreign States.

and as such, naturally involved in such a power. And yet the people made these and others, so many distinct powers, thus manifesting, as clear as the Sun is in the Heavens, that they did not intend the Federal Government to exercise any important power, as a means to other powers, which was not expressed in the enumeration.

I am not sensible that the foregoing view of the subject can be confuted, unless it be urged, that the use of surplus clauses, or language in the Constitution, or the circumstance of giving as special grants of power, those which necessarily were implied, from what was already given, or as resulting naturally from the whole mass of powers, ought not to be opposed to the plain axiom, that the United States Government was to be as sovereign, on every subject entrusted to it, as the States were to be, as to what was retained. The answer is this—it would be idle, worse than idle, to talk of surplus clauses in the Constitution. The men who framed it, were not ignorant or illiterate men, who in expressing their intentions, are apt to use more words than are necessary. On the contrary, the sages who deliberately discussed and considered every article and line of this charter, were fully aware of the import of words. Amongst them, were unquestionably the first Statesmen and Orators of our country. Very many of them were professional men, and it would be a reproach to such men, assembled as they were for months and months, to mature and perfect one of the greatest works ever entrusted to men, to imagine that there is in that instrument, called the Constitution of the United States, so many clauses, that were not designed to have a full and an explicit meaning. If there be any one important state paper, or public document, in the world, which, for the clearness of its general views, the minute arrangement of its subjects, and the exactness, with which it defines the power which it intends to confer, is more distinguished than all others, that document is the Federal Constitution. There is in it, nothing of redundancy, of prolixity, or of circumlocution. For brevity and perspicuity of expression, it is unrivalled as a composition. There probably is not a sentence in it, which was not, amongst the members, the subject of conversation *without*, or the theme of debate *within* the halls of the Convention. There is certainly not a clause which has been retained, in which, by striking it out, a material alteration might not be produced, in the sense and meaning of those who penned it.

When, therefore, these sages were so precise in enumerating the powers they designed to confer, some of which are so plainly involved in, or incidental to others, it was not because these persons were ignorant that armies, and navies, and a national mint, and a national debt, were the most obvious means of war—it was not because they believed, that the power to coin money, and to borrow money, did not carry with it a power to protect their coin and their securities from debasement or counterfeiting, or that they believed that post-offices, and bankrupt laws, and weights and measures, were not connected with commerce, that they provided separate powers for such subjects—but it was, because they wished to inculcate, and to have it clearly understood, that they designed, that *no power should*

be exercised for which there was not a *specific* grant. They designed, it is true, that all the *necessary* and proper laws should be passed, to execute those powers; such laws, in fact, without which the power would be  *nugatory*, and they added a power for such purposes: But they did not mean, that a power, as great as any of those enumerated, should be claimed, under the *power to make necessary laws*.— Their object was, to leave little or nothing, to *construction*; and, that there should be no necessity, or *excuse*, on the part of Congress, for passing the limits of power assigned to it, great and uncommon diligence, seems to have been used, not to omit any thing, but to provide every power, which could possibly be necessary, to regulate the two great objects for which the Government was established, to wit, **COMMERCE** and **DEFENCE**. Had they been less precise, they foresaw that the Government could not proceed in the exercise of some of the most *necessary powers*, without *feeling the want*, of an express warrant of authority in the Constitution, and that it would be induced to resort to usurpation from *necessity*. To guard against its early resorting to constructive powers, which they must have dreaded, and to which, as wise men, they saw, there could be no end, they judiciously conferred on Congress, an *express warrant for every material power* which the Government could *possibly need*, in *all time to come, out of mind*, for the happiness of the American people. And, I ask my fellow-citizens—I call upon the members of the Bar, to look at the instrument, and to designate, if they can, what power it is, that any Government can want, for the purposes of those great objects, **WAR**, **NEGOCIATION**, and **COMMERCE**, which has been withheld from the Federal Government by the States. What power is there, *I ask*, and I ask it triumphantly, the want of which, to render us an happy and an united people, is not to be found *written down* in the Constitution; or, who can say, that this Government, in its experience of forty years, (during which time it has been at war twice, and in peace has conducted us to the most unexampled prosperity) when it was about to use a power for objects, in which *all the people* are interested, to wit, *defence* and *commerce*, could ever point to the Constitution, and shew, that for *this or that* power so about to be used, it could not find an **EXPRESS WARRANT**. No man can say it; and this circumstance alone evinces the wisdom, the consummate wisdom of the men who framed the Constitution. Such a fact is worth a million of arguments to strengthen my position, that the new Government was never to be carried on by implied powers. The enumeration of so many powers, which are but as *means* to other powers, is **TOTALLY IRRECONCILEABLE** with the principle, upon which is founded, at the present day, under the sanction of the Supreme Court, all those implied powers, which are now exercised by Congress.

Our sages having thus granted every necessary power, and placed at the disposal of the Congress, all the means which it could possibly need to administer the government, to the happiness of the people; and having withdrawn every pretext, for the resort to *usurpation from necessity*, which would have been the case, had they been

less precise, the State Legislatures were yet not satisfied. The first care of these Legislatures to prevent dispute, was, to draw around the power of Congress, certain boundaries, beyond which, it should never, in any event, pass. "The enumeration of *certain* rights," says the Constitution, "shall not be construed to deny or disparage others retained by the people." And again—"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."

What is the meaning of these clauses in the Constitution, connected with the enumeration of powers and the history of the times? It is this: We, the people of thirteen States, desire a Federal HEAD to regulate our commerce, and a Federal ARM to protect us. On no other subject are our wants common, or our interests the same. To this end, and this end alone, we need a General Government, and for these two purposes, the power we give, shall be exclusive. The sword and the purse we give you; but as we design the Government for an especial purpose, so we shall limit you by special powers. To confer power on you in general terms, would be to give you, with the sword and the purse in your hands, power to destroy the States, and to consolidate our people into a nation. In this Charter you will find yourselves called upon to regulate commerce, and provide for the public defence. It contains every substantial power which you can possibly need. As strange as it may seem to you, that when we give you the sovereign power, for war and foreign negotiation, and commerce, we should specify the obvious means which such powers necessarily involve; yet we have a *design in this*—we intend, that in your progress onward as a Government, you shall be provided with means for your journey, and use none but what we shall give you—and that you may not reproach us with carelessness or negligence in the supply, we have made it most ample; and that you may not wander from your path, we have prescribed the boundaries, beyond which you must never tread your way.

Is not the idea an absurd one, that the same men who deemed it necessary to give to Congress by a *special grant*, the power to give a patent for an *improved Cotton Gin*, should intend that it should exercise powers, not only not named, but not even hinted at—powers which belong to undivided sovereignty? The words "Canals" or "National Roads," or "Internal Improvements," are not to be found in the Constitution; or, any words which ingenuity can torture to mean any such thing, and yet Congress is projecting national works, which, whether we regard their SCALE and immensity, as to the territory upon which they are to be spread—the TIME in which they may be executed, or the COST at which they are to be completed, would not shrink in a comparison with many of the great enterprises of antient and modern times. Vast extents of roads are to penetrate our forests—an extensive peninsula is to be divided in twain—chains and chains of mountains are to be traversed with canals, and all the elements of power about to be de-



veloped, of which Imperial Rome, in her proudest days of conquest and dominion, has left us so many monuments—on which, even a Napoleon might employ his genius and his care—and which belong only to those States and Kingdoms, and those alone, which have exclusive dominion over the *soil* and *territory*, as well as over persons and other subjects, which are the objects of Civil Government. It is too monstrous, that a Government, so limited by the Constitution, that it cannot, without the EXPRESS consent of a State previously obtained, purchase and exclusively hold land for its Forts, Magazines, Dock-yards, &c.—shall dare to claim such a paramount authority, as to have national roads and national canals, which involve the right of *territorial* jurisdiction, *over* every portion of twenty-four Sovereign States.

Against such doctrines, and such foul usurpations, I protest. As acute as may be the intellects, and gigantic as are the reasoning faculties of those who sit upon the judgment seat of the highest tribunal in our land, yet I would not give the unsophisticated, and the patriotic, and the honest views which may be taken of the Constitution, for all their decisions, were they ten times as learned as they are. No intelligent man, can impartially read the decision of the Supreme Court, and contemplate the proceedings of Congress of late, without pronouncing that the Constitution is A DEAD LETTER—It may mean ANY THING, or it may mean NOTHING. If my views of the subject are unsound, and my fellow-citizens shall pronounce that Congress is in the prescribed limits of its powers, adieu, a LONG ADIEU, to the interests and the SAFETY of South-Carolina.

## NO. 12.

Let us continue our subject. Amongst the enumerated powers in the Constitution, is the power “to borrow money on the credit of the United States.” This is a power unlimited in its extent, and embraces every possible mode known, or to be known amongst nations, for raising money for the exigencies of Governments. To have affixed any limitation of such a power, would be, according to the general views of the Supreme Court, to tie down Congress to provide for the public safety, not only in this, but in after ages, and to deny to them a power commensurate with the great object, to-wit, the liberty of accommodating its means to the vicissitudes, which are constantly taking place in the affairs of a country. Had, therefore, the question before the Supreme Court been in 1819, whether Congress could “emit bills of credit,” or in other words, resort to the “*paper emission*” of the revolutionary war, who can doubt, but that the Supreme Court would have then decided, that the Legislature *had such a power*.—What, “shall a Government (to use the language of the Court) which has the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies; having entrusted to its government the sword and the purse—all the external relations, and no inconsiderable portion of the industry of the nation”—shall it be pretended, that such a Government, (should the public exigencies demand it,) has not the power, to issue continental, or *paper*

money? But why do we reason about it? On such a question, had it occurred at that time, I would have asked no favours of the Court. I would have demanded of them to decide, that Congress *could issue continental money*. I would have adduced to the judges, the case of *M'ulloch vs. The State of Maryland*, where they decide, that a corporation is but "a means to an end," and that a National Bank is a means necessary and proper to the "collection of a tax;" and I would have insisted, that were such a bank an appropriate means for such a purpose, that *bills of credit*, were a still more appropriate means, and more plainly applicable to the end of "borrowing money on the credit of the United States," and of the power to declare war, and other enumerated powers in the Constitution.—That the one, had but a distant relation to its object, whilst the other, had a direct, and an obvious connection—that the latter had been the means, by which we had conducted a successful war for our liberties and our independence, and that it is a means, to which every government must resort, when it cannot raise money by other expedients. I would, moreover, have reminded the Court, that such a power must have been intended to be involved in the other powers, inasmuch as an *express* limitation is to be found in the Constitution, that the *States shall not* emit bills of credit, but that no restriction of the kind, is to be seen amongst the limitations on the powers of Congress. The Court, under such a view, to be consistent with itself, must have decided, that Congress could issue paper money.

But fortunate, most fortunate is it, for its reputation, that such a question never came before the Supreme Court, and that such a decision was never made. Had there been a decision, it would have established the extraordinary fact, that the Supreme Court gave to the Congress of the United States, a power which the framers of the Constitution had determined, *that they ought not to possess*. The fact would thus appear.

In the reported draft of the committee of detail, presented to the Convention, the clause in question stood thus: "To borrow money, and emit Bills, on the credit of the United States." On the 16th of August, when this clause was under consideration, a motion was made, to strike out the words "*and emit bills*," which motion was carried—nine States in the affirmative, and two against the motion. Had this been a mere motion to strike out these words, there might have been room to suppose, that the opinion of the Supreme Court, prevailed amongst the members, to-wit: that the *major* power necessarily included the minor. But the reverse of this is the conclusion. Mr. LUTHER MARTIN, from Maryland, and others, urged, "that it would be improper to deprive the Congress of the power to issue *paper money*; that it would be a novelty unprecedented, to establish a government, which should not have such authority. That it was impossible to look forward into futurity, so far as to decide, that events might not happen, that should render the exercise of such a power absolutely necessary." I will not quote the rest of his arguments; but, says Mr. MARTIN to the Legislature of Maryland:—"A majority of the Convention being willing to *risk any political evil*, rather than the idea of a *paper emission*, in any possible case, *refused to trust this authority to a Government*, to which they were lavishing the most unlimited powers of taxation, and to the mercy of which, they were willing to trust the liberty

and property of the citizens of every State in the Union, and they *erased that clause* from the system."\*

The lesson here inculcated is a most salutary one. It ought to teach all judiciary tribunals, and particularly the Supreme Court, that on all questions of constitutional law, unaided by the journals of the Convention, or other lights, the best rule of interpretation is the plain letter of the Constitution. That to travel beyond this, is to enter a boundless field of conjecture, in which there is always danger of giving to the Constitution a wearing, which the framers not only never had, but to which, perhaps, they would have given their most zealous opposition. In the instance before us, we have a most illustrious example. In the history of the clause just referred to, there is the most abundant evidence, that implied powers, as they are called, were never in the contemplation of the Convention. The supporters of the motion, to strike out the power to issue paper money, must have been well assured, in their own minds, (and they were from nine States,) that no power, *not included in the list of enumerated powers*, with the exception of the power to make the necessary laws to execute the particular power, could be claimed. Had they not thought so, it would be difficult to account, for their omitting to prohibit Congress from the exercise of the power in question, by adding it to the *other limitations*, on the powers of Congress. Their not providing for such a limitation in express terms, is conclusive, that they deemed it unnecessary.

It is much to be lamented, that the debates of the Convention preserved by Chief Justice Yates, do not extend to the later periods of the session of that body, when the enumerated powers were under discussion, as in that case, we should have known distinctly the views of members, as to the insertion and rejection of particular passages. Mr. YATES and Mr. LANSING, both deputies from New-York, left the Convention in disgust, as soon as the great outlines of the Government had been agreed on. The journals of the Convention; however, furnish us with some important materials, as to the rise and progress of some of the powers of Congress.

The first step taken by the Convention was, as to the outlines of the Government; for the members had no sooner met, than it was discovered that there were amongst them three parties of opposite views. The first party, Mr. MARTIN informs us, wished to *annihilate all State Governments*, and to establish a General Government in nature of a *limited monarchy*. This party was small, but several belonged to it who did not openly avow their sentiments. The second party was "not for the abolition of the State Governments, nor for the introduction of a monarchical Government under any form; but they wished to establish such a system as would give their own States undue influence over the other States." A third party "was truly *Federal and Republican*, and nearly equal in number with the other two."

In order to test the opinions of members, as to what the new Government should be, Governor RANDOLPH, of Virginia, very early offered his fifteen resolutions, and upon these resolutions, did the members debate and differ, in committee of the whole, and in convention, for about two months; when, together with Mr. PINCKNEY's draft of a Constitution, also early submitted to the Convention, though not taken up, they were both referred

\* Yates' Debates, page 57.

to a committee of detail, to report a Constitution, agreeably to the resolutions as amended.

There is no need for our purpose, to refer to any of these resolutions as amended by the Convention, excepting the *sixth*, as it is this resolution alone, in which we are to look for the nature and extent of the legislative powers to be vested in Congress. It is in these words:—"Resolved, That the National Legislature ought to possess the legislative rights vested in Congress by the Confederation; and moreover, to legislate, in all cases, for the GENERAL interests of the Union; and also, in those, to which the States are separately *incompetent*, or, in which the harmony of the United States may be interrupted by the exercise of individual legislation."

This resolution was the *basis*, to which the enumerated, and other powers of Congress, were to be conformed by the committee of detail. "The *general interests* of the Union," was not a new phrase. It is used in the 5th article of the old Confederation, and is there synonymous with the term "*general welfare*," used three times in that instrument, to wit, in the third, eighth, and ninth articles. The committee, therefore, could be at no loss to understand what was meant by the term "*general interests*." It did not mean such interests, as a *majority* of the States might possess, as contra-distinguished from different and opposite interests, possessed by other States, which composed the *minority*, for it was not used in that sense in the Confederation, that body having no specified power on any subject whatever, in which one State was not equally, and directly interested with another.

The subjects upon which the Confederation operated, were those of WAR, PEACE, INDIAN TRADE, and Foreign NEGOCIATION: The old Congress, could not meddle with the *navigation* interests of the New-England States, nor with the great *agricultural* interests of the South. These were the *local* interests of the States, over which they had no power, by any grant from the States, general or special. They had the charge only of *general* interests, strictly and truly so called. But there was one general interest, on which the Confederation could not legislate, and that interest was *commerce* with *foreign* nations. This was a paramount *general* interest of the whole Union, not an interest of a majority of the States, but the direct interest of every State—and the want of a common head to direct which in each State, was about to involve the whole in distress and ruin. The meaning of the word "*general interests of the Union*," becomes now to be obvious to the reader. The committee of detail understood the phrase. The path, prescribed for them, in drawing up the Constitution, was plainly marked. Their enumeration of powers, was to embrace, according to the resolution, first—The powers granted to the old Confederation, already referred to. Secondly—The general interests of the Union, amongst which, foreign commerce stands pre-eminent. In fact, it comprises almost every other general interest, not provided for in the Confederation. Thirdly—The cases, to which the States are separately *incompetent* to legislate with effect. Amongst these, is the power to grant patents and copy rights; defining *felonies* on the high seas, and *offences* against the *law of nations*—for which the articles of Confederation had made no provision. Under this head, may properly be included, the power to declare the law and punishment of treason, and some others. Fourthly—The cases, in which the harmony of the States might be interrupted by indi-

vidual legislation; such as, the regulation of the intercourse between the States; a national coin; *naturalization* and *bankrupt* laws. For these powers also, the Confederation had not provided.

The reported draft of the Constitution, by the committee of detail, it will be seen, is in consonance with the sixth resolution, and with the outline of power, fixed by the Convention.

That the committee of detail did not regard Agriculture, or Manufactures, or Internal Improvements, as a general interest of the Union, appears from their reporting no specific power, in relation to these objects—nor are the words to be found either in the reported, or amended draft of the Constitution. Indeed, how could they provide for the interests of Agriculture—Though each State had its own agriculture: yet, in those days, the States designated as the *Agricultural* States, were the Southern States, whose interests were diametrically opposite to the growing *Navigation* interests of the Northern and Eastern States. It would have been as wrong to provide for Agricultural, (there were then no Manufacturing classes) as for Navigation interests—But as Navigation interests might be promoted, under the general power of “regulating commerce,” it became the care of the committee to provide a limitation on this general power, and hence arose that clause in the reported draft, which says, that “No Navigation Act shall be passed without the assent of two-thirds of the members present in each House.” This clause was afterwards stricken out—by which erasure, the great Eastern Navigation interest, which is decidedly a *local*, and not a general interest of the Union, is the *only local interest* which Congress can, at this day, promote, under the Constitution. It has the unlimited and the undoubted power. The manner in which this local interest came to be protected, is this—The *staple* and *commercial* States, as the Southern States were then called, wished to retain this clause, “lest their commerce should be placed too much under the power of the *Eastern* States—but which these last States were as anxious to reject. The Eastern States, however, notwithstanding their aversion to Slavery, were very willing to indulge their Southern brethren with a temporary liberty to prosecute the Slave Trade, provided the Southern States would, in their turn, gratify them by laying no restriction on *Navigation* Acts.” The matter being difficult to adjust, it was referred to a large committee, consisting of a member from each State, and it resulted in this compromise—Slaves were not to be prohibited to be brought into the United States by Congress, before 1808—and the above restrictive clause relative to Navigation Acts, was to be omitted. (See YATES’ debates.) Thus it is, that an *Eastern* and a *local* interest, is in the power of Congress to promote—But it can foster and encourage no other, under the Constitution.

### NO. 13.

The report of the committee of detail, as connected with the basis previously fixed by the Convention, on which the enumeration of powers was to be made out, is worthy of considerable notice, and I may be pardoned, if I dwell longer on the document, even if I be chargeable with some repetition. It is conclusive, I aver, to shew, that they considered the “*general* interests of the Union” precisely in the sense in which I have used it, to wit, interests, in which *each State directly* participates, and not those interests, in which a majority of the States, or of the people of the United States, are

solely or principally concerned, and in which others, at the same time, have no share. The evidence of this their construction, is very ample in their own work, submitted to the Convention. In reporting the subjects, or cases for national legislation, there is *not one*, which is not undeniably *as much* an object of *general-concern* in the South, as well as in the North; in New-Hampshire, as well as in Georgia. All wanted a disciplined militia, an army, a navy, a national coin and currency, public credit, and other means of defence—all were directly interested in foreign commerce, and in foreign negotiation—all needed some provision to regulate the intercourse, and to preserve harmony in legislation, between the States. If there be in the reported, or the amended draft, a single subject for their legislation, which is not strictly a "*general interest*," in our sense of the term, (except it be the power to pass *navigation* laws, now included in the commercial power, which we have seen was agreed to by compromise) let the advocates for an extended government point it out. It cannot be shewn. It would have been unwise and dangerous to invest Congress, with a power to legislate on subjects, in which eight States might be interested, and in which, the other five might have no interest, directly or indirectly. It would have put the minor States in the power of the larger; it would have invested Congress with a power to legislate unequally upon the States, a species of dangerous legislation, upon which the Convention designed to exclude it. Nature, in forming these States, has not been blindly partial to any one. If she has conferred upon the South, the capacity to raise rich and valuable products, she has not been wanting in her magnificence to the North. *They* have their advantages too, which are obvious to all.—To put it in the power of Congress to legislate upon any subject, in which there is not an interest in common, between North and South, would be to suffer the majority to enjoy all the blessings given them by nature, and to take, by their influence and their power, from their weaker neighbours, all others, so as to aggrandize and build up, the prosperity of the larger States, upon the ruins of the weaker.

The whole scheme and theory of the Constitution, is directly opposed to this, and the construction that would put five States, or a smaller number, so much in the power of the other nineteen, as to force them to *contribute* by money, or otherwise, to foster and raise up a manufacturing, or other prominent interest, of those nineteen States, is the construction of a TYRANT and an usurper. There is no warrant for this in the Constitution. In the reported draft, the words "*common defence and general welfare*," are not attached to the "*taxing power*," nor are such words to be found in any part of the draft. How they came to be inserted, will be hereafter explained.

In the Committee's draft of a Constitution, the word "*canal or military roads, or manufactures*," is not mentioned, though, as will be seen, in due time, these words were in familiar use at the time, in the Convention.—Even the word "*post roads*," is omitted in this draft. It stands, "*to establish post offices*," not "*Post Offices and Post Roads*," as it now reads. This is the more extraordinary, as in Mr. PINCKNEY's draft, referred to the Committee, there was a power "*to establish Post and MILITARY Roads*," and also, a power "*to establish and provide for a NATIONAL University, at the seat of the Government of the United States*." But the Committee reported against Post Roads, Military Roads, and against the Uni-

versity. How could they do otherwise. The *construction* of Roads was a matter to which the States were *separately competent*; though they were not so for a Post Office. The establishment of an University, was for the interests of science. This formed no motive for the States to enter into Union, and to give up so much of their sovereignty. In fact, these propositions did not fall within the meaning of Mr. RANDOLPH'S *sixth* resolution. The power to establish *Post* roads, was afterwards restored, six States in favor, and five in the negative. If considered, it is an harmless power.—Probably, the opposition arose from the fear that it might be regarded as a power to *construct* roads, and such actually has been the case. Mr. CLAY and others, are of this opinion. But the construction is a wrong one. To *establish* a post road, is nothing more than to *designate* the towns, or the *route*, by which the mail is to be carried. If there be any doubt on the subject, the acts of Congress, relative to Post Roads, from the foundation of the Government to this day, incontrovertibly establish this construction. When Congress usurped its powers in making the Cumberland and other National Roads, the phraseology used in the acts, was peculiar.—It is remarkable. In the one case, the title of the act is, “An act to establish certain Post Roads.” The enacting clause is, “The following *Post Roads* shall be *established*, viz. from Passamaquoddy, in the District of *Maine*, to St. Mary's, in *Georgia*, by the following *route* ;” and then follow the names of cities, towns, and villages—thus establishing the principle, that to establish a post road, is, to fix upon the posts, where the mail is to be stopped and opened. But when the national roads were ordered, the titles of the acts are different, and the words are, to *make and open roads*, and money is appropriated for the work. There being no appropriation when the acts passed, “to establish certain post roads,” and upwards of a million of dollars, when the national roads were *opened*, shews the *substantial* difference between *establishing* a road, and *constructing* a road. Congress itself, having admitted this distinction, by its own acts, and thus shewn its own sense of the meaning of the power to “establish roads,” it would be a waste of time in me, to say more on this point.

The University was several times proposed. First, by Mr. PINCKNEY, in his draft, but never reported on, and at last, finally rejected in Convention, on the 14th September, on a motion to insert a power for the purpose. The proposition for “*military roads*,” was never renewed. When the Post Roads were only squeezed in by one vote, there could be no hope of military roads being acceptable. The proposition was put to sleep, by the committee of detail; but, after a lapse of some thirty years, the dangerous elements of power, buried by the Convention in 1787, are all carefully disinterred; and, to provide for their removal, in due and solemn state, they are placed in that splendid sarcophagus, the memorable report of Mr. CALHOUN, the then Secretary of War, “on Roads and Canals.”

If there are amongst us, those who take any delight in grand Military Roads through our country, which the Government may, from time to time project and construct, let them be told, that these roads will only augment the patronage of the Government, and diminish that of the States, and that they must be constructed at an enormous expense, the principal burthen of which we must bear, and that the day may possibly come, though not in this generation, when these roads and canals, may become the **MEANS**, as they will the **MONUMENTS**, of the subjugation of the South.

The vestiges of ancient roads in many parts of Europe, are the monuments which record the universal empire of the Romans. For my part, feeling and speaking as a Southerner, and situated as we now are, if I have any wish on the subject of roads, it would be, that the great Alleghany Ridge should diverge from our North Western limits Westwardly, until it should intersect the Western boundary of Louisiana, thence along that boundary until it reaches the Gulf of Mexico; and that it should again be extended with its spurs along our Northern boundary, until it reached the Atlantic; that the five *plantation* or cotton growing States, those States which are bearing, and are yet to bear, the brunt of the evils of a consolidated and an usurped Government, might be the SEA and MOUNTAIN girt States of the Confederacy. We want no military roads from North to South. If the roads will enable the North Carolina and Tennessee men to bring us their cotton, and their hogs, and their corn and bacon, I shall be satisfied. As to enemies, Europe has no motive, to meddle in any way with the plantation States. We are not its rivals in agriculture, trade, or manufactures. Now, that we are independent, Nature has bound us together in cords of perpetual friendship. We raise the raw material, and they manufacture it for us. It is the people of the NORTH, I fear. When their industry begins to languish from the competitors they have in Europe, they would involve us in their disputes, arising from competition, this prolific source of wars and contention, and they would make us the ASS that is to bear all the burden and expense of the contest. It must not—it cannot be endured.

The power to create a *corporation*, is not in the reported draft of the Constitution. It would have been a departure from the outline agreed upon. It was not in the enumerated powers of the Confederation. It was not a case of "general interest," nor was it "*a case of legislation* to which the States were separately incompetent." So far from it, the States had always exercised this power; and who can say, that the exercise of such a power, by a State, is a case in which the harmony of the Union can be interrupted by State legislation. But there were not wanting efforts, to give to Congress this power, for on the 18th of August, a motion was made, to add to the enumerated powers, a power "to grant charters of incorporation in cases where the public good may require them, and the authority of a single State may be *incompetent*." Another proposition was general, and made on the same day, "to grant charters of incorporation." If the powers to establish a National Bank was not the design of these propositions, and seen through by the opponents of the measure, why were they introduced, and particularly the first. That corporation could be, for no other than a *national* purpose; to the creation of which, so as to answer all its purposes, "the authority of a single State would be incompetent." That is precisely the case of a National Bank. A State might create a Bank, and upon a most extensive scale as to capital; but a State could not direct that its notes should be received for taxes, or duties out of its own limits. No State could create a Bank to answer the exigencies of the General Government, as well as a Bank created under the authority of such a Government. The United States, upon an emergency, might restrain a Bank of its own creation from paying out specie. It might possess many advantages, of which it would be deprived, if confined to the use of a local Bank. Under this power to create corporations, might be in-



cluded the erection of a great East-India or West-India Company, or a Company to promote manufactures. But what was the fate of these propositions? They were referred to a committee, but never reported on favourably. On the 14th of September, when the Constitution had been revised, and almost ready for engrossing, the subject was again renewed by a motion to introduce amongst the enumerated powers, a power "to grant letters of incorporation for canals," &c. which motion was negatived, eight States to three.

Here we have a FACT, and an INFERENCE, which no ingenuity can put aside. The *fact* is, that a proposition was made to add to the enumerated powers of Congress, a power to create corporations for *national* purposes, which proposition was rejected. The *inference* is, that the Convention was opposed to a National Bank in any shape; for a National Bank is most prominent, amongst corporations for *national* purposes.

With such evidence as we have on this subject, it would be but a poor reply to say, that the Convention, like the Supreme Court, regarded a corporation as a *means* to an *end*, and not a substantive power—and that this consideration alone might have caused its rejection. The reasoning in my eleventh number forbids this idea.—What a solecism in politics, that an assemblage of the wisest men in the nation, should be giving away, by separate and express grants, little *odds* and *ends* of power, and that they should, at the same time, intend that powers ten times as great, should be used as means to other powers. A National Bank, with a capital of one hundred millions of dollars, is a *means* to "collect a tax," and a West-India Company by charter, may also be means. The present British East India Company, I believe, keeps in pay 250,000 troops—*decent means these*, with a vengeance! This doctrine of a "*means to an end*" may be the doctrine of the Supreme Court, and of the Manufacturers at Washington, but it will as certainly be a *means to the END OF OUR PROSPERITY* in the South, as that the sparks will fly upwards.

The word Bank is not to be found in the journals of the Convention, nor in the secret debates. Canals, and military roads, and manufactures, universities and seminaries of knowledge, all were thought of: Even a power "to pass sumptuary laws" was not forgotten, but proposed—and yet no one proposed a Bank by that name. Can any one believe, that a National Bank was not as much in the minds of the members as a National University—doubtless it was. It was, designed to be concealed in the proposed power to create corporations—and the reason, probably, of its not being introduced more openly, was the conviction that such a proposition would, with certainty, be rejected by the People, if not by the Convention. In the state of jealousy, which existed in the Convention, and out of doors, on the subject of the powers, which were to be conferred on the new Government, there is no saying, what the consequences would have been, had such an engine in the hands of government, as a National Bank was considered to be by the people at large, been added to their powers—As it was, such was the difference of opinion in the Convention, as to the extent of the powers of Congress, that at one time, in the language of Mr. LUTHER MARTIN, "they were for near two weeks, on the verge of dissolution, scarcely held together by the strength of an *hair*, though the public papers

were announcing their extreme unanimity." Had the Convention not debated secretly, we never should have had the present Government.

We are, however, wise beyond the Convention. We have discovered, by the keys furnished us by the Supreme Court—powers, which these men never dreamed of our possessing. There *was* a time, when Congress traced its steps on the ground of usurpation, with considerable caution. There is a remarkable instance of this in their usurped power in opening roads. When the first Act passed to open the great Cumberland Road, there was an express provision that on the surveys being completed, and the expence estimated, the President should not commence the work, without first obtaining the consent of the States through which the road was to pass. But, becoming bold by impunity, these folks now direct roads to be opened, and they have been opened under acts of Congress, in which there is no stipulation for the previous consent of the States. They open roads now without leave or license.

It might be gratifying, if we could compare the cost of the national roads and canals on the North, and to the South of the Potomac. But, after all, what are these roads and canals to us? What is it to us whether the Androscoggin and other streams be examined or not examined, with a view to a communication with the St. Lawrence? Will a market that shall thus be opened for some of the most valuable productions of the State of Maine benefit us? What is it to us whether the great Cumberland Road be kept in repair or not?—whether the Sandusky Turnpike, and the other Road Companies fail for want of funds or not? What is the Delaware and Chesapeake Canal Company to us, that the money of the Nation should be appropriated to aid that, and the many other schemes, for enriching the citizens of the North, at our expence. Has the Government subscribed to our SANTEE CANAL COMPANY? Think ye, that they will ever open a Canal from Winyaw Bay to Wando River, or aid a company for that purpose? Will they ever dig this Canal—a Canal, that, in time of war, would be so important? Do we hear of their extending our State Road through the Saluda Mountain, to the Western country, which will benefit five States? Is not this as much national, as the improvement of the navigation of the Ohio and Mississippi rivers? It is only the other day that the Governor of Boston asked the Secretary of War for the United States Engineers, to assist in surveying the Canal from Boston to the Hudson; but the answer is, they are all so busily employed, that they cannot be spared. Where are they employed? Are they in South-Carolina, or are they located North of the Potomac, or again on the Alleghany Ridge, for FURTHER DEFENCE AGAINST THE BRITISH? Why not augment them, to three or four brigades of Engineers, and thus empty the National Treasury into the laps of the Northerners?

We are not yet sufficiently fleeced. The GREAT SOUTHERN GOOSE will yet bear more PLUCKING.

## NO. 14.

We do not find in the proceedings of the Convention, the word "Manufactures," or any motion relative to the encouragement of them, until the 18th of August. The Convention, having at that time, disposed of most of the clauses in the reported Constitution, as far as the end of the enumerated powers, many additional powers, were on that day proposed to be vested in Congress. Amongst them, was a power "to establish public institutions, rewards and immunities, for the promotion of AGRICULTURE, Commerce, Trades, and MANUFACTURES." On the 20th of August, another proposition was made, to wit, "that a Council of State should assist the President, to be composed of the Chief Justice, and five Secretaries, to wit, of *State, War,*" &c. The duty of the Secretary of DOMESTIC affairs, was, "to attend to matters of general police, the state of AGRICULTURE and MANUFACTURES, the *opening* of ROADS and NAVIGATION, (*internal improvements*) and the facilitating communications throughout the United States, and to recommend such *measures* and establishments, as might tend to *promote such objects.*" I do not discover in the journals, any thing else relating to Manufactures, *eo nomine*, excepting the above. Both of the above propositions having failed, we might reasonably conclude, that the Convention, refused to give to Congress the power to promote Domestic Manufactures, as well as internal improvements. But it is not from the mere failure, to have these clauses inserted in the Constitution, that we would infer a clear and unequivocal intention, that to the States alone, were to be left the regulation of the different branches of internal industry. There are other considerations which establish the fact beyond doubt.

The above propositions, made on the 18th and 20th of August, it seems, were referred to the committee of detail, together with sundry others; some relating to public seminaries of learning; some to the unappropriated lands of the United States; some to the government of the new States to be created; some to authorize the President to hold landed property for the use of forts and magazines; and last, and not least, as we shall hereafter see, was a proposition to restrain Congress from establishing a perpetual revenue under its *taxing* power. On the 22d of August, the committee made a short report, proposing, *inter alia*, that a seventeenth *enumerated* power, be added to the sixteenth clause, in these words, "and to provide, as may become necessary, from time to time, for the well managing and securing, the common property, and *general interests and welfare* of the United States, in such manner, as shall not interfere, with the governments of individual States, in matters which respect only their internal police, or for which their individual authority may be competent." Our readers may construe this report as they please; but one thing is clear, that under so general a power to provide for the general welfare, Manufactures could as well be promoted, as could any other act be done, for which there was no previous provision. This part of the report, however, was not acted upon, and on the 31st of August, we find, that all such reports as had been post-

poned, "and such parts of reports as had not been acted upon," were referred to a committee, to be composed of a member from each State. The next day, the 1st of September, this grand committee "reported *partially*," but did not touch the subject of science, trades, canals, or *manufactures*. On the 4th, the committee again "reported *partially*," but said nothing of manufactures. On the 5th, the committee "reported *further and finally*," recommending alterations and additions, in five instances. The last is, to insert this clause—"To promote the progress of SCIENCE and the USEFUL ARTS, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries." I ought to have mentioned, that in their report of the previous day, to wit, of the 4th, this same committee did propose to add to the taxing power, these words: "to pay the debts, and to provide for the common defence and general welfare. It was necessary that they should make some report on this head, because many motions had been previously made, as will be seen hereafter, to restrain the taxing power, one of which was so rigorous, as to confine it to the debts and the *necessary* expenses of the United States. I hope to shew in my next, that these words were intended as a limitation, and not an enlargement of the appropriating power. The above clause, "to promote the progress of science and the useful arts," was, as I conceive, a report of the grand committee against manufactures.

I am not conscious, that in any exposition of the Constitution, this clause has been relied on, as restraining the power of Congress, on the subject of Manufactures. In my view, it is very important. It is important, if considered in the *abstract*, but when taken in connection with the above proceedings of the Convention, I do regard it as conclusive.

And first, let us consider the clause as it stands in the Constitution. What does it amount to? It is a power to promote *science* and the *useful arts*. What are the useful arts? They are those arts or occupations, which are carried on, with a view to *profit* in contradistinction to such as are pursued for *pleasure*, which are called the *liberal* or *polite* arts. Are manufactures to be classed among the useful arts? Throughout the civilized world, *Agriculture and Manufactures*, stand at the head of the useful arts. All men must assent to this. Here then, is a clear power vested in Congress by the Constitution, to promote Agriculture and Manufactures. But is it a general, or limited power? It is a limited power. How is it limited? It is limited, inasmuch, as the mode by which these arts are to be encouraged, is not left to construction, but is expressed in words, which have a clear and a definite meaning. They shall promote the useful arts, *BY securing to ingenious men patents for their inventions.*" Now, if a power to promote a specific object, by a prescribed mode, does not exclude, the power to promote it by a different, or other mode, there is no truth in the law maxim, "*expressio unius est exclusio alterius.*" Let us familiarly illustrate this.

When the old Congress found itself inadequate to carry on the Government for the want of a direct legislation on the people, it re-

peatedly and earnestly solicited the States, at different times, for a power to raise a revenue by small imposts, to be limited in amount, as well as duration. Had an amendment been made to the Confederation, and a power been granted to that Congress, "to regulate commerce by the imposition of certain duties on West India produce, surely no one could contend, that the words of the grant, would not exclude the power to regulate commerce, by duties on European goods, and by the various modes practised by the present Government, whose power over commerce is exclusive. So, a power to raise a revenue by a capitation or other direct tax, would certainly exclude the power to lay imposts, or to come at a revenue by any means, but a direct tax. In the clause before us, as in the instances just cited, the mode of expression is indubitably exclusive. Manufactures are to be encouraged, but they are to be promoted in one way only, to wit—by the reward of an exclusive right, to the use of a new machine or invention.

The grant of power in question, is, what lawyers would term an **AFFIRMATIVE PREGNANT**, that is, an *affirmance* of one thing, and a *denial* of another; an affirmance of the power of Congress, to promote the progress of science and the arts, by patents and copy rights, and a *negation* of their authority, to encourage them in any other way. There are in the Constitution, other articles of a nature allied to this. For instance—Congress shall have power "to *define* and punish felonies on the *high seas*." The power here given to define a felony *at sea*, implies an admission, that if such a power were not given, Congress would be excluded the use of the power altogether; and it further implies, that the power of defining felonies on *land*, solely and exclusively belongs to the States. There are, it is true, two cases in which it can define or punish felonies on *land*; but in these cases, there are two special grants of power, by two separate clauses in the Constitution. It can "provide for the punishment of counterfeiting its *current* coin and securities;" and it has "the power to declare the punishment of treason."

