DEFENCE

OF A

LIBERAL CONSTRUCTION

OF THE

POWERS OF CONGRESS,

AS REGARDS INTERNAL IMPROVEMENT, ETC.

WITH A COMPLETE REFUTATION OF THE ULTRA DOCTRINES RESPECTING CONSOLIDATION AND STATE SOVEREIGNTY.

WRITTEN BY GEORGE M'DUFFIE, ESQ.

IN THE YEAR 1821,

Over the Signature of "One of the People."

TO WHICH ARE PREFIXED

AN ENCOMIASTIC ADVERTISEMENT

OF THE WORK,

BY MAJOR (NOW GOVERNOR) HAMILTON,

AND A PREFACE BY THE EDITOR.

"AMBITIOUS MEN OF INFERIOR TALENTS, FINDING THEY HAVE NO HOPE TO BE DISTINGUISHED IN THE COUNCILS OF THE NATIONAL GOVERNMENT, NATURALLY WISH TO INCREASE THE POWER AND CONSEQUENCE OF THE STATE GOVERNMENTS, THE THEATRES IN WHICH THEY EXPECT TO ACQUIRE DISTINCTION. *It is not, therefore, a regard for the rights of the people, and a real apprehension that those rights are in danger, that have caused so much to be said on the subject of prostrate state sovereignties and consolidated empire. It is the ambition of that class of politicians, who expect to figure only in the state councils, and of those states who are too proud to acknowledge any superior.*"

One of the People.

"*I will endeavour to show, from our actual experience, that* WE HAVE MORE CAUSE OF APPREHENSION FROM THE STATES, THAN FROM THE GENERAL GOVERNMENT; OR, IN OTHER WORDS, THAT THERE IS IN OUR SYSTEM A GREATER TENDENCY TO DISUNION THAN TO CONSOLIDATION."—*Idem.*

"HE MUST HAVE READ THE LESSONS OF HISTORY TO LITTLE PURPOSE, WHO DOES NOT PERCEIVE THAT THE PEOPLE OF PARTICULAR STATES ARE LIABLE TO FALL, OCCASIONALLY, INTO A DANGEROUS AND MORBID EXCITEMENT UPON PARTICULAR SUBJECTS; AND THAT UNDER THIS EXCITEMENT, THEY WILL IMPEL THEIR RULERS INTO THE ADOPTION OF MEASURES IN THEIR TENDENCY DESTRUCTIVE TO THE UNION."—*Idem.*

"*If, after the National Judiciary have solemnly affirmed the constitutionality of a law, it is still to be resisted by the state rulers, the constitution is literally at an end; a revolution of the government is already accomplished; and anarchy waves his horrid sceptre over the broken altars of this happy Union!*"—