In the Constitution, will be found **NEGATIVES PREGNANT**, as well as affirmatives pregnant. The prohibition to the States laying any "duties on *imports* or *exports*," is *one* of this kind. The restriction which prevents them laying any "duty on *tonnage*," is *another*. The prohibition to their keeping troops or ships of war in a time of peace, is a *third*. The prohibition of any interference as to the slave trade, is a *fourth*. In all these cases, though the restrictions amount to a negation to do the particular acts mentioned, yet there is an affirmance of the authority of *Congress* in the last instance, to prohibit the slave trade after 1808; and in the first instances, of the *States* to lay a land tax, an excise, a stamp duty, or any other tax, (provided it be not an impost or export duty, or duty on *tonnage*); and there is the same authority to levy troops or equip frigates, during a period of war. In these positions, we must all agree.

The clause for promoting manufactures by patents, is then clearly an *affirmative* pregnant. Under its peculiar mode of expression, it

cannot be conceived, that the Convention could deem it necessary to give Congress the power to promote the arts by a particular mode, if it designed to give the liberty of adopting any, and all other modes, of effecting the same object. If the meaning was not, to exclude Congress from any general power of encouraging the arts and sciences, why mention the words at all. There certainly was no necessity for it. These words, are not to be found in any of the propositions, which were submitted on the subject of patents and copy-rights. One proposition was, "to secure to literary authors their copy-rights for a limited time." A second, "to grant patents for useful inventions." A third, "to secure to authors, exclusive rights for a certain time." It would, therefore, have been sufficient for every purpose, to have reported the amendment to read, "to secure for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries," leaving out the first part of the sentence "to promote the progress of science and the useful arts.

But the reason of the committee's using the words last mentioned, is manifest. Manufactures and the sciences had been talked of—various propositions in relation to them, were before the committee; and a previous committee, had reported a *specific* power, to provide for the general welfare, so as to reach these cases. The report was not acted upon, and the subject afterwards falling into the hands of the present committee, it became their duty to report *for or against* science and manufactures. They do report, and recommend a power for this purpose—not, however, by seminaries of learning—not by public institutions, rewards, or immunities, as proposed, but simply by encouraging inventions to facilitate labor—as well as literary works to augment the stock of human knowledge. To promote the arts and sciences, in this way, was to confer a benefit, not upon one portion, but upon every part of the Union. It is for the benefit of each, and therefore, to the advantage of all the States, that authors and ingenious mechanics, should receive in this way, the patronage of the Government: But to give premiums and pecuniary bounties, or to prohibit the export of any material of manufactures—or to restrict the great import trade, of which the Southern States, even at that day, were so jealous, was not the intention of the Convention; it did not choose to leave the question open, whether Congress should do what it is now doing, to wit—to restrict our trade by Tariff duties, almost amounting to prohibition. As the subject was before the Convention, the members of that body, took the opportunity to express themselves, that they were averse to any national encouragement of science or manufactures, except by patents or copy-rights. The clause speaks no other language.

That the friends of science in the Convention, considered this clause, *as exclusive of any power to promote science in general*—and, that they, moreover, could not afterwards seek for it, in the appropriating power "for the general welfare," would appear, by their solicitude upon the subject. On the 14th of September, as the Constitution was about to be finished and engrossed, the motion was renewed for the third time, to add a power, to establish an University,

which motion was lost, six States to four, and one divided—there not being in the Convention, the same interest for manufactures, as there was for science—there being no *calico* printers or *woollen* weavers, occupying the benches of the Convention, as is the case in the present Congress; the Convention, in fact, being composed of men, more literary than they were avaricious, is probably the reason, why the manufacturers, like the University men, did not come again to the charge, and renew their propositions for manufactures. They, however, did not. They quietly submitted to that article in the Constitution, which limits the national protection, only to *patents* and *copy-rights*.

Three clear propositions result from what has been said: First—That there was an attempt made in Convention, to give Congress, power to promote science, agriculture, and manufactures. Secondly—That a committee reported, a specific power for that purpose, to be added to those already enumerated—which report was not agreed to. And thirdly—That an express provision was made, to protect these objects, but *only* to a limited extent. These propositions being established, upon what grounds, can a general power over the subject of *manufactures*, be assumed? “*Prohibitory*” duties by Congress, was a word not mentioned in Convention. The only encouragement asked for, was, public rewards and immunities. Had they proposed protection by prohibitory duties, the Southern States would have taken the alarm, and expressed the same desire for a positive limitation on the powers of Congress, as they did for the *navigation interests* of the Eastern States: a great manufacturing interest to rise up in the States, was in truth, not much thought of in those days. But the *navigation interests* of the Eastern people, were before their eyes. It was this growing interest in the Colonies, of which England was so jealous, and her restrictions on which, no doubt, contributed to the revolution, more than any other cause. These *local* interests we have seen, by a former number, the Southern States consented to be provided for, by a special compromise.

### NO. 15.

It appears by the acts of the Convention, that though it was deemed unadvisable to entrust Congress with a power to promote any great local interest of particular States, yet, that it was considered, that there would be a manifest impropriety, in depriving any one State, which might choose to encourage its own Manufactures, of the means of doing so. The usual mode, by which Domestic Manufactures are encouraged, we all know, is by premiums, pecuniary bounties, and *prohibitory* duties; but all other modes are inexpedient and inefficient, when compared with *prohibition*. If Congress could not lay prohibitory duties, except for the general purposes of the Government, and the States could not impose them, to protect Manufactures, one great motive to the Union, would have been defeated, which was, that the States should not, as regarded their internal relation, or their power to regulate their own industry, be in a worse situation than before. Hence, it became necessary, that the States

should not be deprived of the power of laying prohibitory duties for the convenience of their imports or exports, or for the purpose of protecting their own Manufactures. When, therefore, that clause in the Constitution came to be considered, which restricts the States from laying duties on imports or exports, the subject of Manufactures directly came into discussion.

As this clause originally stood in the reported draft of the Constitution, the restriction was, only as to *imposts*, not exports—"No State, without the consent of Congress, shall lay imposts or duties upon imports." By this partial restriction, each State still possessed the power, to encourage its own manufactures, by duties, to prohibit the exportation of its wool, or other raw material. On the 28th of August, a motion was made to extend the prohibition to exports, which was carried; six States to five, a bare majority. The discussion on this article, brought forth LUTHER MARTIN, the deputy from Maryland, who strenuously opposed the article in all its shapes; but he could not succeed. So determined was the Convention, that the power of the States, as to import and export duties, should not be concurrent with that of Congress, and that the General Government should exclusively possess this source of taxation, that instead of softening, it was disposed to make the prohibition more rigorous. On the same day, therefore, an additional restriction, was introduced into the clause, nine States to four, that even with the consent of Congress, imports and exports were not to be taxed by the States, but "for the use of the treasury of the United States." Thus stood the clause in the revised draft of the Constitution, presented to the Convention, on the 12th day of September, five days before its adjournment. On the 13th, an amendment was proposed and carried, "that no State should be restrained from imposing the usual duties on produce, exported from such State, to pay the charges of inspecting that produce." But, on the 15th, a substitute was moved, and after two other motions for amendment, the substitute was put aside, and the clause finally agreed to as follows:—"No State shall, *without the consent of Congress*, lay any imposts or duties on imports or exports, *except what may be absolutely necessary for executing its inspection laws*; and the nett produce of all duties and imposts laid by any State, on imports or exports, shall be for the use of the Treasury of the United States, and all such laws, shall be subject to the revision and controul of the Congress."

Were an hundred men, to read this clause in the Constitution, I would venture to say, that ninety and nine for a while, would be ignorant of the true design of its introduction. The question, had over and over again occurred to my mind, what could the Convention intend? Mr. HAMILTON, in his *Federalist*, is almost silent on the subject. His reason may be conjectured from what is to follow. That the framers of the Constitution, who disputed so much as to the phraseology of this clause, intended something more, than to give the States the power to impose trifling duties to execute their inspection laws for cotton, tobacco, &c. is too evident; because, independently of the power to lay duties for their inspection laws,



which may be done, *without the consent of Congress previously obtained*, there is a clear and a distinct provision, that the States may, on applying for, and obtaining such consent, impose import and export duties for *other purposes*. What purposes can these be? Can it be, to give the States now and then, a chance of some little revenue. The clause itself, decidedly gives the answer. The produce of the duties, when laid, is to go into the *National*, and not into a State Treasury. Then, what does it mean? Abstractedly considered, it is inexplicable, and to me, and perhaps to others, would have remained so, had not the subject of domestic manufactures, come into discussion. The design of the clause is now at once seen. A satisfactory explanation is instantly within our reach. It was inserted, for the purpose of *enabling such States as were desirous of protecting their own manufactures*, either by export duties on their raw materials, or by *imposts* on foreign fabrics introduced into their limits, **TO DO SO, WITH THE CONSENT OF CONGRESS**. No other solution is admissible. If this was not the intent of the provision, I defy the Supreme Court or any expositor to explain it. In any other view, it is an *useless* and a *stupid* clause of the Constitution.

It is, however, most fortunate for us, that the debates of the Convention, are at hand, to rescue us from further doubt, or difficulty on the point. Let us hear Mr. MARTIN, bitterly complaining to his own State of the total injustice, in his view, of this clause. "By this same section," says he, "every State is also prohibited from laying any imposts or duties on imports and exports, without the permission of the General Government. It was urged by us, that there *might be cases, in which it would be proper, for the purpose of encouraging manufactures, to lay duties, to prohibit the exportation of raw materials; and even in addition to the duties laid by Congress, on imports for the sake of revenue, to lay a duty, to discourage the importation of particular articles into a State, or to enable the manufacturer here, to supply us on as good terms, as they could be obtained from a foreign market.* But the most we could obtain, was, that this power **MIGHT BE EXERCISED** by the STATES with, and *only* with the consent of Congress, and subject to its control. And so anxious were they, to seize on every shilling of our money for the General Government, that they insisted, *even the little revenue that might thus arise, should not be appropriated, to the use of the respective States where it was collected, but should be paid into the Treasury of the United States; and, accordingly, it is so determined.*" (*Secret debates, page 71.*)

Thus, we have all our doubts dissipated as to this *otherwise* singular provision in the instrument; and thus too, we have a fresh instance of the wisdom of the Convention. A mode has been provided, by which, at any time, the people of any one State or number of States, may protect their manufactures, without charging the cost of such protection, to the neighbouring States. Indeed, if we reflect upon the previous acts of the Convention, we must confess, that it could not have done otherwise, than to make the provision referred

to. To have confined the import and export duties, to be laid by the States, to the simple purpose of executing their inspection laws, would have been extreme injustice. Congress had previously been prohibited, from promoting manufactures, excepting by patents; and as Congress could not, for this purpose, lay a protecting or prohibitory duty, what would become of the States, desiring to encourage their manufactures, if they also, in no event, could keep foreign fabrics out of their limits, if it was their policy so to do, in order to protect their own. Such a provision then was indispensable, and the qualification, put upon the restraint on the power of the States to lay imposts, was most judicious, both for the States and for Congress. As the clause stands, the manufacturing States, may, at any time, ask for the permission of Congress, to lay duties to protect their fabrics: but, they are properly excluded the power of imposing these duties at pleasure, and to take the proceeds, as under the pretext of protecting their manufactures, they might collect a revenue, or otherwise interfere with the resources of the General Government. But there is an inference to be deduced from this clause which is irresistible—and that is, that had the Convention believed, that in any of the enumerated powers, which it had immediately before conferred on Congress, there was included a general power to promote Manufactures, there never would have been held out to the States, that in any event, they could lay an import or export duty, except for the purpose of their inspection laws. On Mr. MARTIN'S urging the necessity that might arise at a future day, for the States to protect their Manufactures—and that a power ought to be at hand for such an emergency, the prompt answer would have been, the General Government is already provided with the power—and the Convention would have erased from the clause the words, “without the consent of Congress,” and thus have restricted the power to the simple purposes of inspection. But the clause remaining with these words, I maintain, is conclusive to shew, that there was no idea, of any general power having been given to Congress, over Manufactures.—Nothing but a necessity, which could not have been avoided, could ever have induced the Convention, to consent to the States imposing, in any event, duties on imports. The members of the Convention were nearly unanimous on this point; they were uniformly opposed to any concurrence of authority respecting this fruitful source of revenue. It was early decided, that the ENTIRE Custom-House should belong to the Congress.

The course prescribed by the Constitution, for the protection of Manufactures, being thus plainly marked, Congress is the more inexcusable for usurping the power in question. If, after the duties, which, previous to 1816, had been laid for revenue; and which, at the same time, encouraged Manufactures, it was found that the infant Manufactures of any one State, stood in need of any further protection, the Legislature of that particular State, ought to have applied to Congress, for leave to impose, in all its ports, the same duties on British goods, which are specified in the Tariffs of 1816, 1820, and 1824. To such an application, Congress might have

sented, as the duties would still have been paid into the National Treasury; and I am certain, the Southern members of Congress in those three different years, would cheerfully have indulged these folks, and will still indulge them, with a protection in this way, as long as it will not too seriously affect the revenue. Whether Congress will now, or at any time hereafter, give up to the States the least atom of their power over imposts, I know not: But this I do know, that in refusing to give to the States, a chance now and then, of protecting their Manufactures in this way, (if the States choose to ask it,) Congress would not *honestly* execute the trust, reposed in it by the Constitution.—That, however, would not be our look out.

I am not ignorant, of the difficulty that would arise in getting the majority of the people of any one State, New-York for instance, to join in any such application; for, whilst such a scheme would suit the Manufacturers, it would interfere with other important interests: All persons in such a State, connected with commerce, such as merchants and traders, shipwrights, cordwainers, sail-makers, &c. would be seriously injured. The importation of British goods into New-York would be diminished, on account of the high and double duties, and the Custom-Houses of Charleston, and other ports, where only the national duties were to be exacted, would be filled to overflowing, to say nothing of the ruinous effects upon the overgrown commerce of New-York, to be produced in various ways, and particularly by the British taxing their produce, and exempting ours.—But the manufacturers will say, what then are we to do? Are we to have no protection, except we pay for it on these terms? The answer must be the same, as we would give to a man, who complains, that, whilst his neighbour, who carries on like himself, the wholesale trade in dry goods, has always all the retailers of the city dealing with him, he is without a single applicant. For this case, there is no remedy, but to quit the employment, or to bear the disappointment. It would not be just to say to the retailers, that they are to buy where they buy dearest. But to cease with familiar illustrations, there certainly does arise from this view of the subject, a position which is impregnable, to-wit:—If in any one State, or any number of States, in which there is a clamor for protection, there can be such a diversity of opinion or of interest, that the manufacturers, cannot in any one instance, (which I do firmly believe to be the case) succeed in a Legislative application to Congress, for leave to lay imposts, and thus to avail themselves of that article in the Constitution, expressly provided to enable such State or States, to protect their fabrics, it would incontestibly prove, that in such State or States, the MANUFACTURING interest is not the *predominant*, or PARAMOUNT interest. If it were paramount, its influence would prevail. If then, manufactures, be not a paramount interest in any one State, where there is a *cry for protection*, and the promotion of them, would injure *other* interests in such State, fully as important, A FORTIORI the promotion of manufactures, must injure in a greater degree, the interest of States, in which there are *no manufacturers*. It is only on the ground, of its being a *general* inter-

est in the United States, that a National protection can be advocated and maintained. What is not a *general*, or a *paramount* interest in any one State of the Union, cannot, by any process of reasoning, be decided to be a *general* interest of the *twenty-four* States.

This provision of the Convention, to give the States an opportunity, of protecting their own manufactures, is in exact accordance with the immutable principles of justice. To suffer Massachusetts, for instance, to promote the success of her manufacturing establishments, by means of a *National Tariff*, would be neither more nor less, than to give to her, greater advantages, and greater power too, than she could have had, if she had not entered into the Union. If Massachusetts were to separate from the Union to-morrow, and were to decide, that manufactures was a general interest in the State, and ought to be promoted, what would be her course of policy? She would have to do, what all other nations have done before her. She would have to compel her citizens to wear the home made fabrics, by imposing high duties, so as to exclude the rival foreign articles. She could not think of demanding, that we in South-Carolina, who would be independent of her, should wear her fabrics, any more, than that England can demand of France, to use British manufactures. In England, the entire nation is enriched by manufactures, but who is it, that pays the cost and charges, by which the aggregate of British wealth, and prosperity is attained? Do not the English themselves, pay for these great advantages of protection? Upon what principle, is it then, that under a Government, which is not a consolidated one, but a confederacy of States, the Eastern man should not only have the protection, but have it without scarcely any cost to himself. What State is there, that would not rapidly acquire riches, if it could thus lay its neighbours under contribution, to support its various branches of internal industry. If Massachusetts then, will have manufactures, Massachusetts must be content to have them upon the usual terms. Her own citizens must pay the cost, whether it be, *directly*, by *taxes* for *premiums*, or *pecuniary bounties*, or *indirectly*, by a tax upon *consumption* of the home fabric. To suffer any other mode of encouragement, would be, to violate the Constitution, and to license a system of ROBBERY upon the South. If Massachusetts, is not content, to have the full power, to adopt the *same* measures, which she could take, were she *sovereign* and *independent of the whole world*, she has no right to complain. She must not be permitted to tax her neighbours. The interest she desires to have promoted at the expense of the nation, is a *LOCAL* interest, not half so important, as the Cotton Planting interest of the South, in which there is a far greater capital embarked, than there is in manufactures. Congress cannot promote, the great Cotton Planting interest of South-Carolina, nor can it encourage the manufacturing interest of the North. And why?—Because these are *local* interests of the States, and not the *general* interests of the Union. Congress can lay its imposts for revenue, and if in laying these imposts for revenue, it can at the same time encourage this, or that branch of local or internal indus-

try, giving at one time a little advantage to the Sugar Planters of Louisiana, and at another time, aiding the manufacturers of the North, there is no harm in this. As the impost *must be laid for revenue*, there is no tax here imposed upon one section of the Union, more than upon another. On this principle, manufactures were judiciously encouraged, till 1812, inclusive. Commerce, thereby, was not shackled or interrupted. But, since 1812, all the Tariffs have been gross usurpations of power by Congress.

### NO. 16.

I proceed to say something on the subject of those general phrases in the Constitution, which constitute in the hands of the General Government, the great LEVER by which the State Sovereignties are ultimately to be subverted from their foundations. Congress it seems, has power "to lay and collect taxes, duties, imposts and excises, to pay the debts, and provide for the *common defence and general welfare* of the United States." It is from these words, "general welfare," that a power is claimed to open navigation between the States, to dig canals, to construct roads, and from time, to impose Tariffs, to the extent of a total prohibition of the valuable commerce of the Southern States. It is under cover of these words that the Colonization Society, with Judge WASHINGTON at its head, with the sanction of some State Legislatures, and with the prayers of many Societies and Conventions, is to march to the Capitol in December next, and to demand the aid of the Government for our flourishing and favorite Negro Colony at Liberia. It is under these same words, as the present President contends, that Congress can adopt any measure whatever, which it shall judge necessary to promote the general welfare. And also under this exposition is it, that the ultra fanatics and abolitionists of the North contend, that Congress can alter, whenever it pleases, the whole domestic policy of South-Carolina.

In this view of the subject, these words "general welfare" are becoming every day more and more important to the folks, who are now so peaceably raising their cotton and rice, between the *Little Pedee* and the *Savannah*. The question, it must be recollected, is not simply, whether we are to have a foreign commerce. It is not whether we are to have splendid national works, in which we have no interest, executed chiefly at our cost, and with a view to circulate money in the North. It is not whether we are to be taxed without end. It is not whether we are to have our Northern brethren, as our task masters, and to make bricks for them without straw. But the still more interesting question is, whether the institutions of our forefathers, those institutions under which we have been born, and under which all of us, bondmen as well as free, have enjoyed in the whole, as much of happiness as generally falls to the lot of any one nation on earth, are to be preserved according to ancient usage, free from the rude hands of innovators and enthusiasts, and from the molestation or interference of any legislative power on earth but our own? Or whether, like the weak, the dependant, and the unfortunate colonists of the West-Indies, we are to drag on a miserable state of political existence, constantly vibrating between our hopes and our fears, as to what a Congress may do towards us, without any accurate knowledge of our probable fate, and without a hope of successful resistance?

This, my fellow-citizens, is an awful question, but awful as it is; it is a question on which, sooner or later, we must all pass a final judgment— We deceive ourselves if we think, that there can be any evasion. The time advances and advances apace, when we must either be content to go as supplicants, and prostrate ourselves before the Councils of the nation, soliciting their forbearance and their mercy, or we must there appear as freemen, demanding a recognition of our rights, with a firm and an unalterable resolution to maintain them. There is no middle course:—

Let us examine the grounds upon which the enemies of the republic would impoverish and destroy our happy country. As far as manufactures are implicated, it is immaterial what construction is given to the words "general welfare;" for, if I am correct in the position I took in the two preceding numbers, that Congress is prohibited from giving any protection excepting by patents for new inventions, the power, of course, cannot be claimed under this clause.

No clause in the Constitution, in my view, has been more perverted in its meaning than this. But it is not surprising. When the Supreme Court of the United States solemnly adjudges that the power given to Congress to pass the "necessary and proper laws," to execute its enumerated powers, is an *enlargement*, and not a limitation of those powers, (the contrary of which, I have demonstrated to be the fact, from the journals of the Convention,) is it to be wondered, that the same mistake, should occur in the interpretation of the clause in question? The term "general welfare," I contend, was inserted in this clause, to confine the appropriating power of Congress to the enumerated objects. Should I fail in my proof, I hope I shall have given as good reasons for my constructions, as those on the opposite side, can for theirs. If I adduce facts, which even render the interpretation either way, as not conclusive, I shall have rendered some service to my country. South-Carolina is not to pay tribute money, or have her domestics insubordinate, under a disputed, and doubtful construction of the Constitution.

When the draft of the Constitution was reported to the Convention, on the 6th of August, it was generally understood, as being in conformity with the outlines agreed upon in the amended resolutions of Mr. RANDOLPH. If the committee did deviate, from the letter or spirit of the outlines so given, it could only be, from misconception of their instructions. It does not, however, appear, that they did in any one instance, misunderstand them. In their enumeration of powers, they were, by their instructions, to provide *inter alia*, a special power for every subject of general interest. They did so as well as they could. What escaped their notice, was afterwards provided for, by additional enumerated powers. That this committee ever intended, that the legislation of Congress should extend over any subject, which was not particularly provided for in their enumeration of powers, is contradicted by the important fact, that they used, in their reported draft, no general phrases, under which might be concealed a single latent power. The words "common defence," or "general welfare," or any words of similar import, are not to be found in any part of the reported draft of the Constitution, not even in its preamble; and it appears further, that those words are not, up to that date, in any part of the journals, neither in Mr. PINCKNEY's draft, nor in Mr. RANDOLPH's resolutions. In the Constitution reported by the committee of detail, the

taxing clause stood thus: "The Legislature of the United States, shall have the power to lay and collect taxes, duties, imposts and excises." In Mr. PINCKNEY's draft, referred to the committee, the words are the same.

When this clause, on the 16th of August, was in its turn, called up for consideration, a motion was made for a proviso "to restrain Congress from taxing the exports of a State." The consideration of the proviso was postponed, almost unanimously. It was an unnecessary amendment, because there was already amongst the limitations on the power of Congress, the same provision. Be this as it may, we may presume, that the clause required consideration, and that this may have been one reason for its postponement. On the 18th, we find this motion, "that a clause or clauses be prepared to *restrain* the Legislature of the United States, from establishing a *perpetual revenue*," the meaning of which I understand to be, that no money should be raised by taxes, unless it should be needed for the common purposes of the government. Here then we perceive, an intention to *limit*, and not to extend the appropriating power of the government. The committee, to whom this proposition was referred, must have understood, that there was a disposition in the Convention, to limit the appropriating power, for on the 22d, they report, that the clause should read—to lay taxes, &c. for the payment of the debts, and *necessary expenses* of the United States, provided, that no law for raising any branch of revenue, except it be specially appropriated for the payment of interest on debts, or loans, shall continue in force more than — years." This limitation of the committee, it is true, was not finally agreed to; but I introduce it to shew, that there was a jealousy in the Convention, as to the power of raising taxes, without *specifying the purposes*, for which they were intended. It was to guard against useless taxation, which might be followed by waste and extravagance in the public expenditure.

Between the time, however, that the taxing clause was first called up for consideration, to wit, on the 16th, and the time the committee of detail reported as above, on the 22d, Mr. RUTLEDGE, the chairman of that committee, had moved, that "Congress should consider the necessity, and expediency of the debts of the several States, being assumed by Congress," and a committee of eleven was appointed for this purpose. This committee of eleven had reported on the 21st, "that the Legislature shall have power to fulfil the engagements, which had been entered into by Congress, and to discharge as well the debts of the United States, as the *debts* incurred by the several States during the *late war*, for the *common defence and general welfare*." This is the first time (the 21st of August) that the words "*common defence and general welfare*," appear on the journals of the Conventions; and no doubt it was this report, as to a provision for the public debt, which caused the other committee, in their reports on the 22d, to which we have just referred, to propose to add to the taxing clause the words, "to *pay the debts* and necessary expenses of the United States," &c. In this same report, on the 22d of August, was the *specific* power proposed, as a seventeenth enumerated power, (alluded to in a preceding number) to enable Congress to provide for the *general welfare*, &c. which report I considered as made in favour of manufactures, but was never agreed to. This is the second time (the 22d) that the words "*general welfare*," are mentioned. On the 23d, when the taxing power was again called up, a motion was made to amend it, so as to read, "The

Legislature shall fulfil the engagements, and discharge the debts of the United States, and shall have *the power* to lay and collect taxes, duties, imposts and excises." This motion was carried. On the 25th it was reconsidered, and a motion was made to amend it by saying, "for the payment of the debts, and for defraying the expenses that shall be incurred for the common defence and general welfare;" which motion was lost. Thus the limitation voted for on the 23d remained. But on the 4th, the committee made a report, and amongst other things recommended that the clause should read, "to pay the debts and provide for the common defence and general welfare of the United States;" and it was thus finally agreed to.

If there be one inference clearer than another, from the foregoing statement of facts, it is, that there existed in the Convention a clear intention, not to suffer the appropriating power of the government, to remain subject to the possibly perverted construction, that it was to be indefinite as to *PURPOSE*, as well as illimitable as to *amount*. Let us recapitulate: The amendment of the 18th was a limitation on the power to tax unnecessarily. It was to provide against raising a revenue which might not be needed. The proposition of the 22d was a severe limitation as to *purpose*, confining the appropriation to *necessary* expenses. In that of the 23d, the *purpose* is first expressed, to wit, "to fulfil the engagements and discharge the debts;" and then follows the power to tax. Here was a clear limitation again as to *purposes*. On the 25th, the taxes are to be laid to pay "the expenses that shall be incurred for the common defence and general welfare." This again is a limitation as to *purpose*.

If such of the proposed amendments as limit the appropriating power as to its *purposes*, be attentively considered, it will be seen, that they are all more or less objectionable, and therefore were properly rejected by the Convention. For instance—1st. To confine the appropriation to the "*necessary expenses*" of the government, would be too rigorous. Every government must have some latitude of discretion, as to its expenditures for its enumerated, or legitimate objects. 2ndly. To have limited the expenditure to the "engagements and debts of the United States," would have excluded the debts of the old Confederation, and the *assumption* of the debts of the individual States. There existed moreover, another objection to this phraseology: The taxes here, are made the *means* of executing this particular power, whereas the taxing power must be the great means of executing all the powers. 3dly. To have limited the appropriation to the "expenses that shall be incurred for the common defence and general welfare," might possibly imply a doubt, whether Congress ought to lay its taxes prematurely, or before the wants of the Government should be ascertained. These last, are the words in the old Confederation. I do not recollect what the practice was in the old Congress—but I do suspect, that the States were never called upon for their supplies in money, or in flour, &c. until the expenses were ascertained, and the quota of each State adjusted. However, be the objection to this last amendment what I have stated or not, we must all agree, that if the words, now used in the Article, be words, shewing the *restrictive sense of the Convention*, as to the *construction* of the appropriating power, the clause is better expressed than it would have been, under any of the amendments. As it now reads, it gives Congress the necessary power to lay its taxes at its



pleasure, by anticipation or otherwise—but judiciously confines the proceeds, to the *general* purposes, for which the Government was established, the *public debt* being provided for, by a separate article.

Those who reject this rational construction, that the words “general welfare” were intended to restrict the appropriating power of Congress, to the enumerated objects, will find themselves reduced to the awkward dilemma, of maintaining a very absurd position, to wit—that when a power is given to raise money, without any expression of limits, as to *amount*, or as to *purpose*, it is an *augmentation* of such a power, as soon as the purposes of the appropriation are expressed. The case before us is precisely of this kind.—Mr. PINCKNEY proposed, by his draft, to give Congress a power “to raise taxes, duties, impost and excises.” The Committee report a similar power—This power, though apparently illimitable, as to *purpose* or *amount*, was not so in fact. Under a general power to raise taxes, Congress can no more appropriate money, to any purpose foreign to the wants of the Government, than any trustee who has an unlimited power to raise money by loans or otherwise, can legally appropriate the money when borrowed, to any other than the purposes of the trust which are expressed in the deed which confers the money-raising power.

But, let us give the opposite argument every advantage.—Here is a power reported by the Committee, which is indefinite every way. It must occur to every mind, that to make any addition to a power to raise money, which already is so expressed, as *possibly* to be construed to be unlimited as to the *purpose*, as well as to the amount of the appropriation, is in fact to *limit that power*. That which apparently is already unlimited, needs no additional words to strengthen it; every amendment is likely to weaken it considerably. The history of the clause in question, shews this to be the case. In all the trials to which it was exposed, it was always weakened—sometimes more, sometimes less, according to the proposed amendments. As the clause originally stood, who can doubt, but that Congress might, under its phraseology, have pretended to more power than it now claims—though, substantially, there is no difference between the two clauses. Under such an unlimited power as the words convey, the vote for the relief of the distressed emigrants from St. Domingo, and that of 100,000 dollars to the inhabitants of Carracas, might have been said to be justified. When this appropriation was voted, it was unconstitutional, because it was not for the general welfare of the citizens of the United States, to which the restriction confines the appropriations of the Government. Under the clause too, as it originally stood, a million of dollars might, under some colour of authority, be given to the Greeks; as much more to the South-American Patriots; millions might be voted to extend Christianity in heathen countries, or to civilize that quarter of the globe which is becoming so very interesting to an American Congress—the continent of Africa. But who would now contend, that we could give money to the Greeks, or to the South-American Patriots. And how is it, that we cannot be thus generous, when there is no express prohibition in the Constitution—The answer is a plain one. It is the additional words “general welfare” to the original clause. If then it is the amendment to the original taxing clause, that prevents Congress from now doing, what it might have had a pretext to do, before such an amendment was made—that amendment, must of necessity be a limitation on the appropriating power. It is the limitation

as to the purposes of appropriation, which the words "general welfare" have affixed to a power, which, from its phraseology, might have been assumed to be unlimited, that restricts Congress to such appropriations only as can be referred to the common defence and general welfare of the States. If, then, the words constitute a limitation in this sense, they cannot enlarge the appropriating power. What is intended as, and operates as a limitation, cannot be construed into an additional or a new power.

The words "general welfare," were in truth added to the clause, not because the members of the Convention believed, that, without such a clause, the money appropriating power would in strictness and in truth, be without limits as to the *purposes* for which money might be voted away. They could not have thought so, for there were amongst them too many sound lawyers. They could not believe, that the words conferred a right to give away money except for national purposes. The words were inserted, *ex abundante cautela*. The same extreme caution here prevailed, which influenced them to give a power to Congress to pass the necessary laws to execute its powers, and which also induced them to give as substantive powers, those which were incidental to the execution of other powers. There was a fear, that the clause would be liable to misconstruction, if some words were not added to it, to shew the restricted sense in which they would have it considered. The journals of the Convention decidedly shew this. Had these words not been inserted, to a certainty, large sums of money, or frigates, would have been voted to the Greeks a few years ago, when there was such an enthusiasm on the subject amongst the influential members of Congress. And, to a certainty also, pecuniary bounties and premiums would, ere this, have been voted away by Congress, to encourage agriculture, trade, and manufactures; and even money might have been voted for State purposes. As the clause now stands, no appropriation can be justified, excepting it be for the national objects included in the enumeration of powers.

### NO. 17.

Mr. M'DUFFIE, who, in *his* exposition, of the general phrases in the Constitution, agrees with ALEXANDER HAMILTON, and who, in the debate in 1824, has gone so very *far* in his ideas, of the power of the Government, as to internal improvements, seemed to regard it as a matter of considerable triumph, when some of his adversaries in the debate, had incautiously contended for a principle, which I agree could not be maintained, and which I regret was ever advocated.— He thanked them for the admission, that the words, "general welfare," were intended to *limit* a power, which, otherwise, would have been *illimitable* without them, because he thought, it led to the irresistible conclusion, that the discretion of the National Legislature was not to be restricted within any bounds, short of the "common defence and general welfare."

Mr. M'DUFFIE's argument in support of this doctrine, is so excessively refined, that it is always unsafe for an antagonist, who is not his

compeer in metaphysics, to enter the field of controversy with him. The danger is, that he may be blown "sky high," from the ground that he occupies. Like the Chief Justice of the United States, he so states his propositions, that they seem to be almost self-evident. In an instant, our previous impressions vanish, and for a while, we acquiesce, without knowing why or wherefore, in doctrines, which our mature judgment had always regarded as unsound. The promptness too, with which Mr. M'DUFFIE seizes an advantage, incautiously given him by his adversary, and the dexterity with which he manages his subsequent movements, is most remarkable. It is the novelty of his plan of attack, and the boldness with which he pushes forward his game, that gives him his superiority in debate. His speech on internal improvements, is a master piece of the powers of reasoning. It is by far the greatest effort which was made in Congress, during that discussion, and, it therefore is not surprising, that this speech should have been so long considered, as settling the question in favour of the power of Congress to appropriate money for roads and canals. But Mr. M'DUFFIE's doctrines, like those of the Supreme Court, have been orthodox, because they never have been thoroughly examined. They were promulgated at a period, when it was deemed a kind of heresy, not to fall into the general views of our politicians at Washington, as to the character which our Government ought to assume. It was to encourage a selfish and sectional feeling, to think of differing from men, who, so far from recollecting, that the General Government was designed to be a Government altogether external in its operations, conceived the enlarged and brilliant scheme, of making it a most splendid edifice, *within* and *without*, as calculated to attract notice from its ornaments, as well as its utility.

Had Mr. M'DUFFIE's antagonists joined issue with him on proper pleadings, they might have insured for themselves a successful competition: but, as it was, they were the weak in the hands of the strong. They did not meet him on the true BATTLE-GROUND, or they might have wounded this *Achilles* in the debate, in more places than one. The campaign was badly conducted, both by his friends and his adversaries. Whilst his colleague, Mr. CLAY, was employed in contending, that the power over Internal Improvements, might justly be referred to the power "of regulating commerce," and Mr. M'LANE supported the construction, that to "*facilitate*" commerce, was substantially to *regulate* it: Whilst some would deduce the power in question, as a consequence from the *right to make war*, and others, from the "right to establish Post Roads;" whilst in fact, all his colleagues were contending, that Congress could make roads, and exercise its sovereignty in this way legitimately, and whilst they were all occupying positions, from which they could easily be dislodged: Mr. ARCHER, from Virginia, on the other side, instead of contending for the position taken in the preceding number, that the words "common defence and general welfare," were declaratory, and inserted from extreme caution, rather to shew the restrictive sense in which the Convention would have the taxing

power considered, than from any doubt, that in fairness, any power could be claimed to appropriate money, except for the enumerated objects, most unfortunately admits, that if the words had been omitted, the taxing power would have been *unlimited* in every way.— The eagle eye of Mr. M'DUFFIE, who, ere this, had not made a single movement to the right or to the left, perceives the opening in the enemy's line, and it is at this critical moment, that he advances with the whole force of his mighty intellect, and occupies a new position, only hinted at by his prototype, ALEXANDER HAMILTON, presenting himself in such views, as to strike his friends and his adversaries with amazement, and with consternation. "As the power under consideration, would have had *no limit* without the words "common defence and general welfare," *it results of necessity,*" says Mr. M'DUFFIE, "that we must look to *these words alone,* for the limitation."— He therefore sets out with the proposition, that the discretion of the Legislature is *within* its bounds, as long as its appropriations are for the *general welfare*; and, that he may not be in the difficulties of his colleagues, who, if they should fail to refer the exercise of sovereign power contended for, to some or other of the enumerated objects, must surrender at discretion, he carefully disclaims all pretensions to *construct* roads and canals, as an *exercise of sovereignty*: As a sovereign power, he considers the appropriating power as *ending in itself*. When the money is raised and appropriated, sovereignty, he says, ceases; and whatever else is to be effected, if it cannot be done by the agency of money *merely*, it cannot be done at all. If the aid of any sovereign power be at all necessary, to effect the object to which the money is to be applied, he admits, that in such case, the appropriation cannot be made, without such power is found amongst the enumerated objects.

Mr. M'DUFFIE accordingly maintains, that the *spending* of the money, after it is appropriated by law, even if it be an hundred million of dollars, on roads to be opened with the consent of States, is no more an act of sovereignty, than the purchase of a horse, for a messenger of either house of Congress, would be an act of sovereignty, or the making of a road through a State by an individual, with the consent of the Legislature, would make that individual a sovereign.

Now, to a man of plain sense, it would seem to be a matter of some consequence, as between a State and the United States, that when Congress opens a road through such a State, with its consent, it does not thereby exercise sovereignty, in that particular State, because no State would permit its sovereignty to be interfered with; but really and truly, to the people of the United States at large, it can make no difference, if a hundred million of dollars is to be expended, whether the expenditure of this vast treasure on roads, is, technically speaking, an act of sovereignty or not, because, if the appropriation can be constitutionally made, the money must come out of their pockets, if it be forthcoming at all. But to spend a hundred millions, under a power to appropriate it for the very purpose for which it is actually expended, is, at any rate, to possess a prodigious influence, even if it be not sovereignty. Mr. M'Duff-

his mode of stating the question, is therefore, most imposing; and those who desire to combat him on the ground of metaphysics, or who would not yield to him this position, that to effect any object, however important, by money merely, even if it be an hundred millions, is not to exercise sovereignty, must expect to be *hors du combat*. We must meet him then on other grounds.

Let us say, that he is correct, that to give a million of dollars towards a canal in a State, and with the consent of its Legislature, is not an exercise of sovereign power; and let us further admit his grand position, that the appropriating power has no limits, but the common defence and general welfare. There is yet more than one sophism in his entire argument. The first sophism consists in his supposing, that an unlimited power to raise money for the general welfare, is honestly executed, if the money be applied to the *purposes* of the Government, and not to local or State purposes. The only answer to this argument which I have met with, is that given by Mr. LEGARE, in his speech on Mr. PRIOLEAU's resolutions, in our State Legislature, in 1825. Mr. LEGARE demonstrates, that a Government of limited powers, has no greater right to divert the funds of the Government, beyond the enumerated objects, because it has an unlimited power to appropriate for the general welfare, than a trustee who has an unlimited power by deed, to raise money on the trust estate, can divert those funds to any other purposes of the estate, than are expressed in the different trusts. Every lawyer knows, that a trustee may, under a general power, in a trust deed for that purpose, sell part of the trust estate, and he may apply the proceeds, to purposes which he may deem generally beneficial to the estate. In such a case, though the legality of the sale, and the appropriations could not be disturbed, yet, in equity, the trustee would be adjudged to have departed from his duty, as having abused the trust, and would be compelled to refund. So is it with the Government of the United States. It is a Government of sovereign, but of limited powers. These powers are conferred on it, to enable it to perform certain trusts. These trusts are defined with the utmost precision, in an instrument called the Constitution, but which is neither more nor less, than the great Trust Deed between the States and the United States. The General Government then, is a trustee, and the power which it receives from the States, is a power coupled with a trust. Would any lawyer say, that in construing the power of the Government, unaided by other lights to guide us, all the rules for construing powers, coupled with a trust, should be put aside; those rules, which are not merely the rules of common law, but of common sense. I should hope not. Is it reconcileable with common sense, that a power given by deed, by A. to B. to mortgage the estate, and to apply the proceeds to the purposes of the trust estate, could authorize the appropriation to purposes, not specified or referable to any of the numerous trusts, with which the deed may abound. I should say not. Then, upon what principle, can a Government, instituted to effect certain national objects, which are clearly defined, appropriate the general means, placed in its hands, for a pur-

pose, which it is admitted on the opposite side, has no relation to any of those objects. Such a Government may think proper to assume the principle, that the Government being National, it may effect objects which are National, though not enumerated. What is this but to say, that when the Convention precisely defined the purposes, for which we should be National, the Congress shall undertake to say, we shall also be National for other purposes.

To tax the people, that money may be appropriated beyond the enumerated objects, is a constitutional exercise of power, because the taxing power is unlimited. So is the sale of part of the estate by a trustee legal, because a power is given for that purpose. In either case, the money once appropriated, must remain so appropriated. But equity will adjudge the misapplication of the money, as an illegal act. It is an abuse of the trust. It would be no answer in Mr. M'DUFFIE, to repeat what he has already said, "that construe the Constitution as we will, our principal security must depend upon the discretion of Congress, and that we are not more exposed, by Congress appropriating its money at its discretion, under the taxing power, than if it were wastefully expended, with reference to any of the enumerated objects, where the discretion is admitted to be unlimited." The difference, however, is essential. A wasteful expenditure of money, in building fortifications, and raising armies and navies, when there may be no need of them, is not an unconstitutional act, any more than it is an illegal act, for a trustee, who is appointed to take care of an infant, to allow him so liberally, as to enable him to run through his estate, and to come to ruin before he comes of age. In these cases, there is no relief, because it is money expended upon the objects of the trust, under an unlimited discretion so to do. The manner of executing the trust, is here matter of discretion. But very different is the case, where the discretion claimed to be exercised, is not as to the quantity of money, which is to be applied to a specific purpose, demanding such an application of money, but to the purpose itself of the application.

Congress cannot promote objects which are not enumerated, even where money alone can effect them. It is repugnant to the whole plan and spirit of the Constitution: Is there no distinction between a discretion as to the quantity of means, or money, necessary to execute a particular trust, and a discretion as to the subject or trust, upon which money is to operate? The distinction, in my mind, is most manifest. The Constitution affords many examples of the one, but it furnishes none of the other. For instance, Congress can raise money to any amount, by taxes or by loans, whether the public exigencies require it or not. It can, in time of peace, as well as of war, raise troops, and build and equip frigates, without number.—It can coin money without end.—It can appoint seven or seventy Judges of the Supreme Court.—It may ordain and establish a hundred new inferior tribunals of Justice. All this Congress can do. But in doing all these things, it is still strictly within its own sphere. It may do wrong, but it does so at the expense of the people at large, considered as its constituents. It cannot possibly impinge upon, or interfere with,

or affect in any manner, the sovereignty or concerns of the *States*, either directly or indirectly. Not only its *powers* are exercised within due bounds, and directed to their proper objects, but its *influence* too. Members of Congress are not forming schemes and projects to meddle with the concerns, and disturb the peace of their neighbours, *indirectly*, when they dare not do so directly. In short, the General Government, in thus exercising its discretion, remains what it was created for, and does not become a pragmatistical, offensive, and dangerous power, the object of alarm and jealousy to the States. Its discretion is the only rule of its conduct. Such a discretion is indispensable to it, and it has it by the terms of the grant. But who can point to any clause in the Constitution, which gives the least discretion whatever, as to the SUBJECT, upon which the national legislation is to operate. The bare idea of the Government, being a Government of *limited powers of legislation*, one would suppose, would be a sufficient discouragement to any one, from undertaking so arduous a task. If we look at the instrument, the objects or subjects of legislation, are all enumerated. The very specification of the *objects*, on which the *legislative power* is to operate, *ex vi termini*, excludes the idea of discretion, as to any object, not included in such specification. If there is to be discretion, the very object of the enumeration is defeated. It was wisely ordained by the Convention, that the subjects for the legislative powers of Congress, should be fixed and settled, and that there should be no discretion in Congress, as to what subjects it should, or should not legislate on. For what is discretion? According to the opinion of one of the greatest men, who ever sat on the English Bench, "Discretion is the law of TYRANTS." In the *best* of men, it is sometimes folly, oftentimes caprice. In the *worst*, it is every vice, and crime, of which human nature is capable."

But our *Achilles* must not be permitted to drag us along in triumph, as he would a vanquished Hector, by saying, that amongst the specified subjects for legislation, there is one, to wit, the appropriating power, in which, from its peculiar phraseology, a discretion as to the *objects*, (as well as to the amount) is implied, for that would be to say, that whilst the whole instrument clearly manifests a design, and *studiously perfects* a scheme, to exclude all subjects for legislation, which are not particularly specified, giving to Congress the few *defused*, and reserving to the State the numerous undefined powers of legislation, yet, that by certain *doubtful* and *indefinite* general phrases, the like of which, are to be found in the most common power of attorney, a power of appropriating money shall be claimed by *implication*, which, in its exercise, shall embrace almost every object of human legislation. What is this, but to say, in the language of Mr. LEGARE, "that whilst *all other* means, necessary and proper for executing the enumerated powers of the Government, are limited by the nature of those powers, the levying and disposing of money, the UNIVERSAL means, is to be restrained by no other condition, than that it should not be thrown into the sea, or bestowed on individuals who have no claim on the public."

Let us now show where the fallacy of this part of Mr. M'DUFFIE's argument consists.

## NO. 18.

The fallacy of Mr. M'DUFFIE's argument in this particular, lies, in his supposing, that the promotion of the "common defence and general welfare" by money *merely*, is the *end* for which the whole first clause was inserted. If there was no discretion, he thinks, in Congress, as to the appropriation of its revenues beyond the specific powers, "there would have been *no necessity* for an express delegation of power, to raise and appropriate money; because every one of the enumerated powers would carry with it as an *incident*, the power of appropriating the money necessary to its execution," and that, adds he, "can hardly be a just construction which would thus convert the leading clause of the Constitution, into mere surplusage."

In this last position, we perfectly coincide. The construction, which would cause any one of the enumerated powers in the instrument to be mere surplusage, I agree, must be faulty. It is precisely on this principle of reasoning, that I have protested against the decision of the Supreme Court in *M'Culloch vs The State of Maryland*; for I have shewn, in my eleventh number, that not one, but nearly a dozen of clauses in the Constitution, must be rank surplusage, if the position taken by the Court in that case, be a sound one.

But whilst we so perfectly agree in a joint protestation against a rule of interpretation so unsound, yet I must now turn aside, and separately protest against our own statesman, for the unsound inference which he has drawn, to wit, that had the intention been, to limit the appropriations within the enumerated powers, the necessity of an express delegation of power to raise money, would have been superseded. With such an interference as this, it is not to be wondered, that Mr. M'DUFFIE should fall into a snare. Mr. M'DUFFIE is now to be informed, that so far from the *general* power to tax, being inserted for the special purpose of enabling Congress to appropriate its revenues beyond the enumerated objects, the clause stood at the head of the enumerated powers in Mr. PINCKNEY's draft, submitted to the Convention as soon as it was organized for business, and it stood also in the reported draft of the Constitution, long before the general phrases were thought of or suggested. The words "common defence and general welfare" were not added as an amendment to the clause, until the 4th of September; and then, as I already have stated in my sixteenth number, with a view to express, the *sense* of the Convention, that the appropriating power was to be *limited to the enumerated objects*. The taxing clause, was a clause, which the Convention would have retained above all other clauses in the instrument, and under every variety of aspect, of which its intentions might possibly be supposed to be susceptible. The taxing power was the principle, which was to give life, and health, and vigour to the new Government. It was the want of this vital principle, which caused the old Congress to possess an huge, but yet an useless mass of powers. The idea is perfectly inadmissible in any shape, that the Convention, with so much experience before its eyes, of the embarrassments which had been felt, for the want of this active and living power to sustain the fabric of the Confederation, would have omitted to provide by an express grant, for the most paramount of all the powers which can be conferred by a people on its rulers, and have left the new Government to claim the money raising power, by *implication* of law.



There is yet another reason, why in the enumeration of powers, such a clause could not be dispensed with—The States were about to part with a considerable portion of their sovereignty, and confer it on a Government, which, for certain purposes, was designed to be supreme. To avoid a clashing, or repugnance of authority in laying and collecting their respective revenues, it was most essential to state the subjects of taxation over which the General Government should possess authority. The taxing power, therefore, became of the utmost consequence; it was a subject which was uppermost in the minds of the members—and it was a subject too, which did not admit of very easy arrangement. The Convention had to choose between two modes; *one* of which was, to *separate* the subjects of taxation, so as to give some to the Union, and the remainder to the States; whilst the *other* plan proposed, was not to separate the objects of Revenue, but to give the States *concurrent* jurisdiction, in general, in the article of taxation. Mr. HAMILTON in his Federalist (No. 35) justifies the position finally taken by the Convention, “that a CONCURRENT jurisdiction in the article of taxation, was the only admissible substitute, for an *entire* subordination, in respect to this branch of power, of State authority to *that* of the Union.”

We now perceive the indispensable necessity of the taxing clause, a clause so judiciously constructed, that whilst under its phraseology, no exclusive grant of sovereignty over subjects of revenue can possibly be claimed by Congress—there is at the same time a reservation of State sovereignty, under that NEGATIVE PREGNANT in the Constitution—to wit: the *restriction on the power of the States* to lay duties on imports, exports and tonnage. Does not Mr. M'DUFFIE see, that a clause, which according to Mr. HAMILTON, has the “merit of reconciling, an indefinite Constitutional power of taxation in the Federal Government, with an adequate and independent power in the States to provide for their own necessities,” is amongst the most important clauses in the Constitution, and that it justly merits the position it now occupies, to wit—at the head of all the other powers. Must he not confess his oversight, when he did not perceive, that the taxing power was indispensable, as the great sovereign means of executing all the other powers, and that he was greatly in error, when he imagined, that had the intention been, to apply the proceeds of the taxes to the enumerated powers, “there would have been NO NECESSITY, for an *express* delegation of power, to raise and appropriate money.” Had Mr. M'DUFFIE not indulged in the Utopian scheme, that a fundamental *dissimilarity* of interests between twenty-four States, embracing a portion of the globe larger than Europe, and differing so much in climate, soil, and productions, and in their institutions and their laws, could ever be altered or destroyed; but have contemplated all the schemes of internal improvement, as all rational men do, merely as calculated to add influence to the Supreme Government, and to take it from the subordinate sovereignty, and thus finally to merge the one into the other; had he looked into the Constitution, not with the visionary eye of an ardent enthusiast, for a splendid Government, but with that of the calm and philosophical statesman, he would have known, that it is a work so admirably contrived, as to bear upon its very face and front, the irrefragable evidence, that its whole scheme and design is opposed to *constructive* powers—that the giving away little *odd parcels* of power, which were the incidents to other powers be-

fore given, was purposely, to impress upon the minds of future generations, that nothing was to be claimed which was not given; and from this, he would have learnt what I hope I have established to the satisfaction of all; to wit, that the taxing power was given, not as he believes, to accomplish the *particular end of spending* money towards the common defence and general welfare, beyond the enumerated objects, at the *discretion* of Congress; but that it was, of necessity, given for other and higher purposes, to wit, the accomplishment of the enumerated objects, for which the Government was instituted.

The fallacy of Mr. M'DUFFIE's argument being thus shewn, I pass over those observations of his, in which he would shew, that if his view of the appropriating power of the Government be not correct, every Congress has been guilty of habitual violation of the Constitution. No argument founded on precedents can have weight, where the question at issue is, whether the Government has, or has not usurped its powers. Mr. M'DUFFIE cannot seriously believe, that in the instances which he has cited, of the appropriations to the St. Domingo sufferers, under Gen. WASHINGTON's administration, and of that to the inhabitants of Carracas under Mr. MADISON's, there was an application of money to the "general welfare" of the people of the United States. These were remarkable instances, of the triumph of generous feelings, over sober legislative caution. But there is an argument, drawn from the precedent in the case of the purchase of Louisiana by Mr. JEFFERSON, which does merit a particular reply.

Mr. M'DUFFIE would here exultingly ride over his opponents, by supposing them to take a ground, which, in my view is wholly indefensible.— "It will be said," says he, "that the purchase of Louisiana, was made by virtue of the Executive power to make treaties, and what follows? That there is an unlimited power in the Executive Government, not only to authorize Congress to appropriate money, but to impose upon it all the obligation, which can grow out of the treaty, to make the appropriation."— This, Mr. M'DUFFIE triumphantly exclaims "puts an end to the argument, which limits the power of appropriating money to the other *specific* grants to Congress embraced in the enumeration of its powers;" for, says he, "it would be an extraordinary supposition, that the framers of the Constitution intended to limit, by the most jealous restrictions, the power of the popular branch of the Government, in selecting the objects calculated to promote the general welfare, and at the same time, to vest in the Executive Government, the most unlimited discretion on the same subject."

But the whole of this is a fallacy. Mr. M'DUFFIE here makes up a "man of straw," that he might tear him into pieces. Who would contend, that every treaty made by the President, and ratified by the Senate, is obligatory upon the House of Representatives, or upon the States, or the people. A treaty stands upon no better footing than a law of Congress. In either case, it is only the "Supreme law of the Land," when made "in pursuance of the Constitution." If the President, and Senate ratify a treaty, in which there are stipulations, which violate any express article in the Constitution, Mr. M'DUFFIE ought to know, that such a treaty would not be binding. Suppose a treaty to be made in which the United States are pledged to an *alliance* with England or France, *offensive* or *defensive*, such a treaty would be void, because it would enable them

cutive, and the Senate to put the United States at war with a foreign power, when it is Congress alone in which the power is vested; "to declare war." Many cases might be put, where not only express articles of the Constitution might be violated, under such a construction as this, but certain unalienable, though undefined rights of the States may be impaired and surrendered. This was clearly illustrated some years ago, in a pamphlet called: "*Caroliniensis*." In the debates on Mr. JAY's treaty, a treaty in which it was not pretended, that there was any violation of the Constitution, it was even there doubted, whether the House of Representatives was bound to carry it into effect. The purchase of Louisiana, is not then to be justified, on the ground of its being made by virtue of the Executive power to make treaties. The President and Senate have the unquestionable power to make treaties, as far as those treaties relate to subjects, within the scope of the enumerated objects, for which the General Government was established, but no farther. They have no Constitutional right, to negotiate to purchase territory for the United States, as territory *merely*.

Because Louisiana was purchased by Mr. JEFFERSON, Mr. M'DUFFIN concludes, that the purchase was justified, under his favourite doctrine, of "the power to appropriate money for the general welfare, as money merely." I differ totally from Mr. M'DUFFIE, since the purchase of this Territory, is to be defended on the proper, and the only ground of its being a war measure—most decidedly a war measure. I can well recollect the causes which led to the treaty of cession: A right of deposit was denied us at New Orleans, by the Spanish authorities, and there arose from this aggression, such an excitement throughout the Western country, in consequence of this violation of subsisting treaties, that it became necessary, that the Government should adopt immediate measures of negotiation, or war. There existed a powerful party in Congress, who were for taking New Orleans by force, at the head of which were many distinguished members, amongst whom was Mr. ROSS, from Pittsburg. In this critical posture of affairs, when war or submission was unavoidable, Mr. JEFFERSON, whose policy was that of peace, conceived the sublime project of purchasing it, so as to avoid hostilities. But Spain, in the mean time, transferred the Province to France, and Mr. JEFFERSON being still unwilling to have a collision with BONAPARTE, and being given to understand, that it might be purchased, the purchase was accordingly made. Had we gone to war, and acquired Louisiana by conquest, and retained it after a treaty of peace, no one would have doubted our right to hold it, nor can it be denied, but that it would have cost us some blood, and the expenditure of treasure fully equivalent to the purchase money. It would be refining too much to say, that when we are on the eve of war with a neighbouring power, and negotiations are entered into, and on the one side a *cession of territory* takes place, and an *equivalent* is stipulated on the other, that there is any substantial difference between such a case, and that, where, after actual war, the same treaty is made. I conceive the money expended for Louisiana, as much applied to a purpose strictly national, both in its character and its consequences, as if it had been invested in the armies, or fleets, or other warlike preparations, which would have been indispensably requisite, had not the cession taken place. Instead of its being a cession, in a treaty of peace, after an expensive war, it was a treaty before, and IN SUBSTITUTION of WAR. It was a measure having a direct and natural rela-

sion to war. It was then substantially A WAR measure. It was clearly within the enumerated objects in the Constitution, and therefore Constitutional. I will close this part of my examination of Mr. M'DUFFIE's doctrines, by inserting an extract from Mr. MADISON's celebrated report of 1799, which is so much better than any thing I can urge to the same point, that, perhaps, I merit reproach for not inserting it earlier. Says Mr. MADISON, "Whether the phrases in question be construed to authorize every measure relating to the common defence or general welfare as contended by some, or every measure only in which there might be an application of money as suggested by others, the effect must substantially be the same, in destroying the import and force of the phrases in the Constitution. For it is evident, that there is not a single power whatever which may not have some reference to the common defence and general welfare; nor a power of any magnitude, which in its exercise, does not INVOKE or ADMIT an application of money. The Government, therefore, which possesses power, in either one or the other of these extents, is a Government WITHOUT THE LIMITATIONS, formed by a particular ENUMERATION of powers, and consequently the meaning and effect of this particular enumeration is destroyed by the exposition given to these general phrases.—The true and fair construction of this expression, both in the original and existing federal compacts, appears to the committee too obvious to be mistaken. In both, the Congress is authorized to provide money for the common defence, and general welfare. In both, is subjoined to this authority, an enumeration of the cases, to which their power shall extend. Money cannot be applied to the general welfare, otherwise than by an application of it, to some particular measure conducive to the general welfare. Whenever, therefore, money has been applied to a particular measure, a question arises, whether the particular measure, be within the enumerated authorities vested in Congress. If it be, the money requisite for it may be applied to it. If it be not, no such application can be made. This fair and obvious interpretation coincides with, and is enforced by the clause in the Constitution, which declares 'that no money shall be drawn from the Treasury, but in consequence of appropriations by law.' An appropriation of money to the general welfare, would be deemed rather A MOCKERY, than an OBSERVANCE of this Constitutional injunction."

## NO. 19.

Let us now meet Mr. M'DUFFIE on the true ground, upon which this controversy must finally be decided. The taxing clause, it is said, gives the power to Congress, to appropriate its revenues at its discretion, "to provide for the common defence, and general welfare of the United States." Be it so. The expenditures of the Government must still be applied to national purposes, and to no other. It cannot be pretended, that the clause, as it is now expressed, means either more or less than this. Indeed, Mr. M'DUFFIE's reasoning completely establishes this point. But here the question obtrudes itself upon us. What shall we call a national purpose? for until we can arrive at some precise definition of nationality, it will be in vain to carry on the contest. I will, therefore, give my view as to what constitutes a purpose to be national in its character, as distinguished

from one which is *local*, and I hope to sustain *my* definition, upon the most solid of all grounds, the grounds of the Constitution itself.

We must never forget, that there is a distinction between the term "national," as it may be used in *general*, and the sense in which it must be understood, with reference to *American* affairs. Were all the State sovereignties abolished, and the people of the United States under one consolidated Government, there could not possibly be a difference of opinion, as to what is meant by the term, "the *general welfare* of the United States." But it is, because we present to the world, an *anomaly* in politics and in civil government, that the whole difficulty arises. We understand terms, in the sense, in which from time immemorial, we have been accustomed to use them, forgetting that, however correctly they may be applied in such a sense, to Governments in general, yet, that they can have no influence as regards a country, where has been introduced, an order of political institutions, totally distinct from any thing that ever did, or probably ever will occur again, in the history of the world. In England therefore, or in France, the term "national," is correctly understood to be synonymous with the words "*public*" or "*general*." There, any undertaking by the supreme authority, is called a national undertaking, and any money applied to *public* purposes, by the same authority, constitutes the appropriation to be "for the general welfare." The general welfare of the British Isles, is the *national welfare* of Great Britain, for, let the *public* acts of the Imperial Parliament, be what they may, they operate upon the English, Irish and Scotch, as one entire people, and are properly regarded, and felt by them, as national acts.

But when we come to speak of *American* affairs, where the *same* people are partly governed as *one* entire nation, and partly, in *twenty-four* separate sovereignties or nations, terms, which hitherto have received an undisputed import, now begin not to be so definite, or so easily understood. To give a character of nationality to a measure in America, something *more* is requisite, than would suffice in England. To be *general*, or *public* as to its effects, throughout the United States, and to proceed from the *supreme authority*, the Congress, is not of itself, sufficient. It must also be adopted by that authority, within the *sphere of its own prescribed powers*. If it be not done in the exercise of its lawful sovereignty, however the particular measure may serve to promote the general welfare of the people; yet, in strictness and in truth, it is not a measure national in its character. It is an act of usurped authority, operating *beneficially* upon the great mass of the people; and *so far*, is a measure for the public and *general welfare*; a case which sometimes occurs. A Despot may be so kind, and impartial to all his subjects, as to render his Government, a paternal and an happy one.

The only mode by which we are permitted to test the character of any measure, as to *nationality*, is to bring it to the standard, provided by the *people* themselves. That standard is the Constitution. To this, and this alone, we must all come, for a DESCRIPTION, of the objects and measures, which are national. It is in this great

deed of covenant, that are expressed, the sole purposes, for which we became ONE ENTIRE nation, and no judiciary tribunal on earth, by any ingenuity of construction, can *lawfully* decide, that the people of these States, are an entire nation, for any *other* objects; than the *deed itself* specifies. If any one object, can be deemed a national object, which is not there expressed, any other may be equally deemed to be national, and the deed itself, becomes a piece of useless parchment. To abandon the description of the objects of the Federal Government, as set forth in the Constitution, and to take up any system of construction, and thence to deduce objects, and to call them national, is neither more nor less, than to make us a nation, *not* for the purposes agreed upon, but for any, and every purpose, which human ingenuity can suggest; for who can affix limits to the imaginations of men? It is to be set adrift, on a perilous and boundless ocean, without a chart or a compass.

We are now making some progress towards a sensible, and a correct definition of nationality. A measure to be national, must then have a reference to the *expressed* purposes, for which the United States Government was created as a Supreme Government. If there be in the State Legislatures, ANY CONCURRENCE of jurisdiction, or authority over any one of the objects, to promote which, Congress has *power to legislate*, THAT object cannot be a *national* object. To constitute any one object of civil government, in these States, to be national, it is indispensably necessary, that it be an object, to promote which, the States can no more exercise lawful authority, than could France or England. The MERE fact of the United States Government not being supreme as to that object, by the terms of the grant, DECIDES IT TO BE LOCAL. It would be a manifest absurdity to maintain, that the same people, could desire to exist as ONE nation, for an *especial* or a designated object, and at the same time, to exist as TWENTY-FOUR distinct nations, for the *self-same* object.

I hope I am now fully understood. EVERY THING is national in its character, over which, by the terms of the Constitution, the United States Government can exercise *exclusive* sovereignty; and NOTHING is national, which the States can *legitimately* make the subject of their legislation. It is impossible, that any definition, more accurate than this, can be given of nationality. It is a definition, which results from the very nature of the anomalous structure of our civil Government. That it is truth itself, may be thus demonstrated.

There is no one object, which can be mentioned, which we all agree to be *decidedly* national, for which there is not a provision in the Constitution, that Congress, as to that particular subject, shall be supreme; and, on the other hand, there is not an object which, with one consent in the States, we term local, over which the States do not *exercise* sovereignty, *by the terms of the compact*, in exclusion of the power of Congress. I, of course, exclude the subject of "*taxation*," when I am considering the objects, for which the Federal and State Governments were created. This being the vital princi-

phs. of all Governments, must be possessed, by the one, as well as the other, as a *means* to promote the objects of each; and, hence, of necessity, there must be a *concurrence* of sovereignty over *subjects for taxation* in general. With this qualification to my position, which I state rather to prevent *cavilling*, than from any fear, that any candid reasoner would avail himself, of what might appear to be an oversight, let us now proceed to test our definition of nationality, by citing some few instances on each side.

In "*declaring war*," we constitute one consolidated nation. Why? Because Congress has the power to declare war, and no State can even "engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." In "*preparing for war*," by military and naval establishments, we are an entire nation. Why? Because the States are expressly forbidden by the compact, to raise troops or build fleets, *except* in *actual war*. In "*coining money*," we are a nation. Why? Because amongst the limitations on the power of the States, it is said, "No State shall coin money." In "*regulating foreign and domestic commerce*," and our intercourse with the Indian tribes, we are one nation. Why? Congress, under the Constitution, exclusively possesses the right. In "*foreign negotiation*," we are one nation. Why? "No State shall enter into agreement or compact with a foreign power." In the "*regulation of coin, foreign and domestic, in establishing uniformity in weights and measures, and in bankrupt and naturalization laws, and in conferring patents and copy-rights*," we are one nation. Why? Because, the necessarily exclusive nature of the grants on the subjects, sweeps away the whole power, and precludes the States from legislating on them.

Thus, we see, that every object, universally admitted to be national, coincides with the definition we have given of *nationality*, which means an ENTIRE subordination of the subject, to the *undivided sovereignty* of Congress, by the *terms* of the Constitution. Let us now cite, some instances on the opposite side, of subjects, which are confessedly local in their character. Let us begin with the numberless capital offences against the peace of society.—Here is a subject of legislation strictly local. Why? The States are in the constant practice of this species of legislation—and Congress, with the exception of cases provided for in the compact, cannot *define* and *punish* felonies on *land*, its jurisdiction extending no further than to "define and punish felonies committed on the high seas."

Why are all laws, on the subject of free schools, descents, sale and transfer of property, of escheats, executors and administrators, and guardians, and a thousand such—why is this species of legislation local? Because, from time immemorial, the States have regulated all such objects, and Congress has no specific grant of any such power—but on the contrary, "all powers *not delegated* to the United States by the Constitution, nor prohibited by it to the States, shall be *reserved to the States, or to the people, respectively*."

If there be now, one single object of Government, universally admitted amongst us to be local, or national, in its nature or character, which will not readily fall in with, and sustain the definition

herein given, of *nationality*; let the ingenuity of the Bar point it out: I cannot imagine it.

When I speak, however, of what is necessary, to constitute any measure to be national, I must not be understood to mean, that the particular measure, must be *written down* in the Constitution, as a subject for the exclusive sovereignty of Congress—and that, if it be not there found, it is not national. All I mean to inculcate is, that the measure must have such a *simple*, and such a *direct* relation, to some one of the enumerated objects, that in its absence, that particular object of the Government, could not well be accomplished: But even in this case, it is indispensably requisite, that the particular *non-enumerated* measure is one, on which the States *cannot* act in *any way whatever*. For instance—The UNITED STATES establishment at WEST POINT, is a measure national in its *character*, though no power for such an establishment is to be found in the Constitution. Why is it national? For the plain reason, that though a State can promote military science, yet no State can establish a similar institution, conferring military rank, pay, and subsistence, *bona fide*, with a view to a regular army, without violating that part of the Constitution, which forbids the States from keeping up military and naval establishments, in time of peace. So the establishment of a NATIONAL MINT is not expressed in the Constitution. But it is national. Why? Because no State “can coin money.” So also, all legislation on the subject of privateers, fitting out in our ports, to cruise against a belligerent with whom we are at peace, is not once mentioned in the Constitution. But it is nevertheless, entirely national. But what gives it this character of nationality? It is the *alienation* of State sovereignty on the same subject, under that clause in the instrument, which gives to Congress, the power to “define and punish offences against the law of nations.” A power, which, if it were left to the States to exercise, “might put it in the power of any indiscreet member to embroil the confederacy with foreign nations.”

This is one of the cases, in which an authority is granted to the Union, “to which, a similar authority in the States, would be absolutely and totally *contradictory* and *repugnant*,” and which, according to the Federalist, is sufficient to make any power *necessarily exclusive* in its character—an exposition undeniably sound, and very properly maintained by the Supreme Court. It is on the same principle, that the power to regulate commerce; to establish *uniformity* in bankrupt laws; naturalization, weights and measures, &c. is *necessarily exclusive*. There could be no UNIFORMITY on such subjects, unless one Supreme Government is to prescribe the rule. (See Federalist, Nos. 31 and 42.)

With so just, and so unerring a standard before our eyes, for estimating what is national, and what is local in its character, a standard purposely provided in the Constitution, the question can now at once be settled, whether CANALS, in general, are *national* or *local* in their character. Who is he that now hesitates in his opinion? If he cannot, after what has been said, decide in an instant,



he never can decide. Tell him, it **CANNOT BE NATIONAL**, because, so far from their being any grant to Congress, of a *particle of sovereignty*, much more of exclusive sovereignty over the subject of internal improvement, such a power was proposed to be given to Congress, and refused. Is it then local? **UNQUESTIONABLY, IT IS LOCAL**, because the States have hitherto exercised the *undisputed* power, to the exclusion of Congress. But, without the aid of our userring test, to say whether canals are in their character, national or local, we might long since have agreed with Governor GILES of Virginia, that "The peculiar character of the power to make internal improvements, is **LOCALITY**—locality in its **MOST LIMITED** form, and therefore *peculiarly unsuited* to the jurisdiction of the General Government, which is **GENERAL** in its character, and *peculiarly suited* to the jurisdiction of the State Governments, whose jurisdiction is intended for **LOCAL** objects."

I do not deny to the Government the power, even to *construct* roads and canals under peculiar circumstances. It has the right *flagrante bello*. But, the digging of a canal in actual war, would no more make this a measure national in its character, within the meaning of the Constitution, than to cut down trees across a road, or to burn the public bridges, or to inundate a certain district of country to stop the ravages of an enemy. The ground of justification on which such acts must rest, is, that they are as much the lawful means of war at the time, as if the United States' troops were to take possession of a man's plantation or house, and to use it as an entrenchment. When the enemy is in the city, the first thing to be done is to drive him out. *Salus populi suprema lex*. There is then no time to talk, of this or that power under the Constitution. *Silent leges inter arma*. The United States' troops may do many acts in war, which they could not do in peace, without being violators of the public peace.

But, I do deny the right of the Government, to make a military road or canal, in time of peace, and for the unanswerable reasons, that on a power to make military roads, and also canals, being proposed to be invested in Congress, the first was not agreed to, and the second rejected by the vote of the Convention. Independent, however, of this, the *insertion* in the enumerated powers, of all the great means of carrying on a war, and the *omission* of the single one of military roads and canals, would of itself shew, that the power was not designed to be given. And the power was most properly withheld, for, as undoubtedly necessary, as military roads and canals may be in Europe, where, if it were not for their fortified towns, at short distances, a kingdom might be overrun in a few days.— Yet, in a country like ours, where, in most parts, every tree is a fortification, and every hunting path a military road for our militia, it would be premature, in the present state of the country, it would be a waste of the public money to imitate Europe in this particular.— The Convention was, no doubt, well satisfied that the *extent* of our country, was a security against a foreign enemy, and that the principal points of attack, would be the sea coast, in the vicinity of

which, there would always be found roads, and that the country could be sufficiently defended by armies and navies, forts, &c. trusting, that as the settlements extended, and the country became more populous, the States would, from necessity, have sufficient roads and canals, for commercial purposes. But, the material objection at that day, no doubt was (and a solid objection it was) that, to grant a power to make roads and canals, even for military purposes, would involve, as a matter of course, a right of *exclusive jurisdiction* on Congress, over SOIL and TERRITORY, which the States were resolved not to permit, even as to their forts, &c. without their express consent. They could not be ignorant, that if Congress could construct, thousands and thousands of miles of roads and canals, it could exact tolls thereon, and pass laws to punish persons who should wilfully injure the public works, and thus exercise local *dominion* in the States. It is absurd to believe, as I have already shewn, that Congress and the States, can be copartners in Legislation over any one object of Civil Government. It must belong entirely to Congress, or not at all. Who can read the Constitution and say, that the States ever intended, that Congress should have exclusive jurisdiction, excepting at the Seat of Government, and in its forts, dock-yards, &c.? But the making of *necessary* military roads and canals, in actual war, is a very different thing. It is free from all these objections. At the conclusion of peace, it would be as strange for the Government to claim jurisdiction over such roads and canals, as it prepared for the passage of troops, as it would be for it, to hold jurisdiction over a citizen's plantation, which its army occupied the whole war, as an entrenchment. The want of good roads, which was felt in the late war, as to the operations on the Canada frontier, is no reason, why the power ought to be claimed by Congress. Mr. M'DUFFIE's argument here, if it means any thing, means this. That wherever an occasion has occurred, which proves, that the Government, in any of its operations on that occasion, might have done better, if it had possessed certain, or more extensive means, that such means necessarily must belong to it.— This might be an argument, on a *motion* to amend the Constitution, so as to give Congress a power to make military roads; but it can have no weight, in any other point of view. Congress has limited powers. The power to make military roads and canals is as SUBSTANTIVE a power, as that of raising armies and navies. A substantive power cannot be exercised by construction.

If the propositions herein laid down be true: 1st, That money cannot be appropriated but for national purposes; and 2ndly, That no measure is national in its character, which refers to a subject over which the States, under the Constitution, can *lawfully* exercise their sovereignty, it will be for Mr. M'DUFFIE now to explain, how Congress can legitimately take the subject of internal improvement, under its consideration. The error into which Mr. M'DUFFIE has unhappily fallen, is, that he has not been careful to distinguish those clauses in the Constitution, which *declare the PURPOSES* for which the people exist as *one* nation, from the two first clauses, in

the enumeration, which simply confer the **POWER** to *execute* those purposes. He has not been careful to distinguish between a **POWER coupled** with a **TRUST**, and a **NAKED** power. The distinction between the one and the other, is in equity, most marked and obvious. "A mere power is never imperative. It leaves the act to be done, at the will of the party to whom it is given," and hence full discretion is implied. "A trust is always imperative, and is obligatory upon the consciences of the party entrusted." But where trusts and powers are blended, as where a man may be invested with trusts to be effected by the execution of a power, as is the case where a power is given by a will to trustees to sell an estate, and to apply the money upon trust, here, though the legal estate, until the execution of the power is in the heir at *law*; yet, on the power being defeated at law, by the death of the trustees, Equity acting upon the trust, will compel the heir, to join in the sale of the estate for the execution of the trusts. (See *Sugden on Powers*.) Mr. M'DUFFIE has lost sight of this, and strangely regards the levying and appropriating power of Congress, as *one* of the purposes or trusts for which the Government was created; whereas that clause, and the succeeding one, that of "borrowing money on the credit of the U. States," is not an end, but simply the great means, by which all the enumerated objects, or trusts, are to be accomplished. It is the Power coupled with the Trusts. To be asked to demonstrate this, is as if we were called upon to prove, that any one problem in Euclid is true. I will, however, endeavour to make it plain to those who are not lawyers.

The distinction between the levying and appropriating power of the Government, and all the other enumerated powers, is most manifest. In the other enumerated powers, there is not a *single* clause, which does not contain within itself, some one of the many *definite purposes* for which Civil Government generally exists; whilst in the *two money raising* clauses, there is no definite purpose whatever expressed. Nothing is easier, or more natural, than to imagine, that a people should desire to constitute **ONE** nation for *war*, for *foreign Negotiation* and *Commerce*, (under which general heads all the trusts in the Federal compact may be included) but it is extremely difficult to make a man of common sense *believe*, that a people already associated in thirteen regular Governments, should desire to be consolidated into one supreme sovereignty, merely for the pleasure of **BEING TAXED**; and to possess the power to **SPEND** those taxes. The laying and appropriating power, is therefore no more, than the **POWER** of the Government, *coupled* with the **TRUSTS**. It is only a **MEANS**. A means cannot be a *purpose*, or an *end*, nor can it be greater than an end.

Suppose that Mr. M'DUFFIE, as a lawyer, was to have submitted to him a deed from A. to B. in trust for various uses, and with many limitations therein expressed, and his opinion was solicited as to the real intent of the donor; to what part of the trust deed would he look, for the purposes for which the estate was created? Would he look to those clauses in the instrument, *declaring the trusts*, or would he read the general power in the

deed, enabling the trustee to raise money without limit, for the general benefit of the estate, by sale or mortgage of the estate, or otherwise? The answer is, he would assuredly look to the *trust clauses*, as the only means, by which he could come at the objects, for which the estate was given by A. and he would scarcely cast his eye on the general power to raise money, such a power being a matter of course. Precisely the same must it be with the Constitution of the United States. If we would ascertain, for what purposes we exist as one nation, so as to decide, whether any particular object is a *national* object, or a *local one*, it would be as useless to look (as Mr M'DUFFIE does) at the two first clauses, giving the power "to raise a revenue by taxes and loans, and to appropriate it to the general welfare," as it would be, to look at the *general* power in the trust deed above referred to. These two clauses in the Constitution must then be put aside. They actually ought to have no more influence in an inquiry, as to the purposes which are meant to be embraced in "the general welfare," than that clause in the Constitution, which says, that "each House shall be the judge of the elections of its own members." Construe these clauses as we will, they speak no other language than that the Government shall raise money by taxes, and by loans—and that the proceeds shall be applied to the purposes, for which we *became a nation*, and, to no other. Where shall we seek for these purposes—In the brains of ingenious politicians, or in the enumeration of the specific objects or trusts. In the latter unquestionably. *Id CERTUM est quod certum REDDI potest.*

No part of the foregoing view can be confuted, unless some reasoner more ingenious than sound, should insist, that the words to lay taxes to *pay the debts* and provide for the general welfare "*of the United States*," give to this clause a character of *specification* as to purposes. The answer to this is simple. The words "*to pay the debts*" here, mean no more, than to pay the expenses of the government, or debts contracted by loans, &c. to carry into execution the specified objects. Referring to the 6th Article of the Constitution, we shall see that provision is expressly made, that the new Government is to assume *all the debts of the Confederation*, and thus constitutes those debts, as *one of the trusts* to be executed. The trust being already created, and in its proper place, it would be strange to imagine that the words "*to pay the debts*" mean any thing more than the contracts of the Government.

We are now to consider some of the extravagances and absurdities, to which *any other definition* of "nationality" than that herein given may carry us, and in this way we shall see the real difference between money applied to the "*general welfare*," and that used for the *national welfare*.

## NO. 20.

Mr. M'DUFFIE, it must be remembered, contends, that the power of Congress, to expend money for the general welfare, *beyond the enumerated objects*, is unlimited. As he cannot conceive "upon what principle, the *judiciary* can pronounce any road *unconstitutional*," even if Congress, "under the *pretext* of making military roads and canals, were to make them for purposes not military," though he admits that "such would be an act of usurpation," we are therefore to have, in the opinion of Mr. M'DUFFIE, no other security too, against appropriations manifest-

ly unconstitutional, than this, "that the *conscience* of every member, is to be the *tribunal* before which, he must justify his vote, in each particular exercise of the power in question.

Let us see how this doctrine would work. Say that Congress shall *annually* appropriate a million of dollars, to the support of free schools, in every Parish of the United States, and for that of a College in every State. As much more for a deaf and dumb institution, and a lunatic asylum, in the capital of each State. The same, for a splendid hospital for invalids, in each State, upon the plan of that in Paris, and for infirmaries for the diseases of the eye, and the ear. A million for churches and chapels, from Maine to Cape Florida, for the use of all religious denominations, without distinction. A million to increase the funds, and stimulate the efforts of associations, to suppress duelling, and of societies for the suppression of gambling, drinking, profaning the Sabbath, and vice of all kinds. As much more to philanthropic societies, whose objects are to improve prison discipline, and to restore drowned persons to life: and then an appropriation of four millions, to objects of *general* concern, which we have not here room to enumerate. According to Mr. M'DUFFIE's exposition of the Constitution, all these appropriations, can be constitutionally made by the National Legislature, *though they cannot be referred to the enumerated objects* of the Government. That they are all measures, which promote the general welfare and the happiness of the people, no one can doubt; and if we regard them, as to their *effects* upon the general community, they are unquestionably *national* in this point of view. But can Congress constitutionally make these appropriations? Let those who, in this particular, agree with Mr. M'DUFFIE be told, that they maintain this most extraordinary of all positions; that amongst the MANY purposes, for which a people, already governed in thirteen regular State Governments, covenanted, to become one entire people under a Supreme Government, ONE GREAT END to be promoted, was, that ten millions of dollars, or ten times that sum, if deemed expedient, should be annually TAKEN from their pockets, by imposts and other taxes, with no other view, than that it should be RETURNED to them again, and under an *utter impossibility* of their receiving it, in the same proportion, in which it was drawn from the several States; and this too for the *laudable* purpose of accomplishing objects, to which the States were SEPARATELY COMPETENT, if the money was kept at home.

Here is a most wonderful exposition of the Constitution. The Convention, after two months deliberation, as to the great outlines of the Government, solemnly decides, in the sixth amended resolution of Mr. RANDOLPH, that Congress is to possess *legislative* rights in cases "to which the States are separately incompetent." A committee in detail forms a Constitution under these instructions; they exclude all such cases from the enumeration of the legislative powers of Congress. An effort is made to "give additional powers to legislate, on the subject of agriculture, manufactures, science, and internal improvements." Canals and Universities are proposed. All efforts to give jurisdiction over these subjects, so *confessedly local*, failed in the Convention; and yet we are told AGAINST the internal evidence of the deed itself, AGAINST the lights of the public journals and secret debates of the Convention, and

AGAINST the *written* statement of LUTHER MARTIN, who may be well compared, to a witness who sits at the bedside of a testator, and takes down his words in writing; that *though* Congress cannot dig a canal without violating the compact and the sovereignty of a State; *though* it cannot create a great manufacturing company, with exclusive privileges as to monopoly; *though* it cannot, even according to the decision of *M'Culloch vs. The State of Maryland*, incorporate and take under its charge, Free Schools, Deaf and Dumb Institutions, &c. because they do not refer to any of the specified objects, which Congress are to regulate; yet, that the great ends which the above are the means of accomplishing, may be promoted by Congress in other ways. Monopolies to the manufacturers *cannot* be created by an act of Congress, without a departure from the Constitution, and *yet they may be given* in the shape of *protecting* and *prohibitory* duties, because Congress "has the power to lay imposts." Canals *cannot* be dug in the States, or military roads constructed, because it is to exercise sovereignty over soil and territory, and yet *money may be voted* for the *same* objects, because Congress can promote the "general welfare." National establishments of Deaf and Dumb institutions, with incorporated powers, are unconstitutional—and yet all such institutions may be *most liberally endowed* out of the National Treasury. What is all this but to say, that Congress shall be permitted to approach *indirectly*, a subject for its legislation, which it is admitted it has no power to approach directly, contrary to that most excellent maxim of the law—"Quando aliquid prohibetur fieri Ex DIRECTO, prohibetur per OBLIQUUM."

The evils of such a construction as Mr. M'DUFFIE gives to the appropriating power, may be most tremendous. For instance—The writers in the Monthly Journal of the Colonization Society, admit, that a power in Congress "to emancipate and remove Slaves within the limits of a State, would be a most alarming interference, with the rights of a State, and of individuals,"—but yet they contend, (and they entrench themselves behind Mr. M'DUFFIE'S exposition) that an authority to create a fund, as proposed by Mr. RUFUS KING, to aid the gradual emancipation and removal of the Slaves in the United States, would be constitutional—because, say they, "the power of appropriation, is limited only by the general interests of the country;" and the removal would not "interfere with the rights either of the States or individuals." Not interfere! The purchase of the Slaves, and their transportation to Africa, would not merely deprive us of the only labourers, who can cultivate our soil; but it would have the effect, of altering the Constitution of the United States, in a most material point. It would change the whole representation of the Southern States. Remove the Slaves from South-Carolina—three-fifths of whom are represented in Congress—and South-Carolina instead of sending *nine* Members to the House of Representatives, will send *five*, and perhaps not two from depopulation—and the other States will lose in about the same proportion.

It is to me most amazing, that Mr. M'DUFFIE should freely admit, "that in determining what *sovereign* powers belong to Congress, Congress has NO DISCRETION, the Constitution being the inflexible land mark;" and yet, that he should not himself perceive, that in selecting for the appropriation of its revenues, any object whatever, which it *chooses*

to designate as an object of 'general concern, Congress does thereby exercise, that high sovereign power, not included in its grant of powers, to wit: of legislating *indirectly* upon subjects, and attaining objects, which belong to the States to regulate, and which, from the very nature of the subjects, the States are not only "separately competent," but *more competent* to manage, than the General Government. There is a strange fallacy in that reasoning, which would say, that Congress is limited as to the subjects, upon which it can exercise its *utmost* power of sovereignty, and yet unlimited as to objects, on which its sovereignty is to be *indirectly* applied. I say sovereignty indirectly exercised, for according to the Constitution, the purpose for which money is given, must be specified in the act of Congress, and this act of legislation, constitutes the sovereignty which is to accomplish the object.

It seems then, according to this exposition, that the General Government is not Supreme within the sphere of its own powers, and when it is accomplishing the purposes for which it was created. If I understand the argument, it is substantially this. There are TWO kinds of purposes, for which we consented to become *as one nation*, as distinguished from twenty-four nations. First; those which are agreed upon, and particularly specified. These we readily comprehend. And secondly; those which are equally agreed upon, but not enumerated. This is not so easy of comprehension—it requires explanation, how a new Government is to be created, with undefined objects, though it is easy enough to understand, that undefined powers may be reserved to an old Government, from which some powers are withdrawn. For the enumerated objects, and all measures thereto appertaining, it appears, that Congress is a Supreme Government. It can approach its objects, *honestly, fairly and directly*. But for all the *undefined* (MOST WISE) purposes for which we act as one people, and which purpose are embraced in the appropriation power, under the term "general welfare," Congress has not the full power of a nation, over a vast variety of these, which it may choose to make the subject of its legislation. For instance—Roads and Canals. Congress is not now Supreme. If it wishes Roads and Canals, it cannot construct them—it is not sovereign enough for this, but it can bring its *imperfect sovereignty* (something new) to bear upon the measure, in some other way. Whatever is now to be accomplished, must be done, to use a vulgar adage, by *whipping the Devil round the stump*, unless, says Mr. M'DUFFIE, some "other *sovereign* power besides that of appropriating the money be necessary to accomplish the particular object," in which case, I understand that partial sovereignty must not be resorted to, and the *Devil is to be let alone*, and the purpose cannot be accomplished.

According to this theory, what becomes of the States? I always heard, until now, that there were *State Governments*, as well as a Federal Government. That we existed as one nation for certain designated purposes, and that for all other purposes, (and these are few enough, God knows) there are two express articles in the Constitution, which say, that we remain twenty-four separate nations. But it seems that we are all wrong. Congress can lawfully take what belongs to it, under the *express* grant, and it may constantly be *cribbing* power from the States, by *imperfect* sovereignty without committing a gross trespass on the rights of the people. There is no boundary line, it seems, between the defined,

powers of Congress, and many of the undefined purposes of Civil Government, reserved to the States, for Congress can accomplish both. The one by *direct*, and the other by indirect sovereignty.

The only two great safeguards, which we are permitted to have, for restraining and arresting the usurpations of the Government, and preserving the liberties of the people, "are the positive *restrictions* upon power; and the *responsibility* of those who exercise power, to the people upon whom it operates." Our security, as to any abuse of power in Congress, when it is ranging at large, and seeking its employment and legislation, in the field of the *novel* and *undefined* purposes of the Federal Government, is not to be found, even in the *judiciary* tribunals of the United States.— We are not even to have, the slight chance of a decision of the Supreme Court in our favour. According to Mr. M'DUFFIE, "the *conscience* of each member of Congress, is to be the *tribunal* before which, a vote" of an hundred millions of the people's money for unenumerated purposes, is to be justified. Says Mr. M'DUFFIE, "Shew me, in any of the subdivisions of this comprehensive scheme of representative Governments, a power operating *beyond its responsibility*, and I will shew you a power unknown to the system. A *comet*, let loose from the power of gravitation, which must inevitably destroy the planetary harmony by which that system is so admirably characterized." That unknown power, I can tell Mr. M'DUFFIE, does exist! It is a principle wholly unknown to our system, which distributes power between one common head, and twenty-four subordinate Governments, that there should be no other security against indirect legislation, and the consequent IMPINGEMENT upon the States, than the *consciences* of the national legislators. It is wholly unknown to our system, that the General Government should so legislate, as to gain by a *monied influence*, what it cannot lawfully accomplish, by an exercise of lawful power. Influence is power, and whenever the State sovereignties are abolished, it will be accomplished by the mass of influence, which the General Government will ultimately possess, by small but constant accessions, in the exercise of its constructive powers. As to political responsibility of public servants, as a safeguard, it exists but in the imagination.— There is a responsibility, it is true, of our own members of Congress to the people of South-Carolina. But these men can do no more than their duty. When once the people of the Northern and Western States, who constitute the majority, shall decide, that we shall pay tribute to them, what becomes of that safeguard called "*political responsibility*?" Will this save us, from the usurped dominion, of the men of SAGADOROCK, or of the Illinois? No! Mr. M'DUFFIE will find, that for relief against that odious Tariff, which he so fearlessly, so zealously, and so eloquently opposed, in common with the rest of his colleagues, it will be in vain ever again to look to the ballot boxes of any elections South of the Potomac. To our State Legislature alone must we look, that by its wisdom, and its firm purposes, it may avert from us the evils which encompass us.

On this subject of political responsibility, which is so dazzling in its theory, many of our prominent politicians in Carolina, the most of them excellent men too, have been running into the wildest extravagances. Instead of looking at the Constitution, with the eyes of statesmen, and with a reference to the peculiar circumstances which attended its formation—instead of bearing in mind, that so far from there being any desire, in the great



body of the people, in those days, to have a National Government, with plenary and indefinite powers, and with increased and increasing influence; that the difficulty rather was, to get a Government at all, these gentlemen take up the compact, and examine it in most of its provisions, as lawyers would a deed, with no reference to such a thing as *equity*. Because it professes, in its preamble, to come from the people, and operates upon the people, it is peculiar to these gentlemen to ascribe the existence of the Government, to be the act of the people *en masse*, independent of the State Legislatures, and of its being responsible to the people, and not to the State Legislatures, as if those Legislatures had not the entire agency in calling the Convention, and, as if they could not (had they so willed it) have frustrated all the hopes of that Convention. Hence, it is, that when our Legislature shall raise its voice against any usurped act of the Government, they would protest against any such expression of the public opinion, the Legislature not being the proper organ, without, at the same time, telling us, by what other expedient, the General Government is to be kept within its own sphere of action and of influence. Should that day ever arrive, which God forbid, that it shall become necessary to resist the usurped power of Congress, how will the people be able to act, excepting under the authority of the State sovereignties? Can the people act of themselves? The Constitution of the United States is not a compact, between the people of the United States, as individuals. If it were, it would be on the plan of the State Governments. There would be no enumeration of powers. As is usual, in all such cases, nothing would belong to the people, but what is expressed in the limitations on the general power, or in a bill of rights. But it is, because the States, in their corporate capacities as *States*, are parties to the compact, that there is an enumeration of objects for the Supreme Government to operate upon. It is Mr. HAMILTON who says, "it is neither a National or a Federal Government, but a composition of both. In its FOUNDATION it is *federal*, not national. In the SOURCES from which the ordinary powers of the Government are drawn, it is partly *federal*, and partly national. In the OPERATION of these powers, it is *national*, not federal; and in the EXTENT of them, it is *federal*, not national."

The very Constitution of the Senate, and the mode of suffrage there practised, demonstrates the importance of preserving the State Governments; for, without them, the Government must stop. But who are to preserve the State Sovereignties, but the State Legislatures? The federative principle is not destroyed. Let only the two Senators, from each State, represented during a session of Congress, be in their seats, and the *result* of the votes on any question, is precisely the same, as if the Senators voted by *States*, as was the case with the Old Congress. When the *States have not their veto upon every act of the House of Representatives, in the same manner as if they were assembled in the Common Council of a pure Confederacy of States*, it is only, when some one State is deprived of the services of one of its Senators, by sickness or absence; it is only at that time, that any difference exists between voting by *States*, and voting *per capita*. And what is more, this *federal* feature of the Government, cannot be obliterated. A majority of three-fourths of the State Legislatures, may adopt, at their pleasure, any amendment to the Constitution; but the equality of suffrage in the Senate, cannot be taken away,

but by the consent of every State in the Union. It is time, then, for our politicians, who have so long been astray on this subject, to come back to correct principles, and to regard the Federal compact, as a covenant between separate and independent States. Let us hope never again to hear the doctrine asserted, that the State Legislatures are not to express an opinion as to the violation of a compact or treaty to which the States are essentially parties.

I cannot take my leave of Mr. M'DUFFIE, without acknowledging to him, as a citizen of the United States, my grateful sense of his untiring efforts in Congress, to restore the purity of the Presidential Election, and to divest the House of Representatives of a trust, which it had abused, and thus to promote the welfare of the first and greatest of Republics. As a man of private incorruptible integrity, I admire Mr. M'DUFFIE, and there are few of his devoted friends, who are more sensible of his public merit, and of his claim to be regarded as an honest public servant, and a statesman of no ordinary stamp, than I am. He has never advocated, as I believe, any public measure, but from the most exalted motives of patriotism. His speech on Internal Improvements, breathes a general spirit, and a feeling, of which every American ought to be proud. Like others, I was transported with the perusal of it—but sober reflection soon taught me, that the doctrines there advanced, were incompatible with the safety of the State sovereignties—and I doubt not, but that the time will come, if it has not already arrived, when Mr. M'DUFFIE will himself perceive, that he has attached to the general phrases in the Constitution, an importance, which it was never designed they should possess. He will, I hope, excuse me, for the liberty I have taken with his opinions, and of necessity with his name. Nothing but my conviction of the dangers that await the Southern States, and the recollection that these opinions, coming from such a man, would have prodigious influence, would, in my own view, have authorized me, to make his speech, the subject of a public examination. I trust, I have stated his positions with the utmost fairness, and my endeavour has been to controvert them.

## NO. 21.

The boundaries of power once passed by a Government, which is limited as to its legislation, there is no saying, to what lengths, it will not carry its usurpations. How true is this, as regards the Federal Government. The Government, in the commencement of its career, was as true and as honest to the principles of the Constitution, as could have been desired. But the Constitution was preserved unbroken, only for the first two years of our history. When the bill for the Bank was carried in 1791, the Government then abandoned the clear paths of duty and propriety, and has since deviated, more or less, oftentimes innocently, but of late wilfully, from the views which the people entertained, when they formed the compact. General WASHINGTON'S motives on the Bank question, were honest and patriotic, as they uniformly were, during every portion of his distinguished life. But General WASHINGTON was surrounded, by some of the politicians, who, in the Convention, had contended for a NATIONAL, and not a Federal Government. ALEXANDER HAMILTON, and EDMUND RANDOLPH, were in his confidence and in

his Cabinet. These gentlemen, it is well known, had strenuously contended, the *one* that Congress should "have a *negative* on all the *State Laws*, interfering with its own;" and the *other* that "a Governor in each State, should be *appointed by the General Government*, with a negative upon the State Legislature," in order the better to prevent any such laws being passed in the first instance. There was in the Convention, at one time, a hot contest, whether (in one of Mr. RANDOLPH's resolutions) the word "*United States*," or the word "*National*," should be used. It is a truth not to be concealed, that even General WASHINGTON sided somewhat with those gentlemen in the Convention, and it certainly is not intended, to derogate an atom from his high fame, when it is said, that he was in favour of an *energetic* Government, and a *strong executive* arm. Nor am I disposed to blame Messrs. HAMILTON and RANDOLPH, for opinions, as I believe, sincerely entertained by them. Many of the best men in the Union, at that time, thought with them, and some of them from our own State. They had all been so sensible of the defects of the Confederation, that it was natural, that they should incline to the opposite extreme, and believe a National Government as best calculated for the exigencies of the Union. It appears, however, that they were all mistaken, and Gen. WASHINGTON amongst the number; and it is fortunate for us, particularly of the South, that all attempts to *consolidate* us all into one nation, failed in the Convention.

On the first question, therefore, which arose under the Constitution, respecting the powers of the Government, it was not to be expected, but that with the previous prepossessions of Gen. WASHINGTON on the subject, he should have decided in favour of a National Bank. But, amongst his followers, have been some, who had not his moderation, his prudence, and his sagacity, and hence it is, that during the last, and the present Administration, we have seen the Government administered in open violation of the Constitution, not by any act immaterial as to its effects upon public liberty, but by acts impairing important and vital interests of the States.

When a limited Government, like that of the United States, has passed all the necessary laws, for the collection and distribution of its revenue, and entered into all the arrangements, to provide for the public debt; happy at home, and respected abroad, it must soon find itself in need of more occupation, than the *ordinary* concerns of defence and commerce can furnish. Commerce once regulated, what else remains to be done, but to leave the rest to the industry and enterprise of our citizens. Our policy too, being that of friendship with all nations, and entangling alliances with none, and amply furnished as we are, with the means of defence, what has the General Government to do, but to make provision for its small army and navy, and to keep its forts and arsenals in repair. Can the mind of an American conceive a happier state of things for his country, than that Congress should sit only five or six weeks, and have as *little employment as possible*, and that to the local Legislatures, it should be left, to extend their care, to all the objects which con-

cern the INTERNAL order and improvement of the States.— When, in 1788, the people in most of the States, were jealous of the powers conferred on the Federal Government, and were hesitating, whether they would accept the Constitution, Mr. HAMILTON, by way of reconciling them to the Constitution, told them in his *Federalist*, (No. 45,) “that the operations of the Federal Government would be *most extensive* and important in times of WAR and danger; those of the *State Governments* in times of PEACE and security.” No exposition of the Constitution can be more true than this, and more calculated to shew, that in general, the State Governments, would have advantage as to legislation, over the Federal Government, the times of war in a country like America, bearing no proportion to the times of peace. But how stands the fact. Thirty years scarcely elapse, before the General Government commences a great plan of steady operations, by which it is to carry on a system of internal improvements, which will leave to the States, little or nothing to do on the same subject, drawing immense sums out of the pockets of the people by taxation, without a possibility, as already has been elsewhere observed, of its being expended amongst them, in the same proportion, in which it is taken from the several States. It is in PEACE then, as well as in war, that we observe the operations of the General Government IMPORTANT AND EXTENSIVE, with a prospect, at the same time, rapidly opening upon us, that ere long, almost all the subjects of legislation, which the States now regard as exclusively belonging to them, will be gradually drawn towards Congress, under the powerful attraction of the words the “general welfare.” Who could have believed, in 1789, that in less than forty years, that several *State Legislatures*, should even entreat that Congress would take under its consideration, measures to remove as an evil of the first magnitude, the FUNDAMENTAL POLITY of the Southern States—that even the subject of *slavery*, should be a fit object for the INDIRECT legislation of a Government, instituted for the purpose of attending to foreign relations.

Let Congress be confined within the proper and the legitimate sphere of its action, and it is manifest, that it would not be occupied, half the time it now consumes in its sessions, nor cost the people half of the sum, that is annually spent at Washington. There have been periods, when it might be necessary that the sessions should be somewhat protracted. There was at one time much to do. A system of revenue laws was to be digested and perfected—the Courts of the United States were to be organized—the public debt to be provided for—treaties of commerce to be entered into, and ratified with every nation. A Government in fact, was to be put into complete operation. But, in our day, the Government is settled and established, and were the National Legislature occupied as it ought to be with its *own business*, and not in *assuming the business* of the State Legislatures, there would be little to do. But it is because the Senate and House of Representatives are without occupation, that instead of adjourning and going in proper time to their

homes, the members are disposed to meddle, with what is not their concern, and that they are *constantly in search*, for some *new subject* for their legislation. This is the true reason, why they expend the public money in protracted sessions, and sow the seeds of discontent and jealousy amongst the States. But this is natural: These men "feel power and forget right," and he must be an indifferent observer, who does not perceive, that unless some check be given to the usurpations of Congress, that there will be no end to the subjects, which, in time, it may not discuss and legislate upon.

## NO. 22.

No general course of proceeding can be more destructive of the rights of the States, or of the people, than that adopted by Congress, when it is about to construe its powers. Where real doubts exist, as has frequently been the case, whether any particular power claimed by implication, is within those intended to be granted by the Constitution, this body does not condescend to solicit any aid from its constituents, who are represented in the State Legislatures, but it seizes at once upon the doubtful power. Certainly this is not the course which friendship and good feeling, and even policy would dictate. The Government of the United States, notwithstanding all that has been said to the contrary, by the Supreme Court, is not a Government of the people, in the sense in which the Supreme Court would have it. If it were, it would be responsible to the people alone, as its constituents, as is the case under every consolidated Government, and there would be no other security against usurpation, excepting the power of the people to change their rulers, in which case the minority must abide by the will of the majority. A doctrine such as is contended for, is subversive of the end for which the Union was formed. There is an inconsistency in admitting, that the people of the States, in their corporate capacities of States, have certain acknowledged rights under the Constitution, which are guaranteed to them, and also, that they are so clearly recognized in the instrument, as to be prohibited from exercising their sovereignty on certain subjects, and yet that they are not to be regarded as having the right to complain of the usurpations of the Government, as if it were ever before heard, that those who create a delegated Government, have not lawfully the same power, to restrict it, within its limits, after it is created.

This doctrine, of the General Government being "truly and emphatically a Government of the people" which has been so often relied on, as excluding the right of the State Legislatures, to protect the States against the usurpations of Congress, was first suggested by Mr. PICKNEY, Counsel for the Plaintiff in Error, in *M'ulloch vs. The State of Maryland*, and the Chief Justice, with his usual ability and eloquence, has placed the position in so masterly an aspect, as almost to command the universal assent of the Bar. But the position of the Court cannot be sustained. It is as unsound, as the other parts of this opinion already noticed in previous numbers. The Counsel for the Defendants in Error, in speaking of the true nature

of the Federal compact took this ground "That the terms of the grant, did not convey sovereign power generally, but sovereign power limited to particular cases, and with *restrictive means* for executing such powers;" and further, that the powers of the General Government "were delegated, not by the people of the U. States at large, but by the people of the respective States, and, that therefore, it was a compact between the different States." The Counsel here were certainly right, and the Court as clearly wrong in not admitting the position. The Constitution IS a compact between the States, and there are no parties to it, excepting the people of the different States, in their corporate capacities. The Court, it is true, cautiously disclaims the assertion, that the instrument "proceeds from the American people, as compounded into one common mass," for that would be too untenable; but still, its reasonings do artfully carry us on to the conclusion, that the Constitution does not emanate from, and is not the act of sovereign and independent States, but on the contrary, is as much the act of the people of the United States, as if they were assembled in an aggregate society, to distribute power between the Federal and the State Governments; and that all power derived from such a source, is as sovereign, as if it had remained in the hands of the people, and that all the *incidental*, as well as the *direct* powers, are a part and parcel of any sovereignty conveyed by the instrument. Let us examine this doctrine of the Government being a Government of the people.

In a former number, has been stated, the obvious distinction, between the case of a people without any regular Government, forming a Constitution; and that of a people already associated in so many separate sovereignties, who design to part with power to a common head; the Legislators, in the one case, possessing *all* power not reserved by the people, and in the other, possessing *nothing*, but what is delegated. Situated as were the citizens of America, at the close of the Revolution, there were but two ways, in which the people, could have formed a Government. The first, was, by being assembled in the relation to each other, of individuals of *one great* political society. The second, as associated in *separate* sovereignties. Under one, or the other of these situations of our community, was the Constitution formed. If the powers of the Government, are not derived from the people of the United States, as individuals aggregated in a *general* society, they must then be created by the people in their *corporate* capacities, and so *vice versa*. From, no other sources than these, can they be claimed. Now, it is immaterial to me, which of the two modes, the Supreme Court shall decide as having prevailed, in 1788. If it chooses the last, we agree. If the first, it is in its own language, "a political dreamer, who is wild enough, to think of breaking down the lines, which separate the States, and of compounding the American people into one common mass." The Chief Justice, however, thinks, he avoids a dilemma of this nature, by giving the idea, that though the people on this occasion, were not actually compounded into one mass; yet, that in dispensing power to the new Government, they did it as effectually, as

if they had constituted one great community, for on no other principle, than this, can he establish the doctrine, that as to any particular power conferred on Congress, it is as supreme, as the people themselves would be on the subject; a doctrine which has been denied in these numbers. As if aware, that the assemblage of the people in their States, would imply, that the ratification in this way of the Constitution, was the act of the *States*, and not of the people, he justifies this mode of ratification as the most proper, under the circumstances. "They acted upon it, in the only manner, in which they could act safely, effectively, and wisely, on such a subject, by assembling in Convention." It is true, adds he "they assembled in their several States, and where else should they have assembled? If they act, they must act of course in their States. But the measures they adopt, do not, on that account, cease to be the measures of the people, or become the measures of the State Governments." The answer to be given here, is, that the Constitution might have been ratified, (if the Convention had so chosen) in two other ways; but neither of them, would have comported, with the general sentiments, in and out of the Convention, that the new Government should be *Federal*, and not national in its creation. What, for instance, could have prevented the Convention, from proposing, that the State Legislatures should divide their States into election districts, upon some equitable plan agreed upon, and that each district should send a deputy to a General Convention, or that the people in the different States, should give their assent, or dissent, by voting in districts by a general ticket, and that in either case, the votes of three fourths of the whole, should be an acceptance of the Constitution. To these *last* modes there could be no objection, because the Constitution, whether the subject of debate, or not, was to be accepted, or rejected in *whole*. After NAPOLEON had assumed the imperial purple, he was desirous to know, whether his subjects regarded him as an usurper, and he opened books in every part of his dominions, that Frenchmen might inscribe their assent or dissatisfaction of his conduct. This was voting by general ticket, though not by ballot.

It would be no answer, to say, that either mode here proposed, would have been impracticable, because the *very fact of its being* impracticable to obtain the assent of the people at large, would be *conclusive to shew*, that the assent, if given in *any other way*, could not *possibly* be the act of the people, but of the States. That the people of the United States, were regarded, as acting in their sovereign capacities, as separate States, when they ratified the Constitution, clearly appears, from the rule laid down in the instrument itself, for its ratification. The assent of a *majority* of all the inhabitants of the United States, was not made indispensable, which certainly would have been the case, had the design been that the Constitution should not emanate from the *States*. Under such a view, it might have so happened, that the ratification might not have been complete, though nine States should have assented. Four large States, rejecting the Constitution, might have had a greater population than the other,

nine. For instance, Massachusetts, New-York, Pennsylvania, and Virginia. These four States, at the first census in 1790, one year after the Government went into operation, had 56 members out of 105, that number being the whole representation in Congress—They were the majority of fifteen States. At the second census in 1800, the same four States possessed 74 out of 141 members, and formed the majority of seventeen States. At the third census in 1810, they formed exactly one half of twenty-three States.

Amongst all the modes of controverting the soundness of a position, there cannot be one more effectual, than to shew the manifest absurdity to which its results would lead. If the Supreme Court is right, that the ratification was the assent of the people, and not of the States, the Convention is chargeable with the absurd proposal of having a Government, which is to bind all the people of the United States, to be put into operation, as soon as a minority of the same people should ratify it. Now, on the other hand, if we consider the Constitution, as emanating from the State sovereignties, and not from the people, there is no difficulty whatever, in any view of the subject. The mode proposed by the Convention, was not only the best mode, but it was the only mode, by which the people, acting as the people of separate States, could give their free and unbrassed assent to the compact.

There was a manifest propriety in the Convention's submitting the Constitution, to the assent of the people, in their State Conventions, and not to the State Legislatures, if it was the intention, that the new Government, was to be received from the States. It is only, when the people are assembled in their conventions, that they are exercising their utmost power of sovereignty. At no other time, do they wholly act in their sovereign capacity; for it is then, that they can *take away* what they before *gave*, and *give* what they had previously *retained*. In the State Legislatures, the people, it is true, exercise the sovereign power of making laws, but the power is limited by the Constitution. The Court says, "from these Conventions, the Constitution derives its whole authority." Strange then it is, that at the very moment, when the people in the different States, are acting in the only possible known way of exercising complete sovereignty, that this moment should be selected by the Court, as an occasion for considering their acts, not as the acts of sovereign States, but as those of the people of the United States at large.

It is very plain, from the reasoning of the Chief Justice, that he regards the State Legislatures, or the State Governments, as he also terms them, *essentially*, as the *State Sovereignties*. His words are "The assent of the States, in their sovereign capacity, is implied, in calling a Convention, and thus submitting that instrument to the people. It required not the affirmance, and could not be negated by the State Governments. The Constitution, when adopted, was of complete obligation, and bound the State Sovereignties." For the want of a distinction between a State Legislature and a State Sovereignty, it is not to be wondered, that the Court should deny the Constitution, to be the act of sovereign and independent States,



as States. There is a difference, and a very material one, between a State Legislature, and a State Sovereignty. To speak of them as the same, is to confound two things which are opposite. It is to call the people the Government, and the Government the people.— True State Sovereignty, is that supreme power in a State, which is without limits. It resides no where but in the people. To the people it belongs, as founded on the “original inherent RIGHTS OF MAN.” The State Legislature, on the contrary, is nothing more than that portion of the supreme power, which the people have thought proper to delegate, for the purpose of making the necessary laws, to regulate Society at home and intercourse abroad. A State Legislature is not even the State *Government*, but only a portion of it. If the State Legislature, which is only a part of the Civil Government of the State, be State sovereignty, then the Executive and the judicial powers, are also State sovereignty. The only possible case, in which a State Legislature could be pretended to be a State sovereignty, would be, where, by the terms of a written Constitution, all power whatever is vested in the Legislature, nothing being reserved to the people. Such a written Constitution, would be comprised in one or two short sentences, and would be a novelty.— We have no such in America that I know of.

As we now see the essential difference between the Legislature of a State, and that supreme power, called State sovereignty, we shall readily perceive, in the rise, progress, and final completion of the Federal Constitution, that every thing which *was* done, was in *perfect accordance*, with those notions of Government, which we term republican, and that, had it been otherwise, the rights of the people, as *States*, would have been violated.

The necessities of the people in every State, called for a change in the structure of the existing Governments. How was this change to be effected? By the State Legislatures? Certainly not. The State Legislatures had no right to form a new Constitution. They were competent to form the Confederation, for that was in nature of a league, and it is within the scope of all legislative power, to enter into such a compact. But, when a Constitution is to be formed, Governments are not to be the actors in any way. According to Mr. PAINE, in his “RIGHTS OF MAN,” “Government has no right to make itself a party, in any debate, respecting the principles, or modes of forming, or changing Constitutions. It is not for the benefit of those who exercise the powers of Government, that Constitutions, and the Governments, issuing from them, are established. In all these matters, the right of judging and acting, is in those who pay—the people; and not in those who receive. A Constitution is the property of a nation, and not of those who exercise the Government.”

But though no one State Legislature, could place its own people, under a new form of Civil Government, in which Government they were to be associated with the people of other sovereign States, yet they had a right to submit proposals to that effect, which they did by sending deputies to the General Convention. The work of the

Convention being finished, the next inquiry was as to the mode of ratification. There were but two modes, proposed in the Convention, by which the people were to be bound as the people of sovereign States. The first, to have the assent of the State Legislatures. The second, of the people of the States in State Conventions. The latter was preferred. Had the Convention considered, that the assent of the State Legislatures, could give a binding efficacy to the new Constitution, it would have betrayed an extreme ignorance of the true origin of all civil government, and of that inherent right of the people alone, to make a Constitution. The assent of the people in conventions, then, was the only way, in which their assent could be obtained, as sovereign and independent States. They do assemble. In each State, a majority of the people decide for that particular State. The vote is transmitted as one vote, out of thirteen. Delaware, the *smallest* State in the Union, has the same influence in making up the majority, without which the Constitution cannot operate, as Virginia, which is the *largest* State. And yet we are told by the Supreme Court, that the binding efficacy which the Constitution received in these proceedings, was not the act of the States, as States. But let us, for the sake of argument, pervert terms, and say, that Legislatures *are* States. Still the acts of the Convention, in such a view, must substantially be regarded as the acts of the States. That sovereign political body, which requires another body to decide for it, any question, which it has the power of itself to decide, is certainly the power, that does the act, and not the substitute. *Qui facit per alium facit per se.*

Suppose, that instead of the present Constitution, Mr. PATTERSON's plan had been adopted in the Convention, which was so to have enlarged the power of the old Government, as to give it the additional power of imposts and stamp duties, and to regulate commerce, and to have a Federal Executive, and a Federal Judiciary, &c. This Government, in the words of the Court, would "be the Government of all. Its powers delegated by all. Representing all, and acting for all." But would any one say, that because it was to act directly on the people, that, on that account, it must be national in its creation. The manner in which a Government is ushered into existence, and the nature of that Government, after it is created, are two distinct things. The mode, in which a Government is to operate upon the people, has really no more to do with an enquiry, as to the source from which it emanates, than the manner of its origin, has to do with questions as to the operation of its powers. The only question is, who ratified it. The people, it is true, did it. Who else could ratify it. But did the people ratify it, as the people at large. The answer has been already given. The votes were not a portion of the aggregate votes of all the individuals in the United States, but the vote as one people. It was a single vote. Who, but a State can give a single vote. What is the characteristic of a confederacy of States, according to our own experience? The voting by States. If South-Carolina, in giving her assent to the compact, votes precisely as she did in the confede-

ration, her influence being one thirteenth of the whole, is it not absurd to say, that this ratification is not a federal act. The Court is at some pains to confute the plain proposition, insisted on by the Counsel for the State of Maryland, that the Constitution is a compact between the States in their sovereign capacities. The Government, says the Court "proceeds directly from the people;" "is ordained and established" in the name of the people; and is declared to be ordained, "in order to form a more perfect union." And what then? Who are the people here meant? The people of the United States as one entire nation, or the people of the Thirteen States. The title or caption of the Constitution, as it is presented to the Conventions, announces it, "as a Constitution framed for the *United States* of America, by a convention of deputies from the States of New-Hampshire," &c. If an argument is to be drawn from what immediately follows in the preamble, "We, the people of the U. States, do ordain and establish this Constitution," I should suppose, the people here meant, must be the people of those thirteen *named* States of America, for which States the Constitution was formed, to wit, New-Hampshire, &c. The Government, being a compound Government, it would be difficult to say, how it could, upon the whole, be better expressed, supposing that its adoption was to be the act of independent States. Again as to union. What is meant by "more perfect union," more than an union of sovereign States upon better terms than the confederation afforded. The Court will not say, that a Consolidated Union was the end in view.

The best way to put an end to all argument, is to ask ourselves this simple question—Supposing that it was the real design of the whole convention, that the new Constitution was to be the act of the several States, as States, could it have adopted any other legitimate mode, than that of submitting the instrument to the State Conventions. This question must be promptly answered in the negative, unless we design to maintain the absurdity, that a State Legislature can make a Constitution, which is to associate its people in civil government, with the people of other States. If then, it is clear, that in a State Convention alone, the assent of the people of a State, as a State, can be given to a radical change in the structure of the Government, so as to bind the people of that State, the very circumstance of calling the Convention, incontestibly proves, that its required ratification was to be a State act. It is a loss of time, to attempt to prove what is so plain.

That the Government did not emanate from the people, excepting in their sovereign capacities, as separate States, appears also to be the exposition of the Federalist. In speaking of the real character of the Government, considered in relation to the *foundation*, on which it is to be established, it is said, (Federalist, No. 39) "On the one hand, the Constitution is to be founded on the assent and ratification of the people of America, given by deputies, elected for the special purpose; but on the other, this assent and ratification, is to be given by the people, *not as individuals*, comprising *one entire nation*, but, as composing the distinct and *independent* States, to

which they respectively belong. It is to be the assent and ratification of the several States, derived from the *supreme* authority in each State, the authority of the *people* themselves. The act, therefore, establishing the Constitution, will not be a National, but a **FEDERAL** act." The Federalist goes on to say, "That it will be a federal, and not a national act, (as the terms are understood by the objectors) the act of the people, (as forming *so many independent States*, not as forming *one aggregate* nation, is obvious from this single consideration, that it is to result, neither from a *majority* of the people of the Union, nor from that of a majority of the States. It must result from the *unanimous* assent of the several States, that are parties to it, *differing no otherwise from their ordinary assent*, than in its being expressed, not by the legislative authority, but by the people themselves. Were the people regarded in this transaction, as forming one nation, the will of the majority of the whole people of the United States, would bind the minority, in the same manner as the majority of each State, must bind the minority; and the will of the majority must be determined, either by a comparison of the individual votes, or by considering the will of the majority of the States, as evidence of the will of a majority of the people of the U. States. Neither of these rules has been adopted. Each State, in ratifying the Constitution, is considered as a **SOVEREIGN BODY**, independent of all others, and only to be bound by its voluntary act. In this relation, the new Constitution will, if established, be a **FEDERAL**, and not a National Constitution."

Having thus clearly shewn, as I conceive, that the counsel for the Defendants in Error, were right in saying, that the federal compact was the act of the State sovereignties, and that the Supreme Court was decidedly wrong in denying the position, it may not be unprofitable, to correct some popular errors on the subject of civil government being considered as a compact; as on the correction of these, a very important axiom is hereafter to be maintained, to wit, that to the State Legislatures, as States, and not to the people at large, as its constituents, is Congress responsible for the abuse of its powers. These Legislatures have the unquestionable right to keep Congress within the limits of its prescribed powers.

It is an erroneous idea, that wherever civil government exists, that there is any compact between the *people* on the one side, and the *Government* on the other, and that the Government in consequence, has any rights, except when it acts for the people. This subject is placed in an admirable, and an incontrovertible point of view, by THOMAS PAINE, in his "Rights of Man." In the American Constitutions, of which he was treating, he maintains there is no such idea. The compact, says he, in "each instance, was that of the people with each other, to produce and constitute a Government. To suppose, that any Government, can be a *party* in a compact, with the whole people, is to suppose it, to *have existence*, before it can *have a right to exist*." In the confederation then, we must admit, that the compact necessarily was, that of the people of the different States, with each other, in the relation of independent

communities. In the Federal Constitution, it is a mistake to suppose, that the relation is in the least altered, because the people themselves met, to make the compact, instead of doing it through their Legislatures. The act of ratifying the compact by such a mode, so far from weakening, indubitably strengthened the ratification, as an act of an independent State, for it is done by the people themselves, in the most sovereign character, in which they can possibly be recognized. In no State in this Union, is the sovereignty of the State perfectly represented by its Government. The people may constantly be in the exercise of all the legislative, judicial, and executive powers of the Government, and yet, they may not be using their utmost sovereignty. In every American Constitution, there are powers reserved to the people, which Government cannot exercise. It is in convention alone, that State sovereignty is without limits or controul.

The Constitution then, being a compact, between the people of the different States, as States, and not as individuals, it results, that the U. States Government is nothing more than a great trustee, under an irrevocable power of attorney, to perform certain duties, or to execute certain trusts, prescribed to it by the States. Government, says Mr. PAINE, "is not a trade, which any man, or body of men, have a right to set up, and exercise for their own emolument, but is altogether A TRUST, in right of those, by whom the trust is delegated, and by whom it is always resumeable. It has of itself NO RIGHTS. They are altogether duties. All power exercised over a nation, must have some beginning. It must be either delegated, or assumed. There are no other sources. ALL DELEGATED power is TRUST, and all assumed power is USURPATION. Time does not alter the nature and quality of either." If this be not truth, in the name of reason, what shall we call by that name. Let us then, apply this doctrine to our subject. The power of the Federal Government, we all admit, is a delegated power, and all delegated power, we must, as freely admit, is a trust. It is the State sovereignties who confer this delegated power, and these also, are the only parties to the federal compact. In this view, what becomes of that doctrine so often advanced, that Congress is not amenable to the States, as State sovereignties, for an abuse of its powers. Was it ever heard, that the parties who create the trust, are not to see that the purposes of the trust deed are fulfilled. Who else is to complain, and to take the measures to keep a trustee to the proper discharge of his duties, if it be not the constituents of the trust estate. Suppose that the directors of any public trading company, were to violate certain fundamental articles of covenant, between the individuals who may compose such a company, and are so supported by the majority of the stockholders, to the injury of the minority; what is the remedy? A Court of Justice, by its writ of *prohibition* or *mandamus*, or *injunction*, or other process, arrests their illegal proceedings. The only difference between the abuse of a private trust, such as has been stated, and that of the great public trusts, contained in delegated sovereign powers,

is, in the nature of the remedy, to be applied. For the first, there are impartial tribunals provided in all regular Governments. For the other, as regards the anomaly in the American plan of Government, it results, from the very nature of the Government, that no such tribunal can be found, and that relief must be sought by other means. For who is to appoint such a tribunal? Not surely, the delegated Government. It would be, to consent to allow the trustee, not merely to appoint the arbiter, who is to judge, whether he has or has not abused his trust, but to name for that purpose, his own servants, who are fed and supported by him. In this view, the States who constituted the Federal Government, can never consent, that the United States tribunals should decide, whether the Federal Government had or had not usurped its powers. Such an assent would involve the absurdity just mentioned. It is to make a party the sole judge in its own cause.

I am aware that it will be said, that the mode of settling all such questions, is specified in the compact, and is a part of it; and that the *second* section of the *third* article of the Constitution, makes the United States Judges, the arbiters in all disputes between the States and Congress. I think not. The only part of the section which can be enlisted on the side of such a construction is, that which extends the judicial power of the United States, to all "cases arising under this Constitution, and the laws of the United States;" and also, that which speaks of "controversies to which the United States shall be a party." I have always thought, and do believe, that had this provision been for any other purpose, than to enable Congress to protect itself, against any exercise of power by the States, prohibited to them by the Constitution, or intended to embrace great and vital questions of sovereignty, between the States, and the United States, as to constructive powers, as well as cases of *meum* and *tuum*, that it would not have been so loosely expressed.— This view is considerably strengthened by the circumstance, that on the introduction of these passages, on the 27th and 28th of August, as amendments to the reported draft of the Constitution, there was no opposition, which can only be accounted for, on the supposition, that it was intended to embrace the claims of individuals against the United States, and *vice versa*. We cannot imagine, that so important a provision, as that, by which inherent rights of States were to be taken away, could pass unnoticed, if it were understood to refer to disputes about sovereignty; but we can readily believe, that if the supposed controversy, was to partake of the general nature of the cases provided for in the same section, which are pecuniary suits at law and equity, that there could be no objection.—"Controversies between two or more States." This part of the clause was well understood, and the same reason which might warrant the insertion of this last power, to adjust ordinary controversies between two States, would apply to the exclusion of the idea, that important vital rights were to be the subject of cognizance in the Federal Courts, under the amendments. A State differing with a neighbouring State, might be perfectly willing to leave a dispute, about boundaries, &c.

to the decision of the United States Courts, because, as between such parties, the arbiter must be impartial, and this would be the case, in all the other cases in the section, allotted to the cognizance of the Federal Courts. But the case is materially altered, when the question to be propounded, to the servants of the Government, is, whether their masters have, or have not usurped their powers. It is requiring too much of frail mortals, (unless the usurpation be outrageously gross) to ask of them, to decide in the affirmative. It is unreasonable, even to require of them, that if they have honest doubts on the subject, to throw those doubts into any other scale, than that of the Government, to which they are attached from interest.

The absurdity and the danger of any such stipulation on the part of the States, is too apparent, to admit of the idea, of its ever having been intended, and unless it can be shewn as clear as the sun in the firmament, that such was actually the intention of the clause, such a construction ought to be resisted by the States, upon the principle of self-preservation. They have no other recourse. If we, however, look into the journals of the Convention, we shall be satisfied, that it never once entered into the minds of the members to provide for any other disputes, than such as might occur between States as to boundaries or territorial jurisdiction, or between a State and Congress, where the former might be disposed (as was feared) to pass laws, clashing with the expressly delegated powers of Congress. It was anticipated, that disputes between States would occur, respecting territorial jurisdiction. In the confederation, a mode of adjustment had been provided. In the first draft also, of the Constitution, proposed by Mr. PINCKNEY, a power for this purpose, was invested in the Senate. In the reported draft of the Constitution, by the committee of detail, the same power is invested in the Senate. But in neither of them, nor in any of the five plans submitted to the Convention, is there any provision proposed for disputes, involving rights of sovereignty, between the United States and any one State. None of the proposed plans, as to the settlement of State disputes, being agreed to, it was finally judged proper to make the Federal Judiciary, the tribunal.

There was a strong apprehension in the Convention, that the State laws would interfere with those of the National Legislature, and it was upon this expectation, that Mr. MADISON advocated Mr. PINCKNEY's proposition, that a Congress should have a negative upon all State laws, and because, he moreover believed, "that no tribunal could be found, who could impartially determine the line of State powers, when drawn in doubtful cases." This proposition having been thrice lost in convention, twice on the discussion of Mr. RANDOLPH's resolution, and once again on the 23d of August, it became necessary in the minds of some members, that provision should be made, to prevent the States passing laws, which might infringe the powers exclusively delegated to Congress," for that is the expression in Mr. PINCKNEY's draft.

The Committee of detail not having made any such provision in their reported draft of the Constitution, because it would have been repugnant to their instructions, and the proposition having been repealed on the 23d

of August, as an additional enumerated power, there arose a necessity of a different phraseology of the judiciary clause, when it was under consideration. The judicial power was then extended "to all cases in law and Equity, arising under this Constitution and the laws of the United States," and also to "controversies to which the United States shall be a party."—The provision evidently was intended for the cases, which might arise, from the States, interfering with the powers delegated to Congress. It is impossible to read the secret journals of the Convention, without being struck with the unfounded fears, which at that day seized the bosoms of the majority of the members, as to the danger of the State Legislatures, constantly embarrassing the new Government. Thirty-five years experience has demonstrated that all their apprehensions were as "the baseless fabric of a vision." To prevent the evils which they anticipated from this source was the cause of those very amendments to the judiciary clause, which have been supposed to give the United States Courts cognizance of all disputes as to the extent of the constructive powers of Congress—however vitally such disputes might affect the sovereignty and very existence of some of the States. Mr. HAMILTON, (*Federalist No. 80*) sustains this very motive for introducing the above amendments. In speaking of the necessity of some constitutional mode of enforcing the observance of the restrictions on the State Legislatures, he says, that "the power must either be a direct negative on the State laws, or an authority in the Federal Courts to overrule such as might be in manifest contravention of the articles of Union. The latter, appears to have been thought by the Convention, preferable to the former, and I presume will be most agreeable to the States."

In speaking, however, of the motives of the Convention, as to the above amendments to the judiciary section, I am not to be understood, to say, that it is altogether clear, that even the construction here given or admitted, is not too liberal, but merely to contend, that whatever the words may mean, they could not mean, more than to provide a substitute for that favourite measure of some members, a negative upon such State laws, as might be passed, in repugnance to the express prohibitions in the Constitution.—There is a view of this subject, which at this moment strikes me with some force, and which would shew, notwithstanding the preceding reasoning, and Mr. HAMILTON's exposition just quoted, that all these amendments, might have been intended simply to refer to pecuniary claims, preferred by or against the United States, and also, to all suits which must necessarily or ordinarily arise, between one citizen and another, out of the general proceedings of the Government, and the conduct of its officers, agents or servants. The only way, to come at the intentions of the convention, is, to go up to the fountain head, for their first meaning, and to observe whether that meaning was altered, and how far it was altered by its subsequent acts.

In Mr. RANDOLPH's 16th resolution, the outline of the power of the judiciary, is thus given. "To extend to cases, arising under laws, passed by the General Legislature, and to such other questions, as involve the national peace and harmony." That by the words, "national peace and harmony," was intended, no more than disputes between States as to territorial jurisdiction, and by the words, "cases arising under laws of the United States," the clashing of jurisdiction which might take place between



the Federal and State Judges as to admiralty and other jurisdiction, as to piracies, captures, &c. is evident, from the simple, and yet important fact, that the committee of detail, who heard all the debates, certainly understood the resolution in this sense. In their reported draft of a Constitution, they make provision for the settlement of disputes between States, and for other cases connected with the national harmony, but none whatever as regards collisions between the Federal, and the State Governments, as to powers. We cannot therefore believe, that under these expressions, "national peace and harmony," the Convention ever did intend to include, such important disputes, as collisions about sovereignty. The most rational construction would be, that the cases *arising* under Legislative enactments, were such only, as must ordinarily occur, under every Government, and no others. The subsequent amendment to this clause, on the 28th of August, by adding the words "at Law and Equity" seems to establish this exposition, and as some cases of pecuniary interest probably might occur under the "Constitution" as well as of the laws of the United States, this may have been the cause of the addition of that word "Constitution" also to the section. The claim of Massachusetts, against Congress, for militia claims during the late war, would have been a case of Law and Equity, arising under the Constitution, had Congress not have allowed these claims. Other instances might, no doubt, be cited. In the Virginia Convention and North-Carolina Conventions, (I have not seen the debates of any other) when this clause was under consideration, great as were the objections, yet, no speaker anticipated the evil, of any such construction, that the judicial power was to decide questions of jurisdiction and sovereignty between the United States and any particular State. The whole apprehension was, that in process of time, the Federal Judiciary would sweep to its jurisdiction, almost all the subjects of litigation, so as finally to leave to the State Courts, nothing to do. Their fears are likely to be realized, by a decision of Judge STORY's in *Delovio & Boit*. The introduction of the words "controversies, to which the United States shall be a party," it is true, would countenance the supposition, that questions respecting the boundaries of power, were contemplated as fit for the cognizance of the Judiciary. But, on the other hand, it is extremely difficult to conceive, for the reasons already given, in this and a previous number, that disputes about vital sovereignty were intended to be referred to any such tribunal. A sovereign State can never be presumed, in any compact which it enters into with another State, to yield inherent rights of sovereignty. The absurdity and the danger of any State agreeing to entrust the decision of disputes about sovereignty, to an arbiter, to be appointed by the opposite party, is the best of all arguments to shew, that no such intention was ever entertained. What would become of the States, if, under indefinite phrases in the Constitution, they could, in this way, be deprived of all their rights.

I have not forgotten, that as regards disputes relating to the boundary between the Federal and the State jurisdictions, Mr. HAMILTON considers the Supreme Court as the tribunal, which is established for the purpose of ultimately deciding them, and in his thirty-ninth number, he justifies "such a tribunal as essential to prevent an appeal to the sword, and a dissolution of the compact." But, against this short and transitory, or accidental notice of the subject, is to be opposed, the fact, that whenever he has

occasion to answer objections, to the Federal Government, as a Government, likely to usurp power, and thus to endanger public liberty, he never once suggests, that the remedy for such a state of things, is to be sought elsewhere, "than in that *original right* of self defence, which is *paramount to all positive forms of Government.*" He calculates, invariably, that "all schemes of usurpation, if attempted by the national rulers, will easily be defeated by the State Governments."

Nor ought there to be any other remedy. It is proper that a tribunal should be at hand, to decide controversies relating to the boundary of jurisdiction, between Congress and the States, because all parties, might be willing, to have the opinion of such a tribunal, as long as it shall, by its proceedings, and the conduct of its members, inspire mutual confidence.—The exposition of any particular clause in the Constitution, by such a tribunal, might have so much weight, as to have the effect of preserving the harmony between both Governments. It is in this view, and in no other that the Supreme Court, ought to be solicited for its opinion. It might also happen, that the decision of the Court might be right, upon all the principles of construction, by which Courts are usually governed; and yet, there may be circumstances, which would not warrant an obedience of the States to its decrees. The General Government might so usurp power, as to be beyond the reach of any ground, on which a Court could pronounce its acts unconstitutional. In a former number, I noticed the Tariff, as an instance. The "Woollens' Bill" is perfectly constitutional, if the Court shall be called upon for its opinion in relation to it, because it must decide, according to the provisions of the Bill, and cannot enter into any notice of the motives of the Congress for passing such a bill. If it should pass, it will, in its shape, and all its provisions, be an act simply "to lay imposts," which is within the enumerated powers of Congress, whilst its design would be to promote a great local interest in particular States. Here is a case in which a State, would commit an act of SUICIDE, were it to admit of the principle, that for so gross a violation of the spirit of the compact, it was to seek no redress, but in the Courts of the United States. Other illustrations might be adduced. Let one suffice. According to the *letter* of the Constitution, the compact may at any time be altered, with the assent of three fourths of the States. There is but one single restriction, now existing, on the power to amend the Constitution, which is, that the *equality* of suffrage in the *Senate*, shall be preserved. Supposing now, that Eighteen States were willing, that the Constitution should be so altered, that a power be conferred on Congress to promote the objects of the Colonization Society, and to purchase and remove gradually, out of the United States, the slaves of the Southern States. This proposition is actually suggested in the last Philadelphia Quarterly Review—or suppose the proposed amendment be, a declaratory clause, that Congress has the right to abolish slavery under the Constitution, on compensation being given to individuals. Other instances might be added, such as amendments which effect a radical change in the Government as to its structure, so as to make it any thing but what the States originally designed it to be. What is there in the *letter* of the Constitution to prevent all these things being done—Were the Supreme Court called upon to decide, as to the right to make such alterations, would it not be compelled to say, that by the terms of the grant, there is an unlimited power to amend, excepting in one solitary case,

and moreover, might it not also call to its assistance, that refined metaphysical doctrine of its own Chief Justice, that "a power to create, implies a power to preserve" and from that power to create, easily deduce "a power to change." In such an emergency as this, would any one doubt the right of the six dissentient States, to dissolve the compact, on the simple ground, that an alteration, either in the fundamental polity of a State, or in the Republican principles of the Government, would be a gross violation of the spirit, in which the Constitution was formed. No one can doubt it.

This subject might be pursued almost without end. I have already stated that in all instances of abuse or usurpation of power, on the part of Congress, the State Sovereignties, being parties to the compact, it is their right to remonstrate, and to resist. But some may say, that according to my own previous reasoning, it is the *people in convention*, who have this right, and not the State Legislatures, who are not the people, but only a *portion* of the sovereign power of the State. This objection is thus removed:—Under the State constitutions, all power, which is not reserved to the people in a bill of rights, or by positive limitations, is invested in the State Legislatures. Not so in the United States' Government. In the exercise then, of that portion of the supreme power, which is conferred on a State Legislature, by its Constitution, that Body possesses, without a single exception, every right, not expressly forbidden, which the people themselves could possess. Amongst those rights, stands pre-eminent, the sovereign right of demanding that all compacts entered into, with other States, be faithfully fulfilled, and of adopting such measures to enforce such compacts as in their wisdom they shall judge fit. If the people of South-Carolina, in their collective capacity as a State, be a party to the Federal compact, (as is the fact,) they have the undoubted right, to call the General Government to account for an abuse of its delegated powers. If the people have that right, the same right belongs to the Legislature, that body having in this particular, all the rights, and having imposed on it all the duties of the people. And it is a right, which I trust they will not only exercise, but so use it, as to preserve the State.

But view the compact as we will. Let us regard the Federal Government, as it really is, a TRUST; or let us regard it, as has been suggested, as a deed TRIPARTITE, in which the people *en masse* are one party, the people as States another, and the people in one great political community as a third; or let us call it a CONFEDERACY of States; or by any other name we please, there is yet one feature in the system, which every man in the United States has always before his eyes, and that is, that we are governed, as one entire nation, and at the same time exist as twenty-four separate sovereignties, and that a common friendship, after all, is the great bond of our Union. On a difference of opinion then, as to the true meaning of any particular provision in the compact, the same course ought to be adopted, as would be proper between one friendly nation and another. As in the latter case, a conference would be proposed, before any step would be resorted to, as likely to lead to serious misunderstanding or war; so, in the case before us, Congress, before it assumed any great substantive power, such as the power over internal improvements ought, (under that provision, in the Constitution, which empowers it to propose amendments) to have submitted to the State Legislatures, the question, whether such a power belonged to the States, or to Congress, and

thus by soliciting their aid and advice, as to the true intent of all parties, it would have gained for itself, the confidence and the support of the State Legislatures. To both, the power cannot belong, for I have demonstrated, I trust, satisfactorily, in my nineteenth number, that there can be *no division of sovereignty*, on the subject of internal improvements. If Congress be not *exclusively* sovereign, as to *every* purpose for which the Federal Government was created, it cannot be sovereign at all. The concurrence of authority in Legislation, is only as to taxation, which is only a *means* of promoting the objects, for which *Civil Government exists*, and not itself an *end* or object of Government. It cannot exist on any other subject.—The United States' Government is supreme within its sphere of action, and the States equally sovereign as to their reserved powers. This is the decision of the Supreme Court, and cannot be confuted. The fault of the Supreme Court, is not, that it decides the United States' Government to be sovereign for the great purposes of its creation, but because it confers on Congress, as means of executing those powers, contrary to the spirit of the league, powers which have no *necessary*, and *appropriate* connection with those *expressed* objects, to which their Legislation is expressly confined by the terms of the instrument.

Every patriot and friend to his country, must freely admit, that where there are two rules of interpretation, or two modes of adjusting difficulties, *that* must always be the best, and the safest, from which no inconvenience or injustice can arise to either party. The difference between the two modes is this—Under the construction here contended for, there is scarcely an object of any consequence to the States generally, which may not be fairly referred to some one or other of the many enumerated powers, and therefore the measure may be constitutionally adopted. Should it so happen, that there may be an object, for which the Constitution has not provided, if such an object be one of *general* and primary interest, the instrument itself, has provided the means, by which it may be accomplished.—An amendment to the Constitution, may, at any time, be proposed, and if the new power asked for, be necessary to war, foreign negotiation and commerce, (those great ends of the Union,) there is no fear, but what three-fourths of the States will agree to the amendment. The people will always have intelligence enough to discover their true interests. If the assent of three-fourths of the State Legislatures, for this purpose, cannot be obtained, it would prove that the power ought not to be exercised. It is for the happiness of the *people* of the States, that the Federal Government is ordained, *and not for its own sake*; and the people, heard through their State Legislatures, are the best judges, whether any new contemplated measure will, or will not, augment their happiness. If the power be necessary, and it be refused, the people will suffer, as they ought to suffer. By this construction, the Federal Government will be the sun, or centre of a great political system, diffusing its light and warmth, to all the State Governments, which harmoniously and beautifully revolve around it, and thus, the order and design of the Convention, will be preserved. But, under the opposite course, which is the one adopted by Congress, *viz.* that of seizing upon power in all doubtful cases, a discretion is given to select objects for legislation, to which there is no affixing any limits, and the necessity of which may not be seen; a door may thus be opened for extravagance and waste in the public expenditure; the people may be bur

thened with excessive taxation; sectional interests may be promoted by the majority, under the pretext of their being national; sectional *jealousies will be fomented*; an habitual disregard to the State Legislatures will be encouraged; no amendments to the Constitution will be thought of; and strifes and contentions, between the States and Congress, will increase and multiply, until by some great convulsion, we shall all be resolved again into our original elements. Are we not, under the intemperate measures of Congress, rapidly approaching such a crisis?

### NO. 23.

If Congress had not regarded itself as omnipotent in legislation, it would not have ventured to name amongst its committees, "a committee on *Agriculture*," as if it possessed an atom of sovereignty to regulate Agriculture any more than it can pass laws on the subject of Negro Slavery, or regulate descents at law. What but a sense of its own omnipotence could prompt this body to think of laying one section of the Union under tribute, to encourage the industry of another portion? And shall we, in the Southern States, who furnish such means of commerce to the Union, by our valuable products; shall an interest so great and so paramount as the Agricultural interest of the South, be prostrated, that the local interests of Massachusetts or Pennsylvania may be promoted? I would insult you, my fellow-citizens, were I to doubt your unanimity in the reply which must be given. From one extreme of the State to the other, your voice has already been heard, and your resolutions expressed in terms not to be mistaken. As for myself, I cannot conceive a measure more fraught with permanent mischief and ruin to the Plantation States, than the Tariff. It is not simply to tax us to support our Northern brethren, but it is also to destroy all our means to acquire the ability to pay those taxes. In these States there are but two interests, and they cherish and support each other. The one is AGRICULTURAL; the other COMMERCIAL. Within the memory of man, and the records of history, no other interests than these ever grew up in our country, and for a century at least to come, it is not hazarding too much to assert, that no other can exist in South-Carolina. In this respect, we not only differ as to *interest* from the Northern States, but we differ from every State and Kingdom in Europe. The cause of the difference is obvious.

In those countries the great produce of the soil is bread stuffs; the population is dense; the soil is cultivated by whites; labour is more or less cheap; and each being likely to raise in abundance, those articles which the others need not, causes an anxiety in all to seek amongst themselves for the means of consuming the surplus produce of their own soil. That a period may occur in the future history of the Northern, Middle and Western sections of this Union, when manufactures may be properly regarded as of primary importance to them, it would be as much a waste of time to deny, as it would be to assert, that in the past periods of European history, they were not sometimes most judiciously encouraged by the fostering care of Government. That there is an opportunity even now of

encouraging manufactures to a certain extent in the Northern States, so as not to interfere with others of *their* local interests of equal magnitude, may be true. I, therefore, have not the smallest disposition to dispute the utility of manufactures in general, as a source of wealth and prosperity, provided all circumstances suit for their introduction into a country. I feel the weight of all that has been said in their favour; and believe that where they are permitted to grow up alongside of other interests, under the protecting care of a Government which has the undoubted power to extend its patronage to them, (as is the case with every consolidated Government) they will give activity and energy, to every languishing branch of internal industry. But however true it is, as a general position, that domestic manufactures is the true policy of nations, who abound with a dense and a crowded population, and in which there is more capital than Agriculture or Commerce, or other occupations, can absorb; yet, as regards the application of the axiom to the Southern States of this Union, and particularly to the plantation or cotton growing States, there is not one word of truth, in all that has been written as to the utility of manufactures, from the beginning of the world until the present day. All the writers who have discussed the subject, have discussed it with the sole view to the interest and circumstances of the countries in which they lived and wrote—countries, the very opposite to these Southern States, in climate, soil, population, production, and agricultural labour.

It is therefore false, under any possible light in which the subject of manufactures can be viewed, as regards the South, that any protection given by Congress to the manufacturers of Pennsylvania, can operate otherwise than as an *indirect* tax upon the people of the Southern States, amounting exactly to the difference between *what they now pay*, and the *cheaper price* at which they might obtain the article, if the *three tariffs* already imposed *were removed*. It is trifling with the understandings of men, to tell them that the Northern manufacturer can supply us with goods upon the same terms as the foreign merchant. He now furnishes, it is true, some coarse fabrics cheaper than the English dealer; but he is protected by duties almost amounting to prohibition of the rival article from abroad.—Take off all the tariffs of 1816, 1820 and 1824, and every manufacturer in the United States, for the protection of whose fabrics these tariffs were imposed, will be a bankrupt without a single exception. If it were otherwise, two and two could not make four; for the protection afforded by these Tariffs is not trifling. It is prodigious. All the bold assertions, therefore, of these men, and their adherents in this southern country, are to be disregarded. Any man of common sense must know, that if the home manufacturer could sell his fabrics for a lower price than is demanded by the foreign dealer for the same goods, that he would not ask for protection. The ground on which further protection is now asked for woollen goods, by the WEBSTERS, EVERETTS & Co. is, that the British having reduced their duty *five pence* or foreign wool, gives the British capitalist an advantage in our market over the home manufacturer. In the name

of common sense, what is this but a *direct admission*, that the British are about to undersell them. With the same boldness of assertion, they also tell our folks, (and surprising to say, it is believed by some) that the Eastern people can actually undersell the British in a foreign market, whilst the British are so underselling the WEBSTERS, EVERETTS & Co. in BOSTON, in their *own market*, that they are obliged to clamour for an additional Tariff upon woollens lest they should be all ruined.

No, my fellow-citizens. All that has been written on the subject of manufactures, has no more application to the Southern country, than it has to the Sandwich Islands, or any other Islands in the Pacific Ocean. Our policy is a peculiar one. The great produce of our soil is Cotton Wool. This *material* of manufactures not being raised in Europe, the foreign demand of it, never can be *partial* or *occasional*, as is the case with bread stuffs, or the fleece of sheep, or other produce of the soil at the North—but must be *steady* and *constant*, as long as England shall continue to manufacture for the world. EVEN ALEXANDER HAMILTON, in his elaborate report on manufactures, admits, “that if one nation were in a condition to supply manufactured articles on *better terms* than another, *that other* might find an *abundant* indemnification in a *superior* capacity to furnish the *produce of the soil*. And a *free exchange*, mutually beneficial, of the commodity each was able to supply, on the best terms, might be carried on between them—supporting in full vigor, the industry of each.” Mr. HAMILTON had here, in his view, two countries, *each* of whom could manufacture. His reasoning would, I think, well apply to the United States and England, for, as to the great agricultural products of the United States, which is cotton, there is a capacity to produce it only in one country. But, Mr. HAMILTON’s reasoning must be much more conclusive, where one country can manufacture, and the other cannot. This is the case as regards Great Britain and the Plantation States. We can raise the raw material—she cannot. She can manufacture—we cannot. But how vain are the speculations often of the wisest men. ALEXANDER HAMILTON never committed a more egregious blunder, than when he hazarded before Congress, in his report, the opinion, “That the EXTENSIVE cultivation of cotton in the United States, could, perhaps, *hardly* be expected, but from the *previous* establishment of *domestic* manufactories of the article.”

Every Planter knows, that for his cotton, he must look to Europe, and to England particularly, for a market. England is the principal customer, with whom we can expect to deal upon reciprocal terms, and to our greatest advantage. There is no rivalry, nor is there likely to be any, between Europe and the Plantation States—as there is, and always must be, between OLD England and NEW England. We are exactly in the situation of two shop-keepers, who do not vend, or deal in, the same articles—and between whom, there is no prospect of competition—and between whom, there of course, never can be jealousy. Only close the European trade against us, and where shall we look for a market? Not certainly to the North,

which does not probably consume a seventh of what we raise. No. Should that day ever arrive, that England shall not want our cotton—then may we despair.

Our true interest, I repeat, which is a distinct interest from an Eastern interest, is a free and uninterrupted commerce with the whole world, and particularly with England, where are the work shops of sufficient extent, to work up the raw material which we raise, and are in danger of raising in too great abundance. Take from us this market, by clogging the trade with protecting or prohibitory duties, and we drive our best customers to seek the raw material elsewhere, and to encourage other countries to grow cotton wool for them. With the exception of the fine brands of Sea Island cotton, it must be remembered, that a third of the globe is capable of producing cotton. To imagine, therefore, that England will take our cotton, if she is to go to South America and bring gold and silver for it, and not her own manufactures, betrays extreme ignorance. The experiment once hazarded, it may be fatal to us for ever. Commerce is a shy damsel, and must be caressed. Once slighted by a nation, she returns no more. What then will be the situation of South-Carolina? Will it be any consolation to us, that the time may come, in some hundred years hence, that the Eastern folks shall realize their visions of manufacturing for the world—and drive England and France entirely out of the market—when, in the mean time, we, our families and friends, shall have been impoverished—and more generations than the present, be reduced to beggary, and be involved in one common ruin. This cannot, and **MUST NOT** be. We have but one interest, and that is, the *Agriculture* that produces, and the *Commerce* that wafts our cotton and rice to the shores of Europe. No other interest can flourish, or even take root in our land. Nature has decreed, by an immutable decree, that in foreign commerce, shall South-Carolina seek for the sources of her prosperity, and her importance as a member of the great American family. The Government, therefore, which places upon that commerce any restraint, is not the Government that would, but the Government which **ALREADY HAS RIVETED** the **CHAINS** around the neck and the feet of Southern industry. That Government is not the Federal, but the **NATIONAL** Government of the United States.

This is strong language, but not too strong for the crisis. Never, never since the colonization of the country, has any measure been adopted, no, not the odious stamp act of England, which demands from the Southern States, a more steady and a more determined resistance than this tariff; not a resistance by resolutions of town meetings, but by such acts and measures of the local Legislatures, as shall cause the usurpers at Washington, to tremble at what they are doing, and to pause, ere they plunge this people, hitherto so happy and so united, into discord and disunion. Disunion did I say? Whether disunion shall approach us, rests not with ourselves, but with our Northern brethren. Forbearance and pusillanimity in the South, may retard, but cannot finally prevent disunion. There



is a point, beyond which, we never can endure the oppression of Congress. The "veriest worm will turn when trodden on," and sooner or later, we must turn on those, who would lay us under perpetual tribute. It is firmness alone—the same firmness, with which as a colony, we resisted with such success, the aggressions of Britain, that is to carry us triumphantly through all the perils which assail and surround us, and which in the end, will, in my humble view, lead to the regeneration of the liberties and the sovereignties of the States, as secured by the Federal Constitution. Let there be but one mind and one soul in the South, and we shall have more perfect union, and with our Northern brethren, better friendship and better feelings. There is no Congress that has yet been convened, or that will sit in our day, that will dare to trifle with freemen, who know their rights, and know too how to maintain them; who have within themselves, the resources for empire, the same resources which give to this Union, its extended commerce, and which is constantly aggrandizing the Northern States, whilst it impoverishes ourselves; whose half a million of cotton bags are a circulating medium, or as so many Bank of England Notes, in the marts of Europe, when the Pearl and the Pot Ashes, and Flour of the North, are dull and heavy merchandize. Let Congress then, be told *distinctly*, that though the "current of the public Treasury, has always run as steadily and unceasingly, to the North and East, as the *Gulf Stream*, and with as little prospect of its ever changing its course," yet that, when by some great political convulsion, it shall change its course, all those regions of the North, hitherto improved by the commerce created by our products, and by the rich contents of our Custom Houses, borne year after year, on the bosom of the fertilizing stream, will become comparatively barren and unproductive, whilst South Carolina, like a Phoenix, will rise from the ashes in which she is humbled. Let Congress beware, how it approaches us with any extension of the Tariff, or it may tread upon the RATTLESNAKE of the South. "It is SLOW in its resistance; GENEROUS in its warning, but may be DEADLY in its BLOW."

### NO. 24.

If the power to establish a Tariff to protect manufactures, were even a power warranted by the Constitution, still the motives for abstaining from its exercise, at the present time, are so many, and so powerful, that the mind would be at a loss to conceive, how an impartial Congress, legislating for the whole Union, and not a part, should be so fatally bent upon its adoption, did we not know from experience, that where suggestions of interest are at all attended to, the judgment must be in unison with that interest. Such is the case with the present, and I believe will, every day, be more and more the case, with the majority of every Congress, which shall hereafter be assembled at Washington. Whether an extensive protection to manufactures, will, or will not be, productive of the general good, which is anticipated, even in those parts of the Union, where the clamour for protection is so great, is not a question for us in the South to decide. It is no concern of ours. It will be enough for the purposes of our argu-

ment, that the great body of the people in those States, are in favour of manufactures. As long as this opinion shall prevail, and it will never subside, it is quite natural, that these people should, through their representatives in Congress, advocate "the American Policy," as it is termed. To expect, that with all the bright prospects of a general activity in business before their eyes, they should not combine their efforts, or that they will turn aside to ask themselves, whether the same measures, by which *they* are to be aggrandized, may not ruin other States, is so far from being rational, that it is contrary to all experience. It is rare, to find men in private life, practising that wholesome Christian precept, to do as they would be done by. In political societies, it is still more rare, and hence it is, that considerations of policy, so often suspend or supersede those of justice. If, therefore, we desire to know, how this, or that community will act, under any particular circumstances, there is no better way of coming at the truth, than to ask ourselves, in what does the interest, or the supposed interest of such a community consist. The answer being given, it will be seen that its opinions accord with their interest.

Now the opinion of the North is, (whether right or wrong is immaterial) that manufactures is their true and proper policy, and artful men have persuaded many of their good people into the happy belief, that in promoting their own interest, they advance at the same time, the interest of all the States. Thus we account for the majority of the members of Congress, voting for the tariffs, and as this opinion will prevail more and more every day, as these people shall taste the sweets of an extensive monopoly, so we in the South, must make up our minds, that in the natural course of events, there necessarily must be in every Congress hereafter, more and more of that influence, which will raise up Manufactures, at the expense of our Agriculture and our Commerce. Unless then, we resist the tariff on PRINCIPLE, so as to be done with it for ever, it will be a subject constantly before Congress, and we shall never have any repose. The tariff question will no more die away in our country, than *Catholic Emancipation* or *Parliamentary Reform* will in England. It is a mistake to suppose, that the tariff question, is the measure of this or that political party. It is not got up for the purposes of the Presidential Election. It is a movement of the people in the Northern, Middle, and Western States, who feeling the depressed state of their agriculture from competition with Europe, and the want of an adequate market, are taught to look up to Manufactures, as best calculated to create a home market for their grain, wool, iron, and other products of their soil, regardless of the evil to us in the South. That political characters will take advantage of this feeling at the North, and make it a stepping stone to their preferment, it would be folly to deny; and that Mr. ADAMS and Mr. CLAY, are using this feeling for their own purposes, I do as sincerely believe, as I must confess, that on the opposite side, there are also some men, who will, if they have the opportunity, use the excitement against the Tariff, for similar purposes. It is paying too great a compliment to the politicians on either side, to suppose that *they* have created these opposite feelings in the North and in the South. The *knowing* politicians on both sides, one and all, are not *leading*, but they are *following* public opinion.

Opposed as I always have been, and now am, heart and mind, to Mr. ADAMS, yet I would scorn to make a charge upon his Administration, which

it does not merit. The odium of the tariff belongs not to him, but to Mr. MONROE, and neither Mr. ADAMS, nor Gen. JACKSON, nor any other President hereafter to be elected, can ever suppress the clamour at the North for domestic manufactures. The firm resolution of the South, to oppose it on *principle*, and at every hazard, can alone exempt us from its operations.

Let us then, not deal unfairly to our political antagonists. Let our opposition to Mr. ADAMS, be steady, manly, and honorable. There are sufficient grounds, on which, as *Americans*, we may oppose him, and I hope successfully. But the tariff question must not be entangled with the politics of JACKSON or of ADAMS. It may suit some crafty politicians, on both sides, who are thinking more of their own interests, than either of the North or the South, to blend two subjects, which have no connection with each other. The tariff question is a sacred question, and it belongs to the sons of the South alone, as Southern men, to consider it. The man amongst us, who would approach such a grave and solemn question, with any other feelings, than those of a South-Carolinian, or who, before he would decide, upon this or that measure to be taken at this crisis, would ask, what effect it would have upon the Presidential election, is unfit to be a counsellor or an actor in times like these. He may be an *American*, but *he is not a Carolinian*.

It is the excitement of the Presidential elections, which, hitherto, has prevented us from looking carefully into our own situation, and has at length brought us to the unpleasant dilemma in which we find ourselves. It is an excitement, which promises to be perpetual in our country, and if we suffer it to engross our thoughts, as we hitherto have done, South-Carolina MUST perish. Let us then give to this question a portion of our interest, and not our whole interest. The vote of South-Carolina is irrevocably fixed for the Hero of New-Orleans. As *Americans*, let us, without noise, support him in 1828. As South-Carolinians, we may possibly have to oppose his Administration, as we do Mr. ADAMS'. General JACKSON may be as much a Tariff President, as is Mr. ADAMS. As far as the acts of an individual indicate his sentiments, he is in *principle*, a Tariff man.—General JACKSON voted for the Tariff upon principle—Mr. ADAMS now supports it with a view to *his own interest*. We have it on the unquestionable authority of Mr. M'DUFFIE, that Gen. JACKSON is for the Tariff on principle, and also on the authority of Mr. DICKERSON, the respectable Senator from New-Jersey. Mr. DICKERSON is a friend of the General, and mentions the fact, to his praise, that his election in Pennsylvania may not suffer from a contrary impression. The real difference between the two candidates is this—Mr. ADAMS, who in 1820, voted against the tariff and internal improvements, now advocates all these measures, with a view to his re-election to the Presidency. So unstable a man as this, is not to be relied on. General JACKSON having approved of the tariff of 1824, not from motives of personal aggrandizement, but from an honest conviction of its necessity at the time, possibly, may alter that opinion. His refusal to take the Presidency from the hands of HENRY CLAY, is a magnanimous instance of self denial. Such a man as this, will never administer the Government to his re-election, but solely with a view to his own honest fame, and the good of his country. From such a President there is every thing to hope and little to fear. Once convinced that an extension of the tariff would disturb the harmony of the States, he would be apt to discountenance it, by further

support, and this too, at all hazards to himself. This, however, is mere opinion. He may or may not disappoint his friends. Let us all hope for the best, but in the mean time, let us so act, as not to be diverted from what ought to constitute our main object, which is, to oppose the tariff upon the *right*, and not on the *wrong* grounds. It is throwing dust in the people's eyes, to make them believe, that on JACKSON'S being elected, all will certainly be right, or that South-Carolina will be benefited by the change as to her situation with the North. Such opinions are fatal, mischievously fatal to us. It is not with this, or that Administration, that we are to contend. We shall have to oppose every future Administration, as we now oppose ADAMS', until the tariff be put down, and put down for ever. Let us no longer be as cards in a pack, to be shuffled backwards and forwards, in a game, in which we can gain nothing, but will lose all that is valuable and dear to us.

Under these circumstances, and with every prospect before their eyes, that the manufacturing policy, would acquire strength and vigour as the Government would wax older, and that in a few years more, we shall be an insignificant minority in Congress, it has often amazed me, that the Southern Representatives should have occupied in the debate upon the Tariff, almost every ground of opposition, excepting the true and the only ground upon which South-Carolina is to stand or to fall. The Representatives from this State have zealously and ably discharged their duty.— They have done as much, nay more, than the rest of the Southern minority in Congress; but yet I ask, and I ask it with the most profound respect and deference to them all, what *has* been done, compared with what *might have been done*, had they brought their legal acquirements, their profound research, their knowledge of Constitutional law, and that phalanx of general talents of which they had the command, and that weight of character for which they are distinguished, to bear, not upon the secondary and to us unimportant question of expediency, but upon the great and paramount question of the Constitutional powers of Congress—a question so full of interest *to us*, who have *no* safety, but in the integrity and sovereignty of the States. The Southern members generally, urged the impolicy of the measure, as it regarded the interests even of the Northern States. They demonstrated its folly in various ways, and they brought to the argument all the aids which genius, high intellect, and their profound knowledge of the subject could furnish. They failed not to entrench themselves behind such names as HUSKISSON in the *old*, and FRANKLIN in the *new* worlds.— Their whole effort, was, in truth, a splendid display of talent, and a rich repast. But had all the speeches which were made, to the South of the Potomac, been the speeches of a BURKE or a CANNING; had they been “an irradiating beam of light, a continued blaze of eloquence” from the beginning to the end; yet, the light that was shed in that discussion, was not the light, to lighten their constituents to the *spot*, where their liberties were violated, and their *wrongs* inflicted. It was not that pillar of fire, by which, in the dark and dismal night which is fast coming upon the South, we are to be guided through a wilderness of unsettled opinions as to the *Constitutional* right, into paths, where we might find some rock, on which we might build for our safety, and defy all the tempests, with which the constructive powers of Congress, with the fury of a desolating and overwhelming flood, are sweeping away the rights of the States.

To dwell so much on the impolicy of the Tariff as a national measure, and scarcely more, than to hint at its unconstitutionality, was, for us, most unfortunate. The tenacity too, with which the Southern members clung to this ground, implied, that in their minds, it was the strongest and the best ground. But they were all mistaken. The inexpediency of the Tariff is a ground which must forever slip from under us. To rely on such a ground as this, is to build upon the sands, for we are the minority, and must continue a minority, and as a minority we must submit, in such a view of the subject. Why not, when the Constitution was about to be violated, by a clear and unequivocal act of usurpation, as ever was practised, why did not all the members South of the Potomac, with one soul and one mind, when they perceived a measure proposed so "big with the fate" of the Southern States, as is the Tariff; why did they not, I repeat, bring all the power of their minds, in demonstrating to the world, that neither the letter, nor the spirit of the Constitution, could authorize such a system of robbery, upon their constituents! The unconstitutionality of the measure

—————Alone should live  
Within the book and volume of their brain,  
Unmixed with baser matter.

I declare most solemnly, that if I thought no better ground could be taken against the Tariff, than its impolicy, as a measure of State; or if I were inspired with no better hope of ridding my country of this mill stone around its neck, than the forbearance of the North, I would yield the question in dispute, between the North and the South. I would yield it, and forever sit down, and be content to wear the chains, which, with our own consent in 1789, we fastened upon ourselves. If by that family compact, called the Constitution, South-Carolina ever surrendered, expressly or impliedly, any power to Congress, to legislate unequally upon the States, or to touch any subject, in which one State did not possess an interest in common with every other State, I would give up my State in despair. And which of us would not despair! Take from us the ground of the unconstitutionality of the measure, and what remains for us to do, but to submit, as is the duty of every good and patriotic citizen. What are fine speeches, what the powers of argument, when they are addressed to men, whose constituents have, perhaps, an hundred millions of dollars at hazard, unless protected by Tariffs! What are the sayings and doctrines of the political economists! What the authorities of SMITH, SAY, and RICARDO, when you address a body, the interest of whose constituents consists in differing from you, who

Were they to assent against their will,  
Would be of the same opinion still.

Men, with whom, if we except the recollections which the glories of our Revolution inspire, have not, nor never can have the feelings, the sympathies, or the associations that are in common with us in the South. I would as soon address myself to the Khan of Tartary, or as Mr. JEFFERSON says, to the marble columns of the Legislative Halls, with a hope of success, as to expect to operate upon the minds of a majority of Congress, sent from Tariff States to protect their local interests. No. If we are to be relieved

from the usurpations that are pressing us to the dust, we must not go to Washington, with arguments to convince the WEBSTERS and the EVERETTS, that by the Tariff policy, they will injure themselves as well as us. Such a ground is not tenable. The Bostonians desire no lights from the schools. They understand the science of political economy better than those who have written on the subject. Their sagacity in discerning their true interests, is by a kind of instinct, and the success of their establishments, and the activity that has been given to the industry of the country around Boston, by a spirit for manufactures, has caused even their farmers to be enamoured with the "American Policy;" and thus, we have a signal and a splendid triumph of the intelligence and good sense of a few plain woollen weavers of Massachusetts, over the metaphysical subtleties of the school of the economists.

Let us then, not think of going to Congress as suppliants for their favour, but let our representatives repair thither, with the HISTORY of our Revolution in the one hand, and the DECLARATION of Independence in the other. By the ONE document, Congress may be reminded of what it has forgotten; namely, the separation of valuable colonies from a mother country, brought about by the tyranny of a King and his Parliament, and *therefrom*, they may learn lessons of wisdom and moderation. By the OTHER, it will be astounded at the manner in which freemen can speak of their wrongs, and when it recollects, that the descendants of those freemen, inherit all the principles and the chivalry of their sires, such a recollection will be worth more than all the speeches from Maine to Florida.

### NO. 25.

There is another contemplated exercise of power, which sooner or later, will take place in Congress, and which, in my view, must be resisted at every cost, about which there must be no empty resolutions, no parleying, no compromise. That subject, is the claim of the American Colonization Society, to be supported from the National Treasury.

I know, that many of my fellow-citizens, in some parts of the State, will not at once fall into the opinion here advanced; but it is, because they have not reflected on the movements of this dangerous association of individuals. I intreat, therefore, that they partially bear with me for awhile, and if I do not satisfy all, I hope at least, to shew to the greater number, that whilst internal improvements are drawing off our resources to the North, and tariffs are reducing us rapidly into colonial vassalage, here is an insidious attack meditated at the domestic tranquillity of the South, which is to be regarded in a more serious light, than if an hostile foreign army, in great force, were to invade our territory. The bold and the daring invader attacks openly. In the bravery and devoted patriotism of our citizens, we have, under the worst of circumstances, a hope of ultimate success and safety. But against the secret dagger of the midnight assassin, no precaution can guard us. He enters our premises undiscovered. He advances, or he recedes in his softly stealing steps, as prudence would dictate, and he strikes the fatal blow, when it is too late for us to avert it. Thus it will be with the American Colonization Society.

This Society was established at the SEAT of Government in 1817, that in its very formation, it might be regarded as NATIONAL. Its ostensible object is the colonization of the free persons of colour of the United States, on the continent of Africa. The scheme at the outset, was thought to be so visionary, that the wonder was expressed, that so many intelligent members of Congress, at Washington, could be persuaded to attend the first meeting. The idea, that a class of people, who in the Northern and Eastern States, were enjoying in common with the white inhabitants, so great a portion of civil liberty, should voluntarily exile themselves, and encounter all the diseases of an African climate, and the hostility of savage neighbours, was so preposterous, that many persons suspected, that there was more meant by this Society, than met either the eye or the ear. It therefore became necessary to know, whether the Society had an *ulterior* design, not stated in its Constitution, and a question to this end, was distinctly put by some Southern gentlemen from Virginia. To all questions, as to the true design of the Society, the reply was, that colonization of the free persons of colour was the sole object. With many persons, however, from what accidentally transpired at the time, the suspicion still existed, that a Colonization Society was but another name for an *Abolition Society*; and certainly, if there be one fact, in regard to this Society, about which there never did exist a contrariety of opinion, it is this—that from the day of its institution until the present time, the Society has been publicly assailed by some, as a Society of doubtful character, and by others, as having a favourite *ulterior* object, to wit, the emancipation and removal in due time, of all the slaves of the United States—a scheme so utterly impracticable for any private Society to accomplish, and to which it is doubted, whether the National Government itself, with all its resources, is competent; that it is difficult to decide, whether, in the contemplation and formation of the Colonization Society, folly, or fanaticism, or wickedness, has had the greatest influence.

With the fact always before their eyes, that their Society was originally, and has always since been suspected by thousands and thousands, rather as intending to bring about the abolition of slavery, than of colonizing the free persons of colour, under the hope of voluntary exile, what have been the movements of the friends and members of the association? Under these public imputations, as to their motives, constantly existing in the public prints of Virginia and elsewhere, what has been their course of conduct? Have they been careful in their speeches at anniversary meetings, or in their annual reports, to avoid touching a subject, producing to us in the South, such exquisite sensitiveness, as the emancipation of our slaves? The contrary of this is the truth. In less than four years, we find the true feeling and the spirit, which characterizes the Abolition Societies, manifesting itself in this association, in terms too strong to be misunderstood. Their speeches breathe a spirit, which if it were to become general, would soon bring to ruin the State, in which we live. Let it not be replied, that the Colonization Society

is not responsible for the sayings and the speeches of its members.— It is responsible for them all, for it has, by its own deliberate act, circulated as part of its annual reports, all these speeches throughout the United States, together, with offensive extracts from Reviews, and other publications, and thus it recognizes the doctrines they contain. What difference can it make to us in the South, whether these inflammatory sentiments, are the sentiments of a Society, as a Society, or as those of the individuals of that Society, expressed at its meetings? What stronger proof need we require, of a Society being an Abolition Society, than when the speeches of its most distinguished members, are characterized by animated pictures of the horrors of slavery, and their deep settled conviction that the whole system must be rooted out of the land? If speeches, and toasts, and sentiments of men assembled together for business or conviviality, do not shew the spirit and character of the particular Societies, or companies, in which they are uttered; if these be not infallible criteria, by which we are to come at the scope and object of these Societies, I know not what are. It is not necessary to introduce all that has been said against us in these Societies. Let, however, Gen. HARPER be first heard at the seventh anniversary meeting. After depicting in glowing colours, the great social evil, that is eating its way to the vitals of the State, and the folly of a partial removal; and after estimating the number of slaves in the United States, at a *million and an half* of persons—“How then, (says he) is that MORE EXTENSIVE operation, which alone CAN COMPLETE the SCOPE of our design, to be *ultimately*, or ever accomplished. How is this vast mass of a vicious population, to be safely withdrawn from among us, and with justice to those, more immediately interested in their present condition.” He then proceeds to shew, the qualifying circumstances which must attend the removal of these people. General MERCER followed. He only differed from his distinguished friend, in point of time, when application ought to be made to the National Councils, as the affairs of the Society were not *yet ripe* for such a measure. “The policy is AMERICAN, throughout.” (The tariff over again.) “The North has a *deep* interest in the *emancipation* and colonization of the *slave* population of the Southern States.” Next rises GEORGE WASHINGTON PARK CUSTIS, Esq. who contends, that they must go at once, to the great Council of the Nation, as the guardians of American liberty, and he would tell them, “You are the last of Republics: You boast that it is the seat of freedom, of justice, of honour, of high and magnanimous feeling. The evil we would remedy, is none of ours. It was done before we were born, and it is left for us to undo. Lend us your aid to strike the *fetters* from the *slave*, and to spread the enjoyment of unfettered freedom over the whole of our favoured and happy land.” In another speech of Mr. CUSTIS, which I cannot lay my hands upon, he says, that “when the Society shall see the *stern* of the *last* ship, carrying the *last* of the free negroes, its business will be but begun.” In all the speeches, the doctrine is inculcated, that “if they are defeated again and again, in their addresses to Congress,



this should not *damp* their ardour, but give *new courage* for *new attacks*." "We ought, (adds Gen. HARPER,) to explain our views and plan, *soon* and fully; so that they may be seen and understood by the nation. The sooner, and the more fully this is done, the better; and in no way can it be so well done, as by an application to Congress, and THE DISCUSSIONS (mark that) to which it will give rise."

Thus terminates the seventh Anniversary Meeting of the Colonization Society. Now, I ask my fellow-citizens, if these are the sentiments which are to promote the happiness and security of the Southern States. Domestic servitude is the policy of our country, and has been so from time immemorial. It is so intimately interwoven with our prosperity, as a member of the confederacy, and with our comfort as a society, that to talk of its abolition, is to speak of striking us out of our civil and political existence. It is to remove from us the only labourers who can cultivate our soil. It is to cut off all the resources of our wealth. It is to consent to give up our valuable plantations, our tide swamps, and our prime cotton lands. In a word, it is to surrender the whole of our valuable lower country, to the "beasts of the field" and the wild men of the forest. And how dare the people of this Society, the greater part of whom at this day, form their crude, and their undigested, and their abstract ideas in their closets, with no knowledge of our country, no acquaintance with the habits and pursuits of our people, no experience of our peculiar wants, no consideration of the difficulties of emancipation, be it sudden or gradual—how dare such men, the men of Ohio and the Wabash, &c. professing as they do, friendship and good feelings towards us, presume to discuss a subject of which they know nothing, and when their discussions can produce no other fruit than the bitter apple of discord and disunion. Do these enthusiasts think it a trifling matter to hold out to our slave population prospects which never can be realized; or do they believe, that when by the discussions in Congress, they shall have kindled up amongst these people dissatisfaction, discontent and insubordination, that they can at all times so regulate its heat, that it shall not come to an awful and a wide spreading conflagration? Are they to scatter firebrands, and say they mean well. But, not content with indulging in its wild and mischievous schemes of the revolution in public sentiment, which it hopes to bring about by circulating the speeches of its members, the Society employs the Press in another way, as a still more efficient means of bringing about emancipation. It causes to be published at the Seat of Government, under its immediate auspices, and for its exclusive emolument, a Monthly Journal, which it styles the "African Repository," published "by order of the Managers of the American Colonization Society." It is in this periodical, that are constantly disseminated the sentiments which are to make the slave dissatisfied with his condition, and the master doubtful, whether he ought to hold in subjection his slave. It is here that we have essays, in which the system of servitude is pourtrayed in colors the most frightful and disgusting. It is this journal in which the

tales are to be told, and the anecdotes related, of the cruelty of owners to their slaves. And it is here again, that are recorded the examples of those silly mortals who sacrificed their wealth upon the altars of a moral enthusiasm; who think they aggrandize their country by manumitting their slaves, and thus letting loose beings, neither fitted by education or by habit for freedom, and who must be a walking pestilence wherever they go. It is in this journal, that are constantly expressed, those mischievous forebodings, "that the time must come when the oppressed shall rise against the oppressor with a desolating vengeance."

I know that some of our citizens will be disposed to treat with contempt such predictions, as the effusions of the distempered minds of weak fanatics; but let them not deceive themselves. The Colonization Society, under the specious pretext of eradicating from our country what the people of so many States regard as an evil of the first magnitude, daily acquires strength, particularly in the Middle and Western States, and it has some adherents, strange to say, even in the plantation States. It has even an "Hieronymus"\* from South-Carolina to advocate its cause in Northern journals. By means of the Press, it daily becomes more and more known to the *ultra* religious of all denominations, and the clergy in general, without being aware of what they are doing, give it their cordial support. To these last, it has been recommended to preach sermons on the anniversary of Independence; but none have been bold enough in the South to comply with the request. The Society is not in the hands of weak men. HENRY CLAY is one of its patrons, and a very distinguished anniversary orator. Judge WASHINGTON, of the Supreme Court of the United States, is its President. By his circular of the 14th of March last past, we are informed that the Society is to make application to Congress at its ensuing session. It is the Judge who transmits all over the United States "the form of a memorial to which signatures are to be solicited, and to be forwarded to the Congress." Should a question ever be made in the Supreme Court, whether under the words "general welfare," money can be voted to a negro society, or a negro colony on the coast of Africa, we may conjecture how this Judge will decide the question, for by his circular, it appears that he has already made up his mind. He declares in it "that the object of the Society is one of NATIONAL interest."

After so many declarations, and from a quarter so respectable, can any man doubt but that this Society will present itself before the National Legislature. These abolitionists, it is true, are not as well confederated and combined as the manufacturers. In the one case, great pecuniary interests are involved, and injudicious investments to the amount of many millions of dollars are at hazard, in consequence of "Mr. CANNING's *untaxing* the British nation." In the other case, there are no millions of dollars it is true, but there are a million and a half of poor degraded human souls who need restoration to the rights of freemen. The manufacturers may excel

\* In the controversy in the Boston papers, this writer does more harm to South-Carolina than "Vigornius," the open enemy of slavery.

in the talent which they will bring to their aid, but the abolition men will not be behind them in their zeal, and their perseverance to accomplish their ends. They both will have their special friends in the lobbies and in the House. They all have their plans of attack well arranged, and they both design to make the South feel its present colonial dependance.

The day then is at hand. The crisis approaches, when Congress is to be called upon to discuss a subject upon which no vote can be taken, which will not amount to an expression of its opinion on the subject of domestic slavery. Are the plantation States disposed to submit to any such expression of opinion. I trust they are not prepared, and my sincere hope is, that should this body presume to legislate on, or discuss this subject in any way, that there may be but one heart and one mind, and that we should cut the knot forever that would bind us to the worst of enemies. Of the dangers of such a discussion I shall speak in my next.

### NO. 26.

Our Senator, Mr. HAYNE, has not been an indifferent spectator of the movements of the Colonization Society. With the sagacity for which he is distinguished, he early perceived that these movements indicated a spirit which was hostile to Southern interests. He has expressed this opinion publicly and privately. To the inhabitants of St. Paul's Parish, he has recently stated "that the whole course and tendency of the Colonization Society demonstrated, (what indeed was openly acknowledged by some of its members, and is hardly now denied by any) that the colonization of the class of persons, whose removal was originally declared to be the exclusive object of the Society, was but the first step towards another great object, which, in his opinion, could never be attempted, (and least of all by the Federal Government) without *aiming a blow at our peace and security.*" To this sentiment, Mr. HAYNE added his firm and unalterable determination, to resist to the utmost of his power, the right of the General Government "to embrace a subject which belongs exclusively to the States, and which, in his view, could never be touched by Congress, (whether with good or evil intentions) without producing the HEAVIEST calamities." As far as Mr. HAYNE has had an opportunity, he has acted in conformity with this opinion. When RUFUS KING laid upon the table of the Senate his resolution to empower Congress to establish a fund for purchasing and emancipating slaves, our Senator submitted his protest, together with a counter resolution. On the petition of the Colonization Society being presented to the Senate, Mr. HAYNE again protested. So far has this Senator discharged his duty to his country, and further than this he could not well go under the circumstances.

In the co-operation and assistance of such a colleague as Judge SMITH, we have the most flattering hopes. The services of this latter gentleman on the Missouri question, are universally acknowledged, and the impression, which it is admitted he then made by his open and manly avowal of his sentiments, and the firmness with

which, on that occasion, he stood his ground in the debate, can never be forgotten by the people of South-Carolina. The success of Judge SMITH's resolutions in our State Legislature, on the subject of State Rights, was a remarkable triumph of the good sense of the people over that most unhappy influence in favour of Messrs. MONROE and CALHOUN's politics, which before had been insensibly carrying on the State, to the maintenance of doctrines, in which any thing but safety was to be sought. I intend no reflections on the small minority on those resolutions. In their ranks, I count names personally known to me, and for whom I have always entertained no common respect. But the best men are often mistaken,—and far be it from me, to consider our countryman, Mr. CALHOUN, as not entitled to the esteem and respect of his fellow-citizens. His services have, on some occasions, been most distinguished, and I feel them. But let us hope never to see the doctrines of Mr. MONROE's administration, in which he bore so conspicuous a part, again in fashion South of the Potomac. South-Carolina, in consequence of those politics, has been the sole cause of a want of cordial Union between the Southern States, as to common interests; to the mortification of Virginia, North-Carolina and Georgia; and to this may be ascribed their apparent lukewarmness on the present question of the Tariff. It was this same influence, (with shame be it spoken) which caused, three years ago, an outcry against that first of Southern patriots, Governor TROUP, of Georgia, when, like an Ajax, he was covering the sovereign rights of his own State, and of all the Southern States, with the shield of a most unparalleled and undaunted firmness. The venerable Patriarch of '76, who had always deplored the secession of South-Carolina from the pale of State Rights, was delighted when he heard of the movements of our Legislature on Judge SMITH's resolutions. It was like the dawn of a new day, opening upon the prospects of Union in the South, and in his correspondence with his friends, he hailed it as such, and anticipated the happiest results from a beginning to be made in that very State, which had so unaccountably abandoned a principle common to all. He thought that Virginia had taken the lead long enough, and that she had better thereafter follow.

But, faithful as Mr. HAYNE has been in the Senate, and as certain as he is of the co-operation, heart and mind, of his colleague, it is not to be conceded, that the firebrands which have been prepared to light up discord in the South, are in readiness, for any member to take them up; and let them be taken up when they will, a beginning will thereby be made by Congress to legislate on a subject which cannot be mentioned in the Halls of Congress without manifest mischief to these States—a beginning did I say? Why the beginning has already taken place. A door for discussing of the subject of slavery has been opened in both Houses of Congress. Their tables are already polluted with resolutions and petitions on the subject of negro societies. If South-Carolina does not close these doors, and close them forever against the intrusion of such subjects for debate, she can expect no other than the most serious results. In

the Senate, the door was not opened, without an opposing effort on the part of Col. HAYNE; but, in the House of Representatives, I do not recollect of any sensation amongst the Southern members, either at the time when the subject was first brought up before the House, or when the resolutions of the Legislature of Kentucky, recently brought up by Mr. CLARK, were submitted.

But how is it, that our citizens generally are not alarmed at these indications of a disposition in Congress to meddle with what does not belong to it? Except from Edisto, St. John's, Colleton, and a few more parishes, we scarcely hear of the Colonization Society; and yet I do firmly and conscientiously believe, that unless our Legislature shall, at its next session, or at some other early period adopt some measure, which shall at once bring it to the test, whether Congress shall discuss the subject of slavery directly or indirectly, we shall, in less than twenty years, be in a situation not much better than the people of the British West-India Islands.

Let us only look to the first causes of inquietude of these most harrassed Colonists; their early want of confidence in negro property; the depreciation of that property, and the signs of decay, which are every where now visible in those Islands, and we shall see that they are all to be traced to the interference of the British Parliament on the subject of slavery, and that from the *smallest* beginnings, have resulted those transactions which have brought these people to their present deplorable condition. When Mr. WILBERFORCE first brought forward his bill for the abolition of the slave trade, he was even *more cautious* than the Colonization Society. He took especial care not to profess that the abolition of the slave trade was but the *first* step towards an object which he then most deeply had at heart; but which, at that time, it would have been most imprudent to proclaim, to-wit: the emancipation of the negroes in the West-Indies. Indeed, he and his friends avowed that their sole object was *abolition of the trade*, and no more: and yet we have seen that he no sooner succeeded in the ostensible object, than he was observed to come out of his concealment, and to commence an indirect attack upon the whole system of slavery. Now, in the fulness of time, he openly advocates a general emancipation.

As great interests of the British Empire were at stake, from the capital invested in West-India estates, and the trade it then furnished, it was not an easy matter for Mr. WILBERFORCE, at first, to find many adherents for his ultimate plans. He was, therefore, at an early stage of the discussions, in small minorities; but small as these minorities were, yet the Colonists immediately felt and feared, that with such a mighty subject in his hands as that of the liberty of the British subject, and the appeals he could make to a people, whose prejudices and habits were adverse to slavery, he must rather gain than lose his influence, and they began from that moment to despond. Year after year, for the last forty years, as these topics were renewed in Parliament, the minorities became more respectable; and the hopes of the Colonists continued to sink. As their hopes were gradually weakened, so their property gradually depreciated in va-

luc. The point of depression to which it has at this day arrived, is most deplorable. So unceasing have been the interferences of Parliament, that their negroes are, to them, almost worse than worthless. The object of the abolitionists by holding out emancipation, has uniformly been, first to depress the value of negro property, and when it shall have arrived at its *minimum*, say some thirty or forty dollars a head, then to advocate a general emancipation, with a remuneration to individuals at a trifling cost to the Government.

The unfortunate fate of the people of the West Indies may be our lot, or it may not. This will depend entirely on ourselves.—If we are patient and submissive before Congress, the points of resemblance between us and the British Colonists, will soon strike the most common observer. But if we shall only exert the powers which God and nature has given us; the resemblance can never for an instant exist. These colonists are to be pitied, and not to be reproached. They have not within themselves, as we have in the Southern States, resources for empire; and, they are on this account, doomed to the end of time, probably, to have some European master. Unfortunately for them, they have no power to struggle with the mother country. They are weak colonists. But WE have the POWER to grapple with any set of usurpers, or any enemies, foreign or domestic. We are Sovereign and Independent States.—Infinitely more independent of those, who desire to bring us back to colonial dependence, than they would be of us. Let us then decide at once, that Congress shall not meddle with the subject of negroes, and let our Legislature be solicited, to interpose its powers between this species of legislation, and our ultimate ruin. There is no time for delay. If our Legislature refrains from expressing its sense of the wrongs of Congress in this particular, or prescribes to itself, no course of conduct, to defeat this tendency in the General Government, thus GROSSLY to LIMPING upon a concern, so CONFESSEDLY LOCAL, it will have no other effect, than to invite Congress, to repeat aggression upon aggression, upon the sovereignty of the State. Let us not deceive ourselves. The claims of the Colonization Society, will assuredly be pressed before Congress. It has in its train, upwards of an hundred auxiliary Societies, as I believe. It is a subject which will NEVER slumber or sleep. A paper called “The Genius of Universal Emancipation,” for the avowed purpose of abolishing slavery in the South, is established at New-York. A new periodical, on the same subject, is just established in Philadelphia. Sooner or later, therefore, the merits of this Association, will be discussed in the Halls of the National Legislature. Are we prepared, my fellow-citizens, to submit to a public discussion of this subject? Are we to stand by, and look on unconcerned, at men, who would in this way, lay the axe to the root of our whole system of civil polity. Forbid it patriotism! Let it be remembered, that the claims of the Colonization Society cannot possibly be discussed, without giving to Congress an occasion, *officially* to express its opinion against slavery as an *evil*, and the profession of a desire to eradicate it from the land. It will afford us, my fellow-

citizens, not **ONE** atom of security, that Congress does *not intend emancipation*. This it **DARES** not do at **THIS** time. As rapidly as it is advancing, in its attempts to put down the sovereignty of the States, it would scarcely venture upon a measure, so premature or unseasonable, as this would be. But it is not enough for us, to have a pledge of this nature. Congress *must not* be permitted to *express any opinion*, that slavery (which is the fundamental policy of this State) is an **EVIL**. The expression of any such opinion, would be an interference with a subject, which is not theirs. It would be an intolerably **IMPERTINENT** intermeddling with a concern, *peculiarly OUR OWN*. If there be an evil in slavery, the evil is ours. But our laws recognize it not as an evil, and it is the height of insolence in any other body, than our own Legislature, to decide what is, or is not, beneficial to South-Carolina. The interference of Congress, by an expression of its opinion, moreover, will have a tendency to *weaken* the attachment of our citizens to the policy, which is the **LIFE BLOOD** of the State, and without which, we must *cease to exist as a State*, excepting in name. An expression of such an opinion, would alarm the timid amongst us. It would cause those, who are wavering and in doubt, to give up their opinions. It would deter capitalists from investments in plantations and negroes, from the impression it would give, of a want of permanency in our systems, from a fear that Congress, at some future day, might legislate still further on the subject. As regards our domestics, the effect upon their minds, by any such opinion by the National Legislature, would be such, as to fill us all with the **DEEPEST** apprehensions. *Not for our safety*, for that will be a *concern*, to which, thank God, we feel ourselves competent, under any circumstances, and without any assistance from Congress; but on account of the discontent and uneasiness which might thereby be produced in the minds of those, who are now contented and happy.

The Legislatures of Ohio, New-Jersey, &c. in the paroxysms of their folly and their fanaticism, may pour forth their phials of wrath, upon the system of slavery, and so may **WILBERFORCE** and **BUXTON** thunder forth their anathemas in the British Parliament. Our domestics have the intelligence to know, that South-Carolina is not under the dominion of the one, more than of the other; and, therefore, any such expression of the public opinion in these countries, if it were ten times as strong, can do us no possible harm. But, my fellow-citizens, the case will be entirely changed, when such a legislative body, as the Congress of the United States, shall begin to **DENOUNCE** our systems. When so many weak white men amongst us (I beg their pardon) regard Congress as omnipotent, and are of opinion, that all the efforts of the States to confine this body within its limits, will be in vain, and moreover, are treasonable, it would *indeed be strange*, if the untutored slave were to think otherwise. The truth is, that our slaves do regard Congress as uncontrollable in its authority over the States; and the only way to remove these false impressions from the minds of our own timid citizens

and to cut off all the hopes of mischievous and designing slaves forever, is to give some **STRIKING** demonstration to them, that Congress can no more interfere with this subject, than Ohio and New-Jersey can make laws for us. Let these people, one and all, see with their own eyes, that the instant Congress **PRESUMES** to express its opinion, that South-Carolina will also resolve not to talk, but to **ACT**. The salutary effects of such a course upon their minds, will be such as words are not adequate to describe. On the contrary, let our slaves observe tameness and acquiescence on our part, in these usurpations of the Government, and they will feel, as as they are justified in feeling, that their future destiny belongs not to South-Carolina, but to Congress.

Congress then, must pass no opinion respecting the peculiar policy of our State. It must not denounce the system of slavery, as it exists in the Southern States, as an evil, or so act, as to be understood to desire to eradicate it from the land, unless it intends to make war upon the South. The laws of South-Carolina have forbidden its own citizens from emancipating their slaves. No slave, in consequence, can be emancipated without an act of the Legislature, and the Legislature have refused numberless applications for such purposes. It is perfectly competent for the Legislature to pass this law. It is acting within its reserved powers, under the Constitution, when it is regulating its slaves; and Congress, on the contrary, will usurp power, when it would interfere with emancipation, directly or indirectly. To countenance the American Colonization Society, will be to proceed upon the principle, that slavery is a rank weed in our land. Thus to denounce the whole Southern system, will be neither more nor less, than to excite in the bosoms of all the slaves in the United States, illusory hopes, that Congress may adopt some measures to mitigate their condition, and remedy their grievances. It will be an act of decided, unequivocal hostility. It will be a declaration of WAR, and **MUST** be treated and resisted as such. It will be the **ENTERING WEDGE**, with which, at some future day, our **VITAL** interests are to be **SPLIT** asunder.— It will be the **LANDING** of an enemy, and a bitter enemy too, on our soil! To take no steps, will be to see that enemy gain a foothold in our very dwellings. He must be resisted. There must be no discussion. Discussion will cause **DEATH** and **DESTRUCTION** to our negro property. Discussion will be equivalent to an act of emancipation, for it will universally inspire amongst the slaves, that hope. It will be to teach the slave, that for a gradual amelioration of his condition, he is not to look to his master, or to what *time*, and *circumstances*, or a wise Providence may bring about in its *own good* appointed time; but will encourage him to look to Congress alone, in every movement of which body, our slaves will take an interest, and though any particular measure cannot afford any relief, even to the present generation, yet it will at once be misconstrued by them into something for their immediate benefit, and thus induce them to believe, that rights are withheld from them, contrary to the intent of Congress. It is the discussions in the British



Parliament, which have caused from time to time, the insurrectionary movements in the West Indies, and brought the colonists from *wealth* to *despondence*, and from *despondence* almost to *despair*; and it will be discussion of the subject by Congress, which will bring us, one and all, to complete ruin, if we are weak enough not to check it at the outset, and at every hazard, aye, at the hazard of **DISSOLVING THE UNION**. Can it reasonably be hoped, that when our citizens shall be constantly *worried* on this subject, and constantly *uncertain* as to what Congress can, or cannot, constitutionally do, as to our slaves; that all will not be more or less anxious to be relieved from a property, the tenure of which is to depend upon the capricious will of a body, whom they know to be foreign to us in their feelings, and in their education and modes of thinking.

It is *no consolation* to say to us, that on any petition to be presented before Congress, the votes shall be in *our favour*, even if those votes be in the proportion of *ten to one*. If Congress can entertain such petitions, and discuss such subjects at *one time*, it can do so at *another time*. The small minority this year, may become more respectable the next, and so on, until it shall become alarming to the most sceptical amongst us. When Mr. M'DUFFIE, in some recent address to his constituents, most sincerely told them, in reference to the expected interference of Congress with our slaves, and by way of consolation too, that he did not believe, *there were in both Houses, twenty men* who would not vote as South-Carolina would wish on such a question, it struck many of us, that this intelligence would not be received as consolation by those who pondered the subject.—To me it is most alarming, that there should be found twenty, or even five members, with such sentiments; for, if by this, I am to understand any thing, it is this, that in some twenty or thirty years, this minority must be very respectable, as by every new census, the Northern strength will be augmented, perhaps, in the same proportion as ours will diminish. The West India colonists had, some forty years ago, all the consolation which Mr. M'DUFFIE now dispenses to us. The minority in the British Parliament was at first trifling. I doubt if there were even twenty or ten in both Houses of Parliament, who were for emancipation. But yet the West Indies are hastening, with a very quick step, towards complete ruin; a catastrophe, hitherto, only protracted by the good sense and discretion of Mr. CANNING, and by his ability in stemming the torrent of British feeling, in and out of Parliament, on the subject. And so will South-Carolina assuredly be ruined, if at this day, there are twenty men in Congress, who are for emancipation, sudden or gradual, and the right of Congress to take *even a vote*, is not **RESISTED** as an **ACT OF WAR** by South-Carolina. No. Those who would give the Southern Agriculturist real and substantial comfort, must assure him that a petition shall never be received, and a vote **NEVER** shall be taken in Congress, on any subject connected with slaves, without its being followed by an immediate dissolution of the Union, and then would be seen a **CONFIDENCE** abroad in our land, to

which we have been entire strangers, since the unfortunate Missouri question was agitated.

That question, we all know, was attended with its evils, and as I already have stated, the most prominent of all the evils which attend these discussions, is, that our slaves instantly misconceive the object of the discussions, and turn it to mischievous purposes. By the Missouri question, our slaves thought, there was a charter of liberties granted them by Congress, and the events of the summer of 1822, as will appear by the records of the trials, and the dying confessions of the misguided wretches, will long be remembered, as amongst the choicest fruits of the agitation of that question in Congress. Similar results have followed all discussions in the British Parliament. So alive are the negroes to the proceedings in Parliament, that if a regulation of trade be adopted, it is subject to misconception. Not three years ago, GEORGE IV. was compelled to issue his Royal Proclamation, and to publish it throughout the West Indies, that no act of emancipation had been passed by Parliament. It was the discussions in the National Convention at Paris, that first lighted up the fires of revolt in St. Domingo; and if we, in South-Carolina, are ever to witness any thing of the kind in our country, it will solely be owing to our DASTARDLY pusillanimity, and our BASE TREACHERY to our vital interests, by suffering Congress to support the Colonization Society, and thus to acknowledge the jurisdiction over the subject, by a body, who will make us at some future period, if we thus place ourselves in their power, CURSE the day that *ever we entered into union* with the Northern States.

The Colonization Society must then be driven out of the Halls of Congress, and driven out with DISGRACE. It is, as has been well observed, "the nucleus, around which, will be gathered the worst elements of discord." It is the NEST EGG, placed there by the Northern abolitionists, and therefrom will be hatched and raised for the South, anxiety, and inquietude and troubles, to which there can be no end. It will be the opening upon us, of Pandora's Box. Let it not be so. Let it be remembered, that when Congress claims legislation in any way upon the subject of *negroes*, it assumes the character of the enemy that would invade your territory. There must be "NO STANDING at your arms," as Mr. JEFFERSON says. Suffer him not to effect a landing. Meet him on the beach, and at the water's edge, "FOOT TO FOOT," as the same immortal Patriot expresses himself; and here let it be decided, whether our State is to be independent or not, or our safety put at hazard by KNAVES, MADMEN, AND FANATICS. Should that day ever arrive, when Congress, deaf to all intreaty, shall, in the extravagancy and insolency of its pretensions, to unlimited sovereignty, (I repeat *insolency* of its pretensions, for the occasion demands strong language) attempt to interfere with the policy so peculiarly our own, by expressing its opinion, that such a policy is a national evil, and ought to be rooted out of South-Carolina; which it must do, if it countenances the Colonization Society, my wishes will be, that there may be DISUNION, and that by the opening of our ports to

the whole world, we may avail ourselves of our natural and abundant resources for commerce, and thus gain the **WEALTH AND THE STRENGTH**, to defend ourselves against all our enemies from **WITHIN** and without.

### NO. 27.

I have, as yet, said nothing as to the flagrant *injustice* of a national protection to the American Colonization Society. Were this Society honest and undisguised as to its object, and its purpose was simply to relieve the United States of all the free persons of colour, by their *voluntary* exile, an objection of no ordinary magnitude, even in this view of the subject, presents itself, which is, that its purposes cannot be accomplished without taxing the people of those States, who are without any interest in the subject matter, for the relief of such States as have a very deep interest.

It is perfectly natural for the people of some States to regard free negroes as a grievous nuisance, and for very obvious reasons. According to the last census, New-York and Pennsylvania contained about sixty thousand of this class, and their rapidly increasing numbers, and their extreme indolence as well as insolence, has occasioned a general desire in the people of those States to be relieved of them. Their laws and police regulations are, at the same time so framed, as to encourage the fugitive slaves of the South to seek an asylum amongst them, so that their whole policy seems to be, first, to entice from the Southern planter his slaves; secondly, to emancipate them after they are enticed, by means of their Societies or their laws; and, thirdly, to get rid of them, not at their own entire expense, but at the expense also of the South, by a system called the "American system," and in the same manner as they would encourage their manufactures, (another "American system,") by causing the Southern States to contribute, by taxation, their portion of the cost. Now, really, to us in the South, it is a matter of indifference, whether the citizens of New-York or Philadelphia are tormented or not with this species of population. In truth, if we were to express any desire on the subject, it would be, that they should be more and more tormented with them every day, that they might be induced to aid, rather than oppose the Southron, when he demands the restoration of his fugitive slaves, and that they might indulge towards us, in general, some little more kind sympathy, when they are contemplating the system of slavery. In this portion of the Union, free persons of colour are not a *pest* to us. In the four States of South-Carolina, Georgia, Alabama and Mississippi, there are only 9,506 of such persons, not one third of the number, either of New-York or Pennsylvania; and our laws are such, that these persons are regulated with the same facility as if they were slaves. They give us yet no trouble, and our laws prevent any further increase of them, excepting by natural means, emancipation being expressly forbidden.

On the subject of free negroes, there is here, as there always has been, and must ever be, in many respects, an opposition of interest between the North and the South. At the North, these people are under *no* discipline, and consequently are insolent to the whites, whenever an occasion offers itself, and their occupation, a great portion of the year, is that of thieving or begging. Their jails and poor houses are filled with negroes. At the South, they are well disciplined, and are civil to the whites, and in their

way useful. They are peaceable and industrious, and always to be seen at their honest employments. They are not the inmates of penitentiaries or alms-houses. There is no doubt, however, but that if we in the South were relieved of this population, it would be better for our Southern cities, where they principally reside. But as yet, we have heard of no feasible plan to which there are not some objections. We, in the South, know these people too well, to believe that we can ever be relieved of them under any plan which proposes to them *voluntary* exile from South-Carolina. Let our ports only be opened, and free negroes will flock hence from the North in great numbers, and submit themselves, even to those laws which recognize no distinction, as to trial, &c. between them and the slaves. Our great difficulty is, in keeping them from secretly coming to reside in our cities. Should the time ever arrive, when they shall become troublesome to us, we shall not (like the Colonization Society) stupidly propose to them to quit us, and to go and fight for a home in Africa, but we shall expel them from the State, whether they like it or not. In the South then, it is perceived, we have no interest whatever in the views of the Colonization Society, and laying aside the unconstitutionality of the measure, there can be no propriety in our being taxed for such a purpose.

I would be very thankful to some of those *ultra* consolidation men, who think that Congress ought to adopt every measure which can promote the general welfare, if they would approve of Congress making provision for the voluntary removal of all *paupers* from the United States. Here is a class of people, who may not inaptly be compared as to condition, (I mean no offence to the real sons and daughters of adversity) to the free negroes in the Northern States. The law in many countries, deprives paupers of some of their civil rights, and in others, they are placed in some respects upon the footing of vagrants. Whether, however, they are incapable of labour, from bodily infirmity, or are wilfully indolent, they are not a greater burthen to the Northern communities than free negroes are. The free negroes, it may be said, are the paupers of the North, and as paupers they are supported by the public. The pretext for their removal, cannot be, that these people are a dangerous portion of the community, for they cannot be so, where they enjoy all the essential civil rights in common with the whites, and if the scheme of transporting them to Africa is professed to arise from the great interest which our Northern brethren feel for *our safety* in the South, we have only to reply, that we are quite competent on that score to take care of ourselves, and would rather distrust than follow counsels from abroad.

*Timeo Danaos, et dona ferentes.*

The only good that can reasonably be anticipated from the institution of the Colonization Society, (if the free negroes in New-York and Pennsylvania can be supposed to be fools enough to banish themselves) is, that it will enable these States to be relieved of a considerable body of paupers and vagabonds out of the Treasury of the United States. As for any relief to South-Carolina, I would venture from my personal knowledge of these people, to predict, that not ten in a period of ten years, would voluntarily go to Africa.

What greater right has Congress to provide for the removal of free negroes than for the removal of paupers in the different States, by providing a fund for the passage money of all who might choose to leave the United States. If there be one subject which can be more local than another, that subject is PAUPERISM. So strictly local is it, that in all countries with which I am acquainted, each *parish* is compelled to maintain its own poor. Upon the same principle, ought each Northern State to provide for the removal of free negroes, if such persons are regarded as a nuisance to society. Congress has no right to expend the funds of the United States for local objects.

When, however, we come to regard the Colonization Society as to its *real* objects, to-wit, the gradual emancipation and removal of the *slaves* of the United States, the injustice of providing a national fund for such a purpose, becomes more manifestly glaring. It will be to tax us, for the purpose of emancipating against our free will, our own slaves, which are as much our property as our lands or houses. About three-fourths of the slaves of the United States are contained in the seven States South of the Potomac and Tennessee, and were a direct tax laid for the purpose of paying for them, their proportion of this tax, by calculation, would be at least one-fourth. The 1,200,000 slaves in these States, valued even at the average price of \$300, would amount to 360 millions of dollars, of which sum we should have to pay ninety millions, and thus, instead of receiving \$300 round, we should receive only \$225. But how we are to be compensated for our lands, which, without labourers to till them, must be valueless to us, we are not informed. It is not stated in any *project* I have yet seen, whether that most puissant Body, Congress, is to give us any thing for our lands or not.

If there be any view of this subject which is positively insulting to a Southern understanding, it is that pretext which would regard emancipation, as strengthening the Southern country against an external enemy; as if to us, it would make any difference after the slaves are all removed, whether the French, or English, or Russians had South-Carolina: or whether it existed at all.

Planters of South-Carolina, where are you, that you are so silent on this subject! Bear with me, when I say to you, that if you are hereafter to acquiesce, as hitherto you have done, in the usurpations of Congress, it would be better for each of you to sleep under a roof of bayonets, loosely put-together, with a chance of rising to another morn, than to expect to come out safe and sound from the dangers that thicken upon you on all sides by your present apathy. The more you reflect upon the operations of the Colonization Society, the better you will be satisfied, that its ostensible object is so wholly impracticable, as to preclude the idea that it ever could have been formed, except for other objects than it professes to attain. In the United States, there are 228,698 free persons of colour. The natural increase of these might be computed to be at least 8,000 per annum. Who can believe that this number can ever be reduced within its present limits, when so many are born, and so few emigrate. The negro colony has been established ten years, and now consists of about 600 poor wretches who would be very glad, no doubt, to return, if they could. I do not understand that the Colonization Society would pay the expenses of any such who desire to return to America. There is a fact which it behoves you all to know,

and it is this. As long as the Colonization Society openly professed no other object than the removal of free negroes, it had but little support, and was confined in its operations to few States. There is nothing in the original plan which is captivating to such a man as Mr. WILBERFORCE, or as calculated to *take*, with the great body of the people to the North. No *emancipation* was held out, and the abolitionists were of course indifferent as to its success. The leading members of the Society, perceiving this defect in the plan, took the earliest opportunity of correcting the public impression in this particular; and to make their scheme more palatable, they then openly avowed, that though colonization of the free negroes was the first object, yet, that the *great object* was emancipation. The declaration is no sooner made, than there is an increase of zeal every where, and it is on the ground of its being an Abolition Society, that it now increases in its popularity throughout the Northern, Middle and Western States. Wherever the subject has been taken up, in any local Legislature, foreign colonization has uniformly been recommended to Congress, as connected with the emancipation of the slaves of the United States, and thus to remove, what they term "*a national evil*." This was the case with New-Jersey, and I believe of Rhode Island and Indiana, and the Legislature of Ohio in 1824, even proposed "*the passage of a law by the General Government, with the consent of the slave holding States,*" providing, that "*all children born of slaves thereafter, should be free at the age of twenty one.*" One would suppose, that if we had any desire to emancipate our slaves, we should not need a law of the "*General Government*" to that effect.

But, is it surprising that Ohio should venture thus far, when, instead of looking to our own State concerns, we have been so incessantly busying ourselves in the Presidential contests for some years past. Drilled as our communities have been in the general politics of the country, and being moved like the heads of Chinese figures, to the *right* or to the *left*, by the word of command, from men on both sides, who are really doing no more than playing the game, with the view to the *honours* at Washington; the wonder *rather* is, considering our negligence of our own business, that Congress has not practised greater usurpations of power.

Let us, however, now change our whole course. It is time so to do.—We have no power, it is true, to prevent the Legislature of Ohio, or the Congress of the United States from being offensive and indecorous in its proceedings towards us, but we have the power to say to the latter, that if it meddles with the subject of slavery, it must do so at its peril. In all cases where slavery is proposed to be brought into discussion, let us say distinctly to Congress, "*HANDS OFF—mind your own business—attend to your post-office and such matters.*" If this fails, let us separate. It is not a case for reasoning or for negotiation. It must be a *word* and a *blow*. The man who comes into my yard and preaches to my slaves, that they ought to be free, must not expect to go out with whole bones. So, also, if South-Carolina desires domestic tranquillity, she must separate from the Union if Congress insists upon the right to touch the subject of slavery, on the ground of its being an evil. I do not anticipate any such issue, because I do hope, and trust, that the State will soon act in a manner worthy of her, on this as well as on the subject of the Tariff.

Fellow-Citizens—This is no trifling matter. To those of us who hold negro property, there is but little difference between the case

of Congress forcibly taking from our pockets, three or four hundred dollars for every slave we own, and that of their so legislating, as to make this property valueless to us. The value of a slave arises not merely from his bodily capacity for labour, (for he has *volition*, and may abscond from the service of his owner,) but from his contentment with his condition, and his attachment to his master's household. Once restive and discontented, under the cruelly fallacious hope, that Congress is to take them and their whole race, under its special cognizance and care, our slaves will not only become a present burden to us all, but they will create in all of us, whose lot is to live in this country, a solicitude as to future consequences, which will be the worse species of slavery for us to endure. Never let us forget the West India colonists. In their lamentable history we have seen the consequences of the interference with the subject of slavery on the part of the British Parliament. What would not these colonists give, had they but the means of resisting the mother country, which are so ample in our hands, for keeping Congress within the legitimate bounds of its authority. Let any one only read the proceedings of these colonists a few years ago, when they assembled for the purpose of devising, if possible, some mode by which they could be relieved from the evils which beset them on all sides, and say whether, from the bosoms of men, there could spring better and nobler feelings, and whether from such a people, all that courage could accomplish, or patriotism and fortitude endure, might not be expected from them. But alas, what will avail, at any time, their courage. Theirs will be the courage of men in despair. Not so with us. The abolitionists of Philadelphia, by a great effort, have just returned as a member to Congress, **MR. SERGEANT**, and that the labours of this **WILBERFORCE** of the Western world, in the next Congress, may not be in vain, the seat of the operations of the Abolition Society, is to be transferred from Philadelphia to Washington, that, in conjunction with the Colonization Society, and the influence of Judge **WASHINGTON**, of the Supreme Court, that great **NATIONAL** object may be accomplished, **THE RUIN OF THE SOUTHERN STATES.**

It is for you, planters of South-Carolina, to rouse yourselves, and to make known to your Legislature, your full sentiments on this, the most important of all the subjects which can come under your consideration. Without noise, you can quietly at your military musters, and ordinary parish meetings, prepare petitions, not to the body who would be deaf to all entreaties of the kind from you, but to your own Legislature. Ask of it, whether Congress shall regard an Abolition Society as an object of national interest, and slavery as an evil to be rooted out of your land. Ask of it, to interpose its powers to protect its own citizens and their property, and you will, I believe, not ask in vain.

## NO. 28.

We have thus seen the situation to which the Southern country will be reduced, if, by any want of firmness amongst ourselves, we shall submit, on the one hand, to the exactions of Congress on our purses, and on the other, to its interference directly or indirectly, with the subject of slavery. On the subject of the tariff, there appears to be no fear of a due and proper resistance to the usurpations of Congress. There is a spirit gone forth, which I trust will not easily subside. But on other subjects, there is not that feeling which ought to prevail. The extensive internal improvements that are proposed to be carried on by Congress, will be a certain drain for our resources to flow Northwardly. But this is not the only important evil. Acquiescence in these measures, on the part of the State sovereignties, sanctions the precedent, that the General Government has the constitutional right to legislate on the local concerns of the States, a principle so fraught with danger to the States, that if it be not resisted by the States now, they may not have the opportunity or the ability to do so, when they shall be sensible of a result which they now do not perceive. It is because the effects of internal improvements are not so perceptible as those of the tariff, that they are so little regarded, by the people at large. One reason is, these improvements are but begun. When some progress shall have been made in them by the Government, the injury to the Southern States will be prodigious, in finally disarming them of the power to keep the Supreme Government within its limits. Every considerate person must know, that an exercise of power which puts it in the power of the Government to disburse such immense national treasures, as will be voted for internal improvements, will give that Government an immense stock of patronage, and in the same proportion in which patronage is given to the General Government, must it be withdrawn from the States. Such a patronage not only will enable a corrupt Administration to have large sums placed at its disposal, (as actually has been the case) and so to expend it in particular sections of the country, as to coax and conciliate into its views, persons who are opposed to it; but it actually deprives the States of that which alone can enable them to preserve their sovereignties, to wit, **INFLUENCE**. Who can look at the Federal compact, and not be struck with the unequal distribution of the power between the common head and the subordinate members. The powers given to the first, are, it is true, few, but they are all the important powers, and such as are calculated to give great influence, as well as physical strength, to the Government which possesses them. The *sword* and the *purse* are in the hands of Congress. To the States, on the other hand, are reserved a large mass of undefined powers, but they are no farther important, than from the influence which they might create in favour of the State Governments.

As long as this influence shall be preserved in the States, the State sovereignties must be secure. They cannot possibly be subverted, whilst the patronage of Congress shall be confined within the prescribed subjects on which its power is to operate; for great as is its



patronage in the constitutional exercise of its powers, it is not such as to cause, as yet, any alarm. But there is a material difference between what the patronage of the General Government *now is*, and what it *may be*, when it begins to extend its power and legislation over the local concerns of the States. The moment the time arrives, when by the jobs which will be at its disposal for roads and canals, commercial and military, and by the monies which it shall expend in various ways in the States, and by the offices and honours which it shall distribute, it shall have more talent enlisted on its behalf, and a thousand times more persons to support from its treasury, than the State Governments from theirs; from that moment, the General Government will become supreme in *influence*, and consequently supreme in *power*. In all collisions between the one Government and the other, as to constructive powers, the General Government will have this incalculable advantage, that in *its* councils, there will be but *one* feeling, that of a desire of supremacy, whilst the States will be always divided; a large proportion of its talent and influence of its best men, always siding with the General Government as the stronger party. The States, thus feebly opposing their *distracted* councils to every usurpation of the General Government, must always fail, and *consolidation* will follow as a matter of course. Influence in a State Government is therefore indispensable to its existence in a sovereign character. If it cannot command the aid of its own citizens, by creating amongst them, an interest to support its measures, it will be in vain to hope for a preservation of our happy Constitution. Influence is the weapon of defence provided for the States, and considering how little the States possess, compared with what it is in the power of the General Government to create for itself, he can be no patriot who would desire to see this *little* still *less*. All those, therefore, who advocate internal improvements, are not aware of the dangerous tendency of their own doctrines. The sovereignty of the States, existing in influence, as well as on the parchment, is the redeeming spirit of the Constitution. He who would wilfully deprive the States of their patronage, is an enemy to the Republic.

Supposing that the General Government were even just in its dealings towards the States, and were to give to us our full proportion of its kindnesses, by some *ocular* demonstration of internal improvements in our own State, and all this at the same, or a little less cost, than the works could be completed for, if constructed by ourselves; who can doubt, but that it would be better, that our own money should be expended by ourselves. It would be more pleasant, that we should have our *own civil* engineers, than to have persons sent on from the North, to do for us that, to which we would be competent, if we only had the same means. That the States are as competent to the work of internal improvements, as Congress, cannot be denied. We have, it is true, in South-Carolina, been injudicious in our expenditures, but the experience we have thereby obtained, is a pledge that we shall not waste money again. New-York is a memorable example of the ability of a State to make its canals.

Maryland is also zealously engaged in this work, and in many of the States, private companies are accomplishing all that are at present necessary.

There is one view of the subject of internal improvements, which merits some attention, on account of the extreme injustice which is likely to be done to particular sections of the Union. Amongst all the ends for which the Union was formed, it will hardly be believed, that it was ever intended that Congress should so legislate, as to take from some States the advantages given them by nature, and to transfer them to others. And yet, this will be one of the effects of the interference of Congress with this subject. As the States are now situated, New-Orleans is destined to be the emporium for the products of the Western country. This is an advantage she possesses by nature. It is, however, a part of the design of Providence, that intelligence and art should be made to triumph over certain obstacles of nature, as a means of stimulating the industry of man, and it is perfectly fair that Pennsylvania, or New-York, or Maryland, should level mountains, and intersect them with fine roads and canals, so as to draw from New-Orleans a part of the valuable commerce of the West. This is no more than what New-York does to all the cities in the Union. By the superior intelligence, or industry, or capital, or something else, (not forgetting the good luck to her of the Federal Union, which enables her to do our business) she increases her own commerce, by taking from all the other ports, and is flourishing upon the ruins of us all. This is all fair in trade.—But I do humbly conceive, that the *Government* of the United States has not a right so to expend its resources, as to do for Pennsylvania or Maryland, what those States cannot do for themselves. Canals cut across the Alleghany ridge, in various directions, might cause a serious diminution in the trade of Louisiana; and this diversion in trade is not effected by private capital or industry, but by the agency of a Government, whose duty it is, to give the States to their own resources for extending their internal commerce. If Congress cannot “by any regulation of revenue, give a preference of one port in the United States over another,” without violating the compact, I do not see, why it should be permitted to do so, by national roads or national canals, or by any other regulation of internal improvement.

Let the business of internal improvements be left to the States.—Here it can be carried on without a possibility of objection. I cannot conceive of any measure that will hurry us so rapidly towards a consolidated Government, as to take from the States in this way, the patronage which so properly belongs to them, and to confer it on Congress. If our citizens are to look to Washington, and not to Columbia, for their honours, their preferment, or their employment, the States must daily become more and more insignificant, and the General Government will acquire by such means, a *moral power*, that will set at naught all attempts in future, to keep it within its limited sphere of action.

It alters not the case, that these improvements in a State, are made with the assent of its Legislature. It is still subject to all the objections heretofore stated. The money of the Government cannot be applied to the general welfare of "the people of the United States," considered in mass, but must be expended for their general welfare, regarded as a confederacy of States, or in other words, for national objects. No object can be national, which is not expressed as such, by the terms of the compact. In my next, I will consider more at large this doctrine of internal improvements by Congress, with the assent of a State.

### NO. 29.

[*This Number is not one of the series of BRUTUS. On the 5th of Oct. it was published in the Columbia Telescope, under the signature of "A Radical Republican." Its merit, I think, more than sufficient to warrant its insertion here.*]

When, in 1817, President MADISON returned the bill setting apart the *bonus* of the United States' Bank, for constructing roads and canals, and improving inland navigation, he assigned as grounds of Constitutional objection to it, that the Constitution contained no provision authorizing the measure; and that the assent of a State could not confer on Congress the power to make roads and canals, or improve water courses in the body of such State.—12 *Niles' W. Reg.* 25. Afterwards, in the same Session, a committee of the House of Representatives asserted a power in Congress, 1st. To lay out, construct, and improve post-roads through a State, *with its assent*; 2d. To make and improve military roads in a State, *with its assent*; 3d. To cut Canals through a State, *with its assent*, in order to enhance and secure its internal commerce, and to improve the means of transporting military stores, &c in war: *Provided*, in all these cases, the jurisdictional right be in the State assenting and affected.—13 *Niles' Weekly Reg.* 287.

And here, I apprehend, is the origin of this subtlety, by which it was attempted to whip the devil round the stump, and to make that constitutional which was not so, *by virtue of the assent of a State*.—Let us, for a moment, examine the doctrine, and see how far it is grounded in reason. I take it as clear that all the powers *intended to be vested* in Congress are either expressed in the Constitution, or vested in Congress as necessary to effectuate the express grants.—The express powers, then, and those necessary to their execution, are all that the framers of that instrument judged it *safe*, proper, or convenient to lodge in Congress. But if a State, by its assent, can vest additional powers, then is the dangerous prerogative vested in a single State, (and that State, too, in the condition of one receiving a bribe) of conferring authority on the General Government, which the whole of the States withheld as unsafe, improper, or inconvenient. This view might easily be amplified; and other instances given where the assent of a State would be equally efficacious in giving powers to the General Government, which would be universally admitted to be dangerous in our hands.

Again. How was the Constitution, by its provisions, to be adopted at first? By nine States. Can an additional article be inserted by one State? Or view this additional power as it ought to be viewed, as an amendment. Can one State amend the Constitution? How would the generation who thought they had adopted the Constitution, if now permitted to revisit this earth, be surprised to find they had not adopted it: but that each single State had a right to add to an instrument which its framers foolishly supposed complete? If it be said that the assent of a State, in the cases referred to by the committee, is a cession of State sovereignty, which Congress simply accepts; where is the constitutional power in Congress to do *that*? Or, can Congress take that into their hands, which they are not constitutionally empowered to wield? Does the Constitution consider it safe to vest in them any thing like State sovereignty, except for the ten miles square. Can a State, constitutionally, divest itself of any portion of its sovereignty, so as to make itself, (as far as a State is permitted by the Constitution to remain sovereign) less than a complete sovereignty? Must not all the States in this Union stand upon a perfect equality as relates to sovereignty? If a State can part from a *portion* of its sovereignty, what is to prevent its giving up the *whole*? If so, can Congress take it from the State as a gift? For instance, could South-Carolina, or the people of South-Carolina, choose Congress for its Legislature; the President for its Governor, and the United States' Judges for its own, and abolish all these State functionaries?

Again. There is no instance in the Constitution, of incomplete powers, except such as are therein declared such. In all other instances, when Congress has power, it is complete. For instance, the power of Congress to declare war, may be exercised without consulting a single State. If Congress *possesses* the power of making roads, &c. it *needs not* the assent of a State: if it *does not*, that assent *cannot confer it*. What folly to be asking the assent of a State, to make a good road or canal for it, or to open its rivers! Would any State refuse it? It is a singular prerequisite, which is to come from the party benefitted. But it is the *other States* who pay the money, whose leave *ought* to be asked.

It will be observed that I have considered a State in giving its assent to make roads, &c. through it, as yielding *sovereignty*, and Congress as acquiring it. I know that the committee provided, what they considered, a *salvo* against this objection, by saving the *jurisdictional right* to the State. But this is all a mere fudge. If the State, in giving its assent, was parting with nothing, why ask that assent? Could the private owners of the soil give Congress their assent to make a road over it? No. The State might still refuse theirs. The State would still possess that species of sovereignty called the *eminent domain*; which consists, so far as concerns this argument, in a right to employ such portions of the soil of citizens as may be necessary for roads. The State might want, for the purpose of a canal, this very line of road, a part of it ceded by the citizens to the United States. When a State, therefore, gives to Con-

gress her assent to make a road or canal, she parts with this very sovereignty called the *eminent domain*. True, the committee reserve to the State the jurisdiction over the road after it is made; but this is another and distinct portion of sovereignty. Is there no sovereignty in opening a road through my land? If there is, it is that which a State gives to Congress.

A citizen could not convey to the General Government his lands, in the body of a State. (*Commonwealth vs. Young*; 1 Hall's Jour. Jurisp.) The United States could not hold such property. If they could not hold the *land*, how could they hold a right of *way*, which is nothing but an incorporeal hereditament issuing out of it? Their laws could not be extended to it. Neither could the assent of the State mend the matter. It has been decided that Congress cannot extend their laws to a fortress, not owned by the United States, but occupied by their troops, in the body of a State, even with the assent of the State. (*People vs. Godfrey*; 11 Johns. 225.)

Again. By an amendment to the Constitution of the United States, it is declared that private property shall not be taken for public use without just compensation. But this prohibition in the opinion of some, does not apply to a State Government; it only applies to the General Government: the States are as sovereign and unrestrained in this respect as before the United States' Constitution was framed. Now, if a State gives Congress a right to make a road over my land, who is to pay me for it? The State is not bound to do it. Cannot Congress; which is not lame at an excuse, say we did not take your property? Your State took it, and gave it to us; look to the State.

### NO. 30.

Our ancestors of 1788, foresaw the evils with which we are now afflicted. When PATRICK HENRY, of Virginia, and RAWLINS LOWNDES, of South-Carolina, in their respective State Conventions, opposed the Constitution in its present form, they feared that the States would daily lose their power and their influence, and that the time was not distant when the people would be consolidated into one Government. "You have given to Congress the sword and the purse" exclaims the Virginia Statesman, "and they will take the rest, whether you will it or not." "Upon my tombstone," concludes the venerable Patriarch of South-Carolina, after being exhausted with the debate, "upon my tombstone, I desire no other inscription than, that THIS IS THE MAN who opposed the Federal Constitution, because he foresaw that it would finally RUIN THE SOUTHERN COUNTRY."

Those who remember Mr. LOWNDES, as well as I do, can bear testimony to his virtues as a Patriot, and his rank as a Statesman of solid rather than brilliant acquirements. He was identified, soul and body, with the *Colony*, and the *State* from which he received so many honours; and it was his strong attachment to that State, whose independence he contributed to rear, which caused him to struggle to the last against a form of Government, which, in his view, would

bring it back again to a colonial dependance upon sections of the Union, who were opposed to our peculiar interests by education and by prejudice. Amongst the objections of Mr. LOWNDES to the Constitution, he thought that the character of the confederacy had not been sufficiently preserved; nor could he be reconciled to that policy, by which his State was to yield to the General Government its ENTIRE Custom-house. He was one of those who believed, and believed rightly, that a country, which, for its cultivation, must depend upon the labour of slaves, ought to possess, within itself, the power to keep in subjection those slaves under any circumstances. The government of our slaves, it is true, may be maintained by an habitual sense in their minds of their own inferiority, and of their obligation to perfect obedience. But Mr. LOWNDES had too much sagacity not to perceive, that any distribution of power which did not enable South-Carolina to contain within itself a more permanent principle of obedience from the slaves, than the influence, which certain habits of thinking, (always liable to fluctuation or change) might furnish, could not be a judicious or a safe one. The coercion of ARMS is the only principle of *force* upon which the submission of the slave is permanently to be calculated. The power of keeping up a regular force was therefore one, which, under no circumstances, South-Carolina ought to have given up. But when she parted with the PURSE, in giving up her Custom-house, it perhaps became afterwards, immaterial to her whether she had or had not the power of raising troops, for we surrendered the *means* of so doing. We have, ourselves, lived to see the necessity of a municipal guard of one or two hundred men to protect our citizens from sudden danger, and we behold the *sovereign* state of South-Carolina unable to raise such a guard, *without the license of the General Government*.— Was it surprising then, that such a man as was Mr. LOWNDES, born and bred in a country, cultivated by slaves, should have struggled as he did, for the only power by which his State could maintain her consequence and ensure her permanent tranquillity—the power of raising a revenue by the easiest possible means, and without its being felt by the people. Who can look around him and perceive a section of the Union like ours, blessed by Providence with the richest products, and so fortunately situated for an extensive and profitable commerce with Europe and the world, and not feel indignant that the people of the North, not content with having all the fruits of this lucrative commerce poured into their own laps, should exact of us still greater sacrifices than we consented to pay as the price of our dear bought Union. Let any man only take up and peruse Mr. M'CORD's speech, delivered at Columbia, and ask himself whether the General Government has been paternal to the South. So far from it, he will perceive by the irrefragable evidence which this speech contains, that from the *foundation* of the Government to *this hour*, the *whole policy* of the Government has been so directed as to cause the weight of the indirect taxes to fall upon the South. Whether manufactures were to be encouraged under imposts, which were necessary or not necessary to revenue; whether bounties were grant-

ed on the exportation of dried, pickled and salted fish, or whether their shipping interests were protected by exorbitant tonnage duties, or a diminution of duties on goods imported in American ships, the South still has been the beast of burthen for the North. In the words of Mr. M'CORD, "we have been paying a heavy, *destructive* tribute, worse than that which Ireland has paid to Great-Britain.—From the very commencement of our political existence under the Union, the Federal Government has been a continued and an oppressive drain upon the South," whilst not a single interest in which the South could participate, has ever received the least protection from Congress. Mr. M'CORD ably refutes, by facts and by reasoning, that most unfounded assertion of the Manufacturers, which has been thoughtlessly taken up even by "the *American Quarterly Review*," that the cultivation of cotton was originally protected by a Tariff. Southern interests have never received protection from the Federal Government.

Mr. LOWNDES foresaw, no doubt, all these evils. His intellect was of an high order, and his wisdom was of a character which almost amounted to prescience. But did he, in this, his last effort, for the sovereignty of the States, speak with the spirit of prophecy! Let us decide, my fellow-citizens, that he did not. Let us by our acts and our measures, demonstrate, that when he predicted the fate of South-Carolina, he was for once mistaken. Let us use his epitaph, as the warning voice of the best of friends. Let us profit by the counsel it contains. Let us remember, that "the strength and powers of usurpation, consist **WHOLLY** in the **FEAR OF RESISTING** it, and that in order to be **FREE**, it is only *sufficient that we WILL it.*"—That done, let not Mr. LOWNDES' prophecy remain with its falsification, but let us, in kindness to the memory of our deceased patriot and friend, and in gratitude for his legacy, destroy his tombstone and his epitaph, and substitute one commemorative of his services. Be ours now, the duty to avert by our firmness, the ruin that he predicted was in preparation for us; and upon the heads of our oppressors, let us break those new chains which both Houses of Congress, with a corrupt and corrupting administration, are now forging for us at Washington.

The safety of the republic is in the integrity and sovereignty of the States. It is here and here alone, that the great principles of civil liberty are safe from the hands of violence and ambition. In the hands of Congress they cannot be deposited, but at the risk of their being abused and destroyed. Congress aims at, and is in the exercise of great constructive powers. Under the confederation even, Congress aimed at sovereignty. Mr. MARTIN in the convention, "confessed that when the confederation was formed, Congress ought to have been invested with more extensive powers; but when the States saw that Congress indirectly aimed at sovereignty, they were jealous, and therefore it was, that they refused further concessions."

Under the present Constitution, Congress has so much power, that it seizes with more ease upon what it wants. The powers which

it now assumes, and the principles upon which it claims them, are such as necessarily lead to consolidation, and from consolidation, as Mr. MADISON well observes, we shall pass to monarchy—not monarchy in *name*, but monarchy in *substance*; and liberty once driven from the spot where she would delight to dwell, will continue to wing its flight, more and more westward. As regards the peculiar rights and interests of the South, I can see no political salvation for us, but in the undiminished sovereignty of our State. At every cost and hazard we must maintain that sovereignty. Through “good report and bad report,” we must not surrender one atom of it to Congress, unless we intend to yield all that is dear and valuable to us. The sovereignty of the State, is the ARK, into which the gradual swelling of the floods of usurpation, of avarice and fanaticism around us, admonish us to retire with our families and our goods, ere it shall be too late. Let us then, cling to this ark, and when in that great deluge of the constructive powers of Congress, which is now coming upon the States, shall be engulfed every principle of liberty, for which our fathers fought and bled, and every right of self-government, secured to us by the Constitution, we shall still float upon the bosom of the mighty flood, and on the subsiding of the waters, shall find a secure spot to rest upon, and we shall come out with our little ones, and our flocks and herds, safe and sound. To pursue any other course, or to fly for succour, to any other refuge but our own resources, or to the means so kindly provided for us, is to immolate our country on the altars of folly and crime. To the Congress of the United States, we can no longer look for protection. Instead of protecting us from danger, Congress itself is the invader. In such a case, says the sage of Monticello, “the States must shield themselves, and meet the invader *foot to foot*.” There can be no compromise—No half way measures.—When the rights of one sovereign are invaded by another sovereign, there is no course but resistance. If resistance produces Disunion, let Disunion come. Better that it should come now, than some twenty years hence, when our *trade* shall have been *destroyed*, our *policy crumbled to ruins*, our citizens *ruined*, and our *spirits broken down* by wrongs upon wrongs heaped upon us, by a Government, in the hands of manufacturers, fanatics and abolitionists.

As to union, who is there that has a family or property to protect, who does not value, and who does not want union, and want it too, as much, if not more, than those who make such an outcry about it? God knows I value union as much, and believe I am as deeply interested in it, as men in general; but I am not so silly, or so sentimental, as to regard union above all price. On the contrary, I think the price we have already paid for union, is more than a fair and a sound price for the commodity, and were the bargain to be made over again, I would not give as much. Give me union upon the terms, and in the spirit of 1789. Give me this blessing, as it is secured to me by the Constitution of the United States. Give me equal laws and equal burthens, as was stipulated, and I will defend the Constitution, as is my duty, with my “life, my fortune,



and my sacred honour." I will adhere to the oath I have taken, and I will redeem the sacred pledge I have given to support it. But place before me union upon the terms of the manufacturers, and the Colonization and Abolition Societies of the North, and I will spurn it as a thing grossly offensive to me. Such an union, I will, to the latest hour of my life, oppose.

I am not to be amused with a name, as a child would be with a toy. God has blessed me with intelligence enough to distinguish between the *substance* and the *shadow* of the things of this world, and I too well know, what contributes to the health and vigour of my native State, and what is eating out its very vitals, not to be alarmed at the usurpations of the Government. As to the Constitution of the United States, if a thousand such were placed before me, in which Congress is to have no limitation but its will, and in which my State is not to have and use at her discretion, her own resources, and in the way in which it was intended they should be used, I would break down the pillars of them all, and rejoice, and triumphantly rejoice, in the deed I had done. Away then, away with all this unmeaning cant and jargon of union, which at all times, and under all circumstances, are in the mouths of some self-constituted patriots. We all know, and feel the necessity of union. We all desire union. In proper union, we are sensible that our interest and our safety consists, and to preserve union, we are ready to make reasonable sacrifices. But there is a point in adjusting differences and collisions between nations, as well as between individuals, beyond which, neither religion nor prudence, nor a regard to our safety, would require us to go. The crisis approaches, when it shall be demanded of us to surrender rights, which we never can surrender, without impairing our prosperity as a State, and diminishing our security and our comfort as a Society. The tariff is an OPEN blow aimed at our agriculture and our commerce. The proposed protection to the Northern abolitionists, is an insidious, a CONCEALED, and a dangerous attack upon the domestic tranquillity of the South. Our citizens have seen the uplifted arm of the manufacturers to cripple their industry, and they seem both ready and willing to avert the blow. But the approach of the other enemy has been so slow and cautious, that it has been unobserved. The cause of African emancipation has slyly crept into the Federal councils. It will there advance or recede, as the policy of its friends and adherents shall dictate. But it is there, and if this hydra be not crushed, and with it, all the hopes of the Abolition Society, we may bid adieu to the peace of the Southern States. A beginning once made by Congress, no man can see the end of it. Give me disunion. Make me a colonist, not of England, (for that would be going "from the frying-pan into the fire") but, if you please, of Spain, France, or Holland, rather than compel me to be a permanent resident of South-Carolina, with a power on the part of an American Congress, to legislate, directly or indirectly, on the subject of slavery.

## NO. 31.

So much has been said in Town and Parish meetings, of the usurpations of Congress, and of the determination of the people to resist any further Tariff, that we are to take it for granted, that we now intend to do something more, than we have done on former occasions, of complaint against the Government.

This is not the first time that the Constitution has been violated by grossly taxing the South to support the North. In 1816, the Manufacturers succeeded in obtaining protecting duties for their fabrics. We, however, did not then take the alarm, though the taxes imposed upon *consumption* by the revenue laws of that year, were considerable. In 1820, the Manufacturers again pressed forward, and made very exorbitant demands for protection. We then remonstrated. A very able memorial of the citizens of Charleston, drawn by Mr. STEPHEN ELLIOTT, who was the Chairman of a most respectable committee, was transmitted to Congress. But the Tariff men succeeded, and the Bill laying additional duties on articles of consumption, was passed by Congress. In 1824, these voracious Manufacturers,

As if increase of appetite, had grown

By what it fed on,

Again demanded a higher rate of duties on foreign manufactures. The city of Charleston again remonstrates, by a spirited memorial, and its example was followed in other parts of the State. But all our remonstrances were disregarded, and the bill was passed. It was easy to foresee, and there were not wanting persons who predicted it in 1820, (when there was the first alarm) that a quiet submission, at that time, to these usurpations, would produce no other effect than to invite a repetition of them, and, that unless the remonstrances of the people were followed up by some decisive measures on the part of our State Legislature, we should have Tariff upon Tariff, until our whole foreign commerce was destroyed. The prophecy soon began to be fulfilled. In 1824, the South is again plundered of the fruits of its industry to pamper Northern monopolists. In 1827, a fresh attempt is made to plunder us again, and it is this attempt that has called forth the present expression of the public feelings and sentiment on the subject of the Tariff.

Now, I do most humbly conceive, that unless some very strong and decisive measures, on the part of South-Carolina, shall grow out of all this public excitement, it will have been idle for the people to have assembled at all. Resolutions of Town and Parish meetings have hitherto had no more effect than if they had not been entered into. Nay, more,—Resolutions of STATE Legislatures have had *no* effect. Our own Legislature has already resolved that the Tariff is an unconstitutional measure; and yet, I do believe, that any such legislative proceeding as this, never produces any other sensation at Washington, than a smile from the majority of the members, that a State Legislature should undertake to decide whether

their **HIGH MIGHTINESSES** were in the exercise of their powers. I do venture to assert that we shall, every four years, for a century to come, (if we last a fourth of the time as an independent State,) resolve in our Town and Parish meetings, (and our Legislature shall do the same,) that all these acts of Congress are acts of usurpation, and we shall talk of equality of rights and equality of laws under the Constitution; and of what our ancestors did; and we shall remind our oppressors of the consequences which followed the tax upon *tea* during the Revolution; and, that their descendants know how to value the rich inheritance bequeathed to them; and that after all this shall have been resolved over and over again, and a great deal more, it will have no effect whatever in restraining Congress within its limited sovereignty. Men, whose constituents have got so many millions of dollars at hazard, and who, from habitual usurpation, have such a sense of their omnipotence, are not to be scared by these kind of bullets, from their *own paper manufactories*; these *pop guns*, let off at Congress, from every crook and-corner of our State. The Northern people have been so accustomed to this sort of thing, that they will regard all these proceedings as the mode or *vent* by which Southern spirit *evaporates*, and they have a right so to consider it, because all such proceedings hitherto, have terminated and settled down, on our part, in **MOST TRANQUIL SUBMISSION**; though we, ourselves, know full well, it has proceeded from the extreme desire we have for peace and Union.

He is but a superficial observer, who does not see that all that has been done by us will amount to nothing, and that all this manifestation of the public feeling will have been useless, unless the Legislature shall *embody* that feeling—not simply by resolving, but **BY ACTING**; by acts and measures which cannot be misunderstood, and which, on being made known to Congress, must cause that body to reflect as to the extent of its powers, and to pause before it shall wantonly come into direct collision with a member of the confederacy, hitherto devoted to Union, but whose attachment to the great head has been weakened by the inconsiderate folly and extravagancy of its pretensions to unlimited power. If any other course than this is to be taken; or if, in plainer words, our Legislature is to resolve, and after it has resolved, is not to be prepared to resort to other measures, in case Congress shall not abandon the *principle* of the Tariff, then South-Carolina is *gone*, **IRRECOVERABLY GONE**. Let us never again bluster about the Tariff, and talk big on the subject of State rights, but let us ever hereafter endeavour to get by our *extreme civility* and our *passive obedience*, what we are afraid to attempt to gain, by a firm and a manly resistance. As I am one of those who never for an instant could believe that my countrymen, like the Neapolitans, are only valiant in speech, and submissive as soon as a soldier's bayonet shall be in sight, I take occasion to repeat, that if we are to contend with the General Government for our rights, we must contend on **PRINCIPLE**: I have been mortified over and over again to observe, that almost all the reasonings against the Tariff, in and out of Congress, have been grounded on its inex-

*pediency* and *inequality* as a *national* measure. If this be the ground, we are to take, we are undone. If Congress has the Constitutional right to protect Northern manufactures, that body alone is to decide on the expediency or impolicy of the measure. We may differ with Congress on this question; but, after Congress *has decided* that the measure is politic and *proper*, we must submit, however injurious it may be to our particular interests. In England, it is common for the Government to sustain particular interests at the expense of other interests. But no one doubts the power of Parliament to pass *corn laws*, and *navigation laws*, and laws to prevent the *exportation* of *wool*. All the people of England are under a *consolidated* Government, and if those who suffer by unequal laws cannot obtain a successful hearing from Parliament, they must be without redress. Though we are not, in America, under a consolidated Government, yet, submission is as clearly due to the Federal Government, where it is in the exercise of its legitimate sovereignty, as if there were no State Governments. If, then, we oppose the Tariff, on the ground of its *impolicy*, the instant Congress decides that it is not impolitic, our opposition ought to cease. It is, therefore wrong, decidedly wrong, to oppose the Tariff upon a weak ground, when we have that best of all grounds, that it is a violation of the compact, for Congress to protect a *local interest* of particular States at the expense of *all the people* of the United States.

Congress either *has* or it *has not* the right to protect Northern manufactures. If it *has* the right, we all must believe, that it will sooner or later, extend that protection still further. Under this view of the subject, the first duty of every good citizen of South-Carolina is, to make up his mind on the great question of the RIGHT of Congress to impose the Tariff; for by the decision of this question, in his own mind, is his conduct to be regulated. To perplex his mind about the impolicy of restrictions on commerce to promote manufactures, and thus to go into the metaphysical subtleties of the school of the economists, can answer no other end, than to bewilder him, as thousands before him have been bewildered. And after all, he must at last, come again to the question as to the *right of Congress* to adopt the measure. If Congress has the right which it claims, the path of duty is clear to every citizen. It is to submit. I, for one, would be the first to submit, were that my opinion. But again, if Congress *has not* the right, the path of duty is equally clear. It is for the State to take care of her rights of sovereignty, and thus to protect her citizens. Every man, I now hope, perceives the injudiciousness and folly of opposing the tariff, excepting upon the true ground, to wit, that it is an unconstitutional act.

To talk too, of resistance to the tariff, by all *constitutional* means, is to talk to no purpose. It would be better to say nothing. It is to talk of *submission*, and not *resistance*. When many sovereign States are parties to a league or compact between themselves, mutually fixing the boundaries of power, beyond which, neither party shall go, and some of the parties violate that compact, so as to endanger the *existence* of the others, can the mind of man conceive

any other mode of settling such a dispute, excepting by negotiation or the sword. Were any point in dispute between such parties, not important, a case might be made up by counsel, for the Supreme Court of the United States, and its decision might, by common consent, be received as final. But on a point involving vital interests, a State would not be authorized, as has already been observed, from its obligation to its own citizens, to submit such a point to the decision of any arbiter whatever; much less to the award and judgment of the Supreme Court, which is the tribunal of the General Government, and consequently cannot be impartial on a question of disputed sovereignty.

My fellow-citizens, you may view this subject as you please.— First, to the right, and then to the left. Turn it every way in your thoughts, and if there be in South-Carolina, a patriot, who can devise a practicable plan, by which, in our present deplorable situation, we can rid ourselves of the *leeches* that are drawing from us our life blood, I hope, in God, he will come forward and recommend it. I have heard of several plans, but I will, in another number, shew their inutility. I can, myself, see no hope for our domestic safety, or for our agricultural interests, but in RESISTANCE.— Resistance, and *firm resistance*, is the only course to preserve the Federal Constitution in its pristine purity, and with it, the hopes of freedom. Let me not, however, be understood by resistance, that I mean an hasty or an intemperate resistance. I mean no such thing. I would hope, that our Legislature will first remonstrate, and remonstrate with the respect, and the temper, and the dignity, which belongs to the solemn occasion. That she will cause the sentiments of the people to be laid before the great council of the nation, not in the ordinary mode in which resolutions from State Legislatures are there carried, but in some other manner so imposing, as to evince, without conveying a threat, that whilst from the bottom of their hearts, the people of South-Carolina desire Union; they cannot, and WILL not submit, to unequal and oppressive taxation, or to have the fundamental policy of their State, officially denounced by Congress as an evil, which ought to be rooted out of their land. Let our Legislature not adjourn, excepting for the purpose of meeting again, to receive the determination of Congress. But whatever may be done at Columbia, “let the members consider the issue.— Let them look to the end. Let them weigh and consider well, before they advance to those measures, which (should Congress not recede) must bring on the most trying and terrible struggle South-Carolina ever saw”—not however, a struggle for our sovereignty or safety, for I here fear not the result, but that more painful struggle in our own bosoms, whether we shall continue in firm friendship with, or be separated forever from our Northern brethren.

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NO. 32.

That the present is the proper and the *only* time, for South-Carolina to commence, and to perfect a plan of measures, for counter-acting the progress of the General Government to inordinate power,

must be obvious to every man, who coincides in the opinion, that in resistance, in some shape or other, is to be found our ultimate security. At present, we are a more respectable minority, than we shall ever be again; and, if we have made up our minds, that sooner or later, we must, from necessity, take a stand in defence of our State sovereignty, is it not the extreme of folly to postpone to a future period, that, which can be done at the present time; and when, by delay, no possible advantage can be gained, but, on the contrary, a certainty that we shall be weaker than we now are.

At the commencement of our political existence, South-Carolina had in Congress, five representatives out of sixty-five, which is one *thirteenth*. In 1790, she had six members out of 105, a little less than an *eighteenth*. In 1800, she had eight out of 141. In 1810, nine out of 181; and in 1820, nine out of 212, a little less than one *twenty-fourth*. So that from being a *thirteenth* of the whole, originally, and at the taking of the first census an *eighteenth*, she became a *twenty-fourth* in 1820, thus losing in thirty years, by the census, *one third* of her influence. Nearly in the same proportion, has she lost her influence, in conjunction with her sister Southern States. For instance—the four States of Virginia, North-Carolina, South-Carolina, and Georgia, had originally, twenty-three delegates out of 65, a little more than a third; and were Maryland to be added, which then was a Southern State, nearly one half of the whole. In 1790, the same four States possessed thirty-seven representatives out of 105, which was more than *one third* of the whole—a respectable standing this. In 1800, they stood forty-six out of 141. In 1810, fifty-one out of 181—and in 1820, fifty-one out of 202—a little more than *one fourth*—thus falling off in thirty years, about one third.—But if we even add to these four States, the three new States of Alabama, Mississippi, and Louisiana, still in 1810, they would stand as fifty-four out of 105, and in 1820, as fifty-seven out of 212. So that the seven Southern States above named, at the last census in 1820, were only a fraction more than *one fourth* of the whole. What they are to be three years hence, when another census is to be taken, we can easily imagine. Probably not a fifth or a sixth.

But discouraging as are the prospects before us, as to our future strength, (in the Senate too, as well as in the Representatives) yet when we consider the real strength we bring to the Union, we have every cause for congratulation, and every inducement not to suffer that strength to be diminished, by the assaults of Congress on the Constitution. I have not all the documents at hand, by which to develop the resources of the Southern States, which have contributed so much to the flourishing commerce of the United States, and which have created its navy, the pride of its friends, and the terror of its foes. Nor is it material. It is known to every one conversant with our statistics, that these resources are immense. I will take for example, the last fiscal year ending the 30th September, 1826. The exports of the growth, produce and manufactures of the United States, were \$53,055,710, of which, the article of *Cotton* alone, amounted to \$25,025,214, and Rice, \$1,917,445. So that the cotton

alone, the produce (with some trifling exceptions) of the five Plantation States of South-Carolina, Georgia, Alabama, Mississippi, and Louisiana, nearly equalled HALF of the total exports of the TWENTY-FOUR States, whilst the Rice and Cotton exceeded that moiety. If the article of Tobacco, which belongs more properly to Virginia, &c. be added, the three articles of Cotton, Tobacco and Rice, would amount to \$32,289,667. The products of the *Forest*, which also partly belong to these States, are not included. Nor is *vegetable* food, which amounts to \$7,527,257, and a part also of which, belongs to Virginia and North-Carolina. In truth, the five Plantation States, furnish *more than half of the total exports*, and the seven Southern States, probably *three-fourths*.

What proud and triumphant facts are these! Those same five *Plantation States*, which, three years hence, will be of so little consequence on the floors of Congress, and are doomed to be more and more insignificant in the representation, with every subsequent census, are yet of more consequence to this Union than the other NINETEEN put together. Look upon these facts, ye little men of South-Carolina, whose habit it is to underrate your own Southern country, by talking of its weakness, as compared with the North; who are ignorant that the physical strength of a country, consists in its *capability* for wealth as well as in its population; who would seek for security in the *forbearance* and *magnanimity* of the majority; who brand, as traitors, all those who differ from you, or who contend for resistance in *deed* as well as in words, when our sovereignty is to be assailed, and our vital rights to be wrested from us—who would calmly shoot down the sentinel on the watch tower, because he faithfully informs the garrison that the enemy is in motion. What think ye! Did the God of nature ever design that a country so situated as is this Southern country, with such rich products, and such a capability of employing forever, millions and millions of tons of shipping should be held in colonial vassalage by a class of greedy manufacturers; or, that its local policy and concern should so engross the attraction and interest of the public mind at the North, as incessantly to become the subject matter of their pamphlets, magazines and elaborate Reviews, as if we in the South, and all our institutions were at *their disposal*—or, as if there were no other difficulty as to the final disposal of us all, than that there is a want of unanimity amongst our good friends North of the Potomac, as to any one plan by which, with the aid of Congress, our slaves are to be rendered worthless to us.

Only take from this Union the resources of wealth and commerce, furnished by the Southern States, and what will be the situation of Boston, New-York and Philadelphia. What have the Northern States to give to Great-Britain and France as an equivalent for the manufactures they send to the United States, the imposts on which fill their Custom-houses to overflowing, whilst our own are daily diminishing. Would their flour and other vegetable food, and the produce of their forests and fisheries, answer the purposes of our cotton wool, the growth of the South: What would become of the

shipping of the Eastern States if the Southern States were under a separate Federal Government. Take off the immense protection we now give to their navigation interests, to our own serious injury, for what nation would they be the carriers as they now are for us. Where would be their Commerce? On the contrary, what would not Charleston, what would not South-Carolina be, were all Tariffs removed, and our ports opened, and a free intercourse opened with all the world, with capitalists flocking to our cities, great importing merchants residing amongst us, with their retinue of clerks, servants and dependants; and with our own Custom-houses and millions of dollars collected and expended amongst ourselves. Charleston, at one period, before the Revolution, had a greater trade than New-York or Philadelphia, and let the people of the North only be so unwise as to drive us to extremities, and they will see their own cities dwindle into insignificance, compared with what they now are, whilst all the Southern cities would be regenerated with an increase of trade, and with an abundant population. How can it be otherwise. We are so happily situated, that in Union, or out of the Union, we are without competitors, as to our great staple products, and on this account, our friendship must always be courted by all nations. Let us enter into a few particulars, as to the advantages possessed by the Northern people, by their union with us, that they may thereby learn to appreciate the value of the South to them. It is the North, and not the South, that in disunion, will first cry out "*Peccavi.*"

The foreign exports of S. Carolina in 1826, were \$7,468,966, and her imports only \$1,534,483, whilst the exports of New-York were \$11,496,719, and her imports, the enormous amount of \$38,115,603, nearly half the total exports of the United States. The exports of Massachusetts for the same period were, the *great* sum of \$3,888,138, whilst her imports were \$17,063,482. It thus appears, that South-Carolina only imports a little more than one fifth of what she exports, whilst New-York imports nearly four times, and Massachusetts more than four times as much as they export. If we take the four States of South-Carolina, Georgia, Louisiana and Alabama, their total exports are \$22,402,803, whilst their total imports are only \$6,210,551, less than a third. But there is another view of the subject. Though New-York exports produce to the amount of upwards of eleven millions of dollars, it must be remembered, that a great proportion of these exports, are the products of the Southern States. The cotton and rice which goes from Southern ports to New-York, and from thence to foreign countries, is very great, whilst from Southern ports, scarcely an article is shipped, but the product of the South. If I had any means at hand, to come at the value of New-York products, shipped from New-York, it might, probably, appear, notwithstanding her *great* canals, and her great population, to be trifling; perhaps, not above four millions: so that, in fact, she actually may import ten times what she exports. New-York and Massachusetts together, import \$55,179,112, out of \$84,974,477, total imports of the United States.



Let us now suppose that there is a separation of the States, and that New-York is to be placed upon no better footing than that of other nations. How could it be possible for her to import 38 millions of dollars worth of foreign manufactures, with products of her own to give in exchange, not a tenth of that value. Then as to Boston, the duties on goods imported from the 1st to the 11th of September, last past, a period of ten days, amounted to upwards of half a million of dollars, nearly equal to the amount accruing at our Custom-house for *one year*. Could Massachusetts in case of disunion, with her whole exports, not amounting to four millions, expect to import upwards of seventeen millions. To know what would be the difference in our condition, as to trade, between union and disunion, requires no mercantile sagacity or experience. Every man must know, that in such an event, all the business which is now done for us in New-York would be done by ourselves. For the 27 millions of dollars which our cotton and rice would be worth, the four Southern States could import, at least, the same amount, if not much more, instead of six millions. In disunion, the annual customs of New-York would not exceed, as they now do, ten millions of dollars, being nearly twenty times those of Charleston; nor would Charleston be a place of deposit for goods *in transitu*, a port of agencies, as she is now. They who suppose Charleston declines on account of the yellow fever, are egregiously mistaken. Let the Northern people only force the Southern States into independence, and New-York and Charleston will begin to think of changing places. Charleston would soon count her hundred thousand inhabitants as well as the Havana, which is a more fatal climate to foreigners, and would not have the same trade. Only contemplate the injury done to the trade of Charleston, by the course of business as it is pursued by Northern ship-owners, whose vessels come hither not only with all their own supplies for a voyage to Europe, but with cordage, provisions, sail duck, &c. for the use of their vessels expected here from abroad. Formerly, *more* foreign vessels came to this port, whose outfits in stores and cordage and the like, were obtained here, and thus furnished support to many of our citizens. Foreign vessels, making long voyage from Europe, were not in the habit of being furnished with more stores, &c. than were necessary for their outward passage to this port. It is amazing to see how Charleston has suffered in various ways, from the prodigious advantages which the North has over us, by tonnage duties and discriminating duties in favour of their own vessels. I could dwell longer on this topic were it necessary, but I have said enough for such persons, as are in the habit of underrating the importance of the South. It is time for us all to take other ground, and to feel that confidence in our strength and our resources, which becomes us at all times, and more especially at a conjuncture, when all that is valuable to us is about to be immolated upon the altars of an unprincipled avarice, and a bold usurpation of Federal authority. It becomes the more necessary to look into our means, because the time approaches, when, if the Congress of the United States shall

continue deaf to the admonitions of reason and justice, the Legislature of this State must put out its sovereign arm, and with the shield of its authority, protect its own citizens. If that protection shall be withheld from any mistaken notion of danger to ourselves, from collision with the Government, all will be lost, irrecoverably lost. It will be in vain for the people ever to meet again, if we are quietly to sit down under a new Tariff. All the valour that we have displayed at our meetings; all our spirited resolutions; all our "startling memorials; all the resolutions of our Senate and Representatives; all the able expositions of our Constitution in our favour;" all these will have been but "as a sounding brass and a tinkling cymbal"—*vox et præterita nihil*, if at the time we uttered them, we did not make up our minds to be prepared for other and ulterior measures.

The conspiracy that exists against the South is not a trifling one. It is wide spread, and embraces a larger portion of the Union than we think for. We are deceived if we think because some Northern and Western members opposed the "woollens' bill" that they are opposed to the *great principle* of the Tariff. This partial opposition is not founded on any friendship for us, but arises from a cause, the very opposite, and ought to alarm us the more. That cause, is the want of agreement amongst the Manufacturers, as to the *mode* in which the South ought to be taxed for their emolument. New-England, for instance, has a great capital embarked in manufactures, and carries on her business in incorporated companies, whilst in Pennsylvania, the business is done chiefly by private and smaller capitalists. In the western country, from the population not being dense, there is a still greater inability to sustain a competition with New-England. When, therefore, Mr. BUCHANAN, of Pennsylvania, (whose speech was without thought, lauded in some of our journals,) saw that it was the policy of New-England to diminish largely at once, if it could, the foreign importation, because it would give her the advantage (from her capital and machinery being all ready,) of the *whole* market, and thus come in for *all* the profits, before the smaller capitalists in his own State could get ready their goods, he valiantly opposes the Tariff, taking care at the same time to tell us that "he is *friendly*, and *always has been* to the *Tariff policy*, and that no *slight* difference of opinion would have *separated* him from the friends of the "woollens' bill." What then is the difference of opinion between Mr. BUCHANAN and Mr. WEBSTER, *par nobile fratrum*? Brother Jonathan, it seems, wished the extension of the Tariff to be confined to the *woollen* manufactures; but, if possible, not to protect the growers of domestic wool. It was no part of his plan to impose a duty on foreign wool, for the cheaper the price at which wool could be bought, the better would it be for Jonathan. But, when this is insisted on by some Pittsburg man, what does Mr. WEBSTER next do. He places such a *minimum* per lb. on foreign wool, as increases considerably the *ad valorem* duty near forty per cent; but, at the same time, permits the import of wool *upon the skin* without a *minimum*, which discriminating duty, in favour of such fleeces, would have had the effect of stocking the American market with them, and thus have kept down the price of domestic wool: but there was another *trick* which was to have been played off against the Pennsylvania wool growers. The Tariff upon foreign woollens was to have gone into opera-

tion the first day of August, 1827, but the protection to domestic wool was not to be afforded for nearly a year after, and not fully afforded until the 1st of June, 1829, so as to give the Eastern Manufacturers time to lay in a good stock of foreign wool.

Messrs. BUCHANAN & Co. however, have other reasons than the above for opposing WEBSTER, EVERETT & Co. Pennsylvania being a grain growing State, and her agriculture declining, wishes a Tariff on foreign spirits, that *whiskey* might be substituted for *New-England Particular*, and thus increase the demand for the grain of the former. No, says WEBSTER, that will hurt our trade in foreign spirits. Give us then a Tariff upon foreign hemp, so as to give the farmers of Lancaster county, or the Kentucky farmer a chance of competition with Russia. Jonathan opposes this also. The Pennsylvanian, seeing too sharply that the "woollens' bill," as it stood, would give the New-England folks *such a monopoly of the market of the whole Union*, that Pennsylvania and Kentucky would soon stand as much in need of a Tariff against New-England as New-England needs it against Old England, quits copartnership with Jonathan; and, for the first time in his life, most magnanimously votes against a bill taxing the South, and for this act he is praised in one of our journals. Our former Tariff, says Mr. BUCHANAN, "rested upon BROAD NATIONAL foundations. (What assurance!) They embraced *every* article, which required protection. The BLESSINGS and burdens of the system were thus diffused over the Union. (This is most unparalleled affrontry.) A pack of avaricious manufacturers, with all the activity of ravenous vultures about a fresh carcase, scrambling for the tit bits, venture to talk of their benefiting the Union. With whom can we so well compare Mr. BUCHANAN, as with the unrighteous CORNWALL Parson, who, when he heard the words "a wreck!" whispered amongst his congregation, and too plainly saw, from the restlessness of a few, not quite so pious as the rest, that they would quit the church and arrive at the wreck too soon, concluded his discourse, and enjoined upon his hearers, that they should all START FAIR. Had Mr. WEBSTER consented to have given Pennsylvania a *fair start*, in the race for plunder, we should have heard of no speeches against the "woollens' bill" from Pennsylvania, or elsewhere in the North and West.

The more this "American system," as it is called, is looked into, the more it will be regarded as a well digested system of PIRACY upon the South. If, hitherto, my fellow-citizens, we have not been more grievously taxed, than by having some fifty or an hundred per centum, put upon some articles of consumption, we must ascribe it to the fortunate circumstance of the THIEVES not being yet FULLY agreed as to the manner in which the spoil is to be divided. Every proposition at the North for a new Tariff is in the nature of a grand plundering expedition upon the property of the South, fitted out in Northern and Eastern ports. It is a faithful delineation of some of those broils or scenes which are sometimes exhibited in the numerous hiding places between the Havana and the Matanzas, where a part of the Cuba pirates, from some dissatisfaction, from previous distributions of the plunder, are unwilling to join in the risk of another expedition until the terms be well settled, and their proportion of the spoil be previously agreed on. The late intended piratical excursion, fitted out in Boston, under the command of WEBSTER & EVERETT, failed for the want of a sufficient crew to sail under such a flag, as that of the "*Woollens' Bill*."—

But will these parties always quarrel? No! A common interest, in most matters, still binds them, and sooner or later, they will make up their differences, and again cruise against us in company.

Fellow Citizens! We are precisely in the situation of a family who have listened to, and overheard from their windows, the conversations of robbers in the streets, and fortunately, know that its own dwelling is to be the scene of their villainous operations. What is the course which prudence would dictate to that family? Certainly, to be prepared with blunderbusses, and to BLOW OUT their BRAINS: So must it be with the Tariff. If the people of the North, will attempt to force it upon us, let us in the South, not argue the matter with them, but distinctly tell them, we regard them as Pirates, and as such we will resist them. This is the only way we can get rid of the PRINCIPLE of the Tariff FOREVER. Any course of conduct which is not founded on views and feelings of this kind, will be insufficient, unwise and unsafe.

### NO. 33.

I have no more to say, on the subject of the dangers which have for some time past, been thickening upon the Southern States. I hope, I have succeeded in shewing, that they are dangers of no ordinary character, and to the "Plantation States" in particular, serious in their consequences, and awful, perhaps, in their issue. If the views I have taken; as to the best means of averting those dangers, are not just, I would hope, that the public will be favoured with the sentiments of others. The subject is full of deep interest to us all. If I have spoken the truth too plainly, it is better that I should err on this extreme, than on the other. The people of South-Carolina have been too little accustomed, of late years, to have the truth told them in the public prints; as to their real situation, not to profit somewhat, by what is now said. My design, from the beginning, has been to call their serious attention to their LOCAL affairs. From their own *proper* concerns, they are constantly in danger of being diverted, by the conflicts that are perpetually taking place in general politics. It is time that this should be at an end. Under such a state of excited feeling, as the Presidential contest must, from its very nature, forever call forth, we must perish at last as a Sovereign State.

In the present disposition which exists to support the rights and interests of the State, a good deal has been written and said, about OPPOSING the Tariff law. Whilst some are for a steady opposition, by acts as well as by language, many cautious people profess the *firm* purpose of counteracting the General Government, in its advance to usurpation; by all *constitutional* means in their power. Let us examine into these means, such as they have been stated to be, and we shall discover, that they are no means at all; and that it would be better to do nothing, than to think of such ineffectual remedies, against tyranny and oppression.

The first scheme, is that recommended by the Charleston Committee, which is a *non-consumption* agreement. On this same committee, are men, generally of very firm purpose of mind, and of sound judgment and observation, which makes it the more surprising, that a recommendation, so perfectly inefficient as this, should come from such a quarter. Without stopping to inquire, whether it becomes the independent freemen of a

Sovereign State, whose rights are grossly violated, to assume a ground, which implies fear and weakness, in those who take it, I would ask, whether it be possible, in the nature of things, that a *voluntary* non-consumption agreement, can ever take place in the City of Charleston. In the first place, if it be difficult to bring the people of this city into one mind, on the *principle* even, of opposing an usurpation of the Government, and we even observe, amongst the editors of public journals, a disposition to ascribe all opposition to the Tariff, as a *trick* only of party, how can we ever expect, that unanimity in sentiment, which is positively essential to create a non-consumption agreement. And, secondly, if such an agreement were entered into, can we believe, that in a population of thirty-five thousand souls, *all* men are honourable, and all would feel themselves equally bound to perform what they promise? Men of honour, under such an arrangement, would regard their stipulations, to their utmost inconvenience, whilst those who are without honour, would not hesitate to buy the prohibited articles. Many poor people too, might, from *necessity*, be compelled to violate their pledge, and we could not, perhaps, blame them. We thus see clearly, that a non-consumption agreement, would be impracticable in our own community; and if so in *one* community, it must be *more so*, when extended to *many* communities. Still more impracticable will it be, when extended to a *whole State*. But when we come to propose a non-consumption agreement, which is to bind the people of many States, comprising many millions of people, both good and bad, the plan immediately strikes every citizen, as being utterly useless and impracticable.

Another plan proposed at some meetings, is, that we should commence manufactures amongst ourselves. This, I confess, would be a very good plan, if we had the right to impose a Tariff, so as to prevent the importation of Northern goods into our State. But this we are precluded from doing, no State having a right to lay imposts, without the consent of Congress, and the citizens of one State, being the citizens of every other State, and having a right of *ingress* and *egress*, every where with their goods. If the plan of manufacturing for ourselves, be predicated on the idea that we can undersell the Boston folks, it would be better for those, who have any such visionary hopes, to throw their money into the docks, than to invest it in manufactures. If the WEBSTERS and EVERETTS are so far ahead already, that Pennsylvania cannot manufacture a certain description of goods as cheap, what hope can we have? It will, at all times, be just as easy for New-England to undersell us, in our own market, as it is for Old England to undersell New-England in every part of the world. So that this plan will not answer. If by home manufactures is meant, that every planter shall turn his hands to spinning and weaving, what are those to do who have no plantations. Planters are not the only persons who consume goods; and how again, are we to complete an arrangement which is to bind all men, good and bad.

A third plan has been spoken of in private circles, and merits some little attention. It is, that we should lay an EXCISE, and apply the proceeds of the tax, as bounties for foreign manufactures, and thus cause a preference to be given to these manufactures, over Northern goods. This would undoubtedly answer, if we could compel persons, vending Northern goods, to take out a license; but a question here arises, have we such a power under the Constitution. I think we have not, and do not doubt, but that

the Supreme Court would so decide. We have the clear right for instance, to say, that all persons selling spirituous liquors, shall take out a license; but I doubt our right to tax a man for selling New-England spirits, *eo nomine*. If Northern goods could be so distinguished from all other goods, as to answer to a certain description of them, without being named as Northern goods, an excise might be laid generally on such a description of manufactures, so as to include the home manufacture, and exclude the foreign. But this is not wholly practicable. The provisions of such a law would not be beyond the contrivance of the Eastern people to evade them.

A fourth expedient is, a general understanding by resolutions at town meetings, to encourage smuggling by all the means in our power, and thus to be supplied with foreign goods. I should blush for my country, to see the exhibition of so shocking a spectacle, as that of a whole community deliberately resolving to do an *immoral* act upon a *grand* scale. But there is a stronger objection to this course of proceeding. It would imply, that we are opposed to the Tariff, merely because it takes from the pockets of every man, some few dollars; whereas, our opposition arises, from its being a violation of our constitutional rights. So that this plan is out of the question. It is, to say the least of it, a *mean* expedient. Let it never be forgotten by us, that in this collision throughout, there has been a manifest distinction, as to *motive* between the North and the South, which has placed us upon a proud and a lofty eminence; and that if we quit this vantage ground, we shall have to descend to the lowness of our adversaries. The motive which goads on the North to insist on the tariff, is the meanest motive, which springs from the human heart. It is *avarice*—*rank avarice*. But the bosoms of the South, as they become more and more swelled into honest indignation against the tribute of the Tariff, are actuated by the noblest feelings which can influence the actions of men and of societies—an adherence to the principles of Liberty and of the Constitution.—The North supports the Tariff from INTEREST, mean, sordid interest, The South resists it ON PRINCIPLE. Then let us so shape our proceedings, that in this great contest, we shall be admired and respected, whilst our adversaries shall be despised. Let us, over again, act the same part, in which we appeared to such decided advantage in our revolutionary struggle with Britain. If ever history furnished the example in any country, of a pure devotion to principle, and principle alone, apart from every other consideration, that example is to be sought in the determination of the Southern Colonies to resist the aggressions of Britain. These colonies, at the beginning, had no motive to quarrel with the mother country. Not so with the Eastern States. They had, or in a short time would have many. They saw that the measures of Britain were all calculated to check or to stifle their growing navigation interests, and hence, plainly arose that first cause of uneasiness, which afterwards extended itself to serious discontents, and at length to revolution. It was not the tax on tea alone. Mr. QUINCY was early sent on to sound the people in the South, as to their disposition to make a common cause with them. The proposal was acceptable to our principal characters, and when we entered into the cause, it was with a certainty, that our country would be the principal seat of war, and that the great evils of war would be felt at the South. We were not mistaken. We suffered greatly, but we suffered happily, for we have obtained our independence. We have struggled for it on principle alone, and not be-

cause we felt the oppressions of the mother country. The Eastern States are doomed by nature, to be competitors with England, as to navigation and trade. We never were, and probably, never will be.

The fifth, and the last means spoken of, is to resort to the Supreme Court of the United States. This, as I have already shewn, would be to go on a **FORLORN HOPE**. The Tariff laws are, in *their form*, perfectly constitutional. They would come before this Court as revenue bills, and as the Judges cannot enter into the motives of legislators, they could not do otherwise, than to decide, that Congress has a right to pass such laws.— Where the spirit of the league is broken, though the form of the compact be preserved, this is a matter of arrangement between the sovereign parties to that compact. Sovereigns sometimes appoint arbiters between them, to settle unimportant boundaries, where territory is no great object; but points of vital importance they discuss, and settle amongst themselves.

All the proposed plans being either inefficient, or impracticable, or immoral, we must at last come to the only mode of redress which is left for us. I have pondered the subject, over and over again, and situated as we are, and must forever be, to wit, in a minority, and with no hope of changing the national councils in our favour, I cannot see how we are to get rid of the growing usurpations of Congress, but by **RESISTANCE**. The word resistance, is a *startling* expression. Men shudder at the thought, and disunion, bloody civil wars, and a thousand chimeras dire, immediately pass in review before the minds of the timid, the quiet, and the good of the community. This is natural. But let people have a little time to be restored to their sober reflections, and they may begin to believe, that it is a mode, by which States, can sometimes come to their chartered rights and liberties, without bloodshed and without noise; although at the same time, resistance ought not to be thought of, unless those who propose it, are prepared for *all* the consequences. They must not calculate upon the *fears* of the opposite party. This, no honourable man does, in private disputes. States to be respected, must act as individuals would, under the same circumstances. Nothing must be said or done for *effect*, or to intimidate.— This is the course of a coward, who, if he happens to form a wrong estimate of his antagonist, has to retrace all his steps with disgrace.

But the consequences of resistance may not be so awful as some would anticipate. In this Union, there are twenty-four States; the people of which, are spread over a most extensive face of country, embracing a variety of climates. They are, moreover, greatly diversified in their agriculture, pursuits, habits, occupations, and prejudices. But yet these twenty-four Sovereignities, most wonderfully “move together, in concerted and harmonious action.” What is the link by which they are so intimately connected. It is friendship. It is the principle of a common affection, and a common feeling, inspired by the Revolution, upon which, as yet, rests the whole strength and the power of the Federal Government. To this, and this alone, must it look for its security and its permanency. As regards the external enemies, of this league of republics, it must, for the above reason, always be a Government of prodigious *physical* force and resources. History may never furnish such another example. But, as regards the power of this Government over the States, it is of a different character.— What its destiny is to be a century hence, it is not for us to say. It may, perhaps, be *physically* strong within, as well as without. But, at pre-

sent, it rests on public opinion. It wields, even now, a tremendous power; but the power is altogether a *moral* power, conveyed to it, by the *affections* of the people. Let these affections be alienated in one or more sections of the Union, and the Government is without power. It becomes impotent. Of this, we had a memorable example only the other day. A neighbouring State, was in serious collision with the Government, and on a point of sovereignty. The dispute had arrived at a crisis, when nothing was apprehended, but bloodshed and a civil war. The Government of the United States threatened *military coercion*, and Georgia was to be put down by the *bayonet*. With a promptitude, that ought, in my view, to entitle him to the gratitude of the Southern States, and to hand down to the latest posterity, the name of TROUP, as the most distinguished of ALL the names ENROLLED in favour of STATE RIGHTS, the interpid GOVERNOR of Georgia, orders out the *State Militia*, to support and vindicate its *outraged sovereignty*. The issue is known. Georgia, by THIS DECISIVE example of firmness, preserved her Sovereignty. Had Mr. ADAMS, and his thoughtless Secretary of War, reflected before they spoke, they would have known that the United States have not yet advanced far enough towards Consolidation, to possess the power, to *coerce a State*—and it was not until force was called for, to put down the rebellious Georgians, that the wise folks at Washington, discovered, for the first time in their lives, that the power of the Government was a *moral* and not a *physical* force, and that this same moral power, springing from the affections of the people of Georgia, was likely to be withdrawn, as soon as the Government should speak of sending troops to coerce them.

So will it be with South-Carolina. Let her only WILL that she will *not submit* to the tariff, and to impertinent interferences of Congress, with her policy, and the business is three-fourths finished.— There will, perhaps, be no necessity for calling out the militia — There will, probably, be no civil war. If an adherence to our rights is likely to cause civil war, our citizens will then have to decide whether they prefer colonial vassalage to resistance, and to civil war. I should hope that there are none such amongst us, who would hesitate in their choice. If war be the result, and the neighbouring States, who have a common interest with us, look on and withhold their assistance, even then, the Government could NOT PUT US DOWN. The only event in which we could be subjugated, would be in case the Southern States, were most unnaturally in league against us. I am opposed to all conventions of States, at the present crisis. In peace even, I will not embarrass the Government. I will not wage war in disguise. I am for open, undisguised hostility, as soon as resistance shall become necessary. Let South-Carolina act for herself, and the other States for themselves. It is time enough to enter into league when war shall be declared. Should we be even subjugated, what then? We shall have the proud consolation of not having submitted without a struggle, and I shall then, I presume, make as good a colonist as any of my neighbours. There is not an atom of disgrace in being vanquished. But there is meanness in submission. The Polander, in his adversity, is respectable. The Neapolitan despised. He talked and blustered and



the sight of the first Austrian bayonet, scared him into perfect submission.

If there be in our system of Government, one feature, which is delightful for the real patriot to contemplate, it is that, which shews the inability of the Government to coerce one of its confederated members. If friendship cannot hold us together, force never can. He is much mistaken, who can imagine, that the same physical force, which could enable the Government to put down one of the twenty-four Republics, would not so endanger the whole, as to make our government, any thing than what it now is. Into my mind any such idea of any one State being in *rebellion* against the Government, never once entered. I do not admit the monstrous doctrine that a *State* can *rebel*. Whenever a State comes in collision with the Government, it will be on a *vital* point, otherwise the State would not be supported in its pretensions, by its *own* people. A State can have no possible motive, to dispute the great powers of Congress, for these are *expressly* delegated, and are beyond all dispute; but the General Government has motives in abundance to crib and steal power from the States. It may, therefore, safely be affirmed that a State can never be wrong, in its disputes about sovereignty. The weak are not willing to provoke the strong, but the strong are always apt to impose upon the weak. A sovereign and independent State, then, in opposition to the Government is not to be treated, as we would treat a band of insurgents, who are acting without the authority of a State Legislature. Such a State is as much to be respected by Congress, as if it were a foreign nation. Negotiation is to be resorted to. The Federal Government is a copartnership between States, as to the exercise of power for the common benefit, and if the partners cannot agree, let them separate peaceably. If the copartnership shall ever be dissolved, the fault will not be with the States, but with Congress.—“Power is always stealing from the MANY to the FEW.”

*not* I am well assured, that the sentiments of these numbers, have not been palatable to some. To all such, I have only to say, that if I am to blame, then some of our most distinguished men are also to blame, for they have inculcated the idea, that to submit to the tariff is degrading, and their speeches imply resistance. When such men as Col. DRAYTON, and Mr. M'DUFFIE, and others, utter their sentiments in public, we are to presume, from their high character, that they would *not* utter what they do not feel. Colonel DRAYTON, to the inhabitants of St. Paul's Parish, said “that if Congress could impose the Tariff, then is our independence but a *phantom*; then have the patriots of the Revolution, toiled and *bled in vain*; then would it be better for us to return to our former *colonial vassalage*, when, if unjustly taxed, the burthen was imposed without discrimination, upon *all* our countrymen: when, if oppressed, our *oppressors* were not our *representatives*; when if enslaved, we were guiltless of forging the chains ourselves, with which our liberty was manacled.” Mr. M'DUFFIE regards “the spirit, which would convert the mass of the people into the tributary vassals of a few lordly

manufacturers, as not more odious, than would be the degradation of silently, and patiently submitting to the measure of the Tariff." He thinks it "idle to talk of moderation and temperance and dispassionate deliberation. They do not belong to the occasion." Mr. M'DUFFIE adds, that he "has carefully weighed his words, and has uttered none which the occasion did not, in his judgment, imperatively demand, and which he is not fully prepared to vindicate and maintain." Others have spoken to the same effect, but I have not their words.

But let me not be understood by quoting these authorities, as offering any apology for what I have written. I take shelter under no man's opinions, not even of such men as Col. DRAYTON, &c. My object has been freely to write what I freely thought, regardless of what might be said of me by *this* or *that* man. When, therefore, I have been told of the epithets of "Treason" and "Sedition" being in the mouths of some men who have read these numbers, I could not but smile, that such folks as these, should think, that in a matter which so vitally affects my country, as the Tariff, I should give the least heed to what they could say of me. I have written for the Planters of South-Carolina, and for the Merchants, Mechanics and other freemen of our State, who live amongst us and who are to *sink* or *swim* with the Southern Country; and not for those men who in every dispute between the North and the South, on subjects peculiarly connected with our safety or our interests, look to Boston for their instructions. If there be another set of men amongst us, whose opinions I do disregard, it is those natives, who are for placing under the ban of the Empire, every citizen and every printer too, who shall presume to name, or even to hint at *dis-union*, as if there can be any other *ulterior* recourse, for a State, whose sovereignty is assailed, than the dissolution of that compact, already broken by other parties. Least of all do I care, whether I please those busy politicians, who are moving heaven and earth for JACKSON or for ADAMS, and who are alarmed at any sentiment, which can divert the public mind, from a subject, in which they themselves may have a strong interest, and the people of South-Carolina little or none, compared to the subject of these numbers. To those of the first class, I offer no advice, excepting that when they send off their intelligence to their employers, as to the state of public feeling in the South, they take especial care not to lull them in the belief that the feeling against the Tariff is not a general feeling in South-Carolina, lest they lead them into difficulties. To the second class, I recommend the frequent perusal of that fine passage in the Constitutions of New-Hampshire, and other States; "The doctrine of *Non* Resistance against arbitrary power and oppression, is absurd, SLAVISH, and destructive of the good and happiness of mankind." To the third, I offer a sincere request, that they would look a little more towards home. South-Carolina needs at this time the services, and the entire devotion of every native and adopted Son of the South. And now one question at parting to all those, who in our community, think BRUTUS a traitor—Do ye think, there is a general

acquiescence in your opinions? I assure you not, "Because half a dozen grasshoppers under a fern, make the field ring with their importunate chink, whilst thousand of great cattle, reposed beneath the shadow of the native *Live* oak, chew the cud and are silent, pray do not imagine, that those who make the noise, are the only inhabitants of the field; or that of course, they are many in number; or that after all, they are other than the little, shrivelled, meagre, hopping, though loud and troublesome insects of the hour."

And of my fellow-citizens in general, I now take my leave, with an earnest entreaty, that they will at *least* ponder in their thoughts, the things that are herein written. But,

"If Cassandra-like, amidst the din

"Of conflict, NONE will hear, or hearing heed

"This voice from out of the wilderness, the sin

"BE THEIRS, and my OWN feelings be my meed."

**BRUTUS.**







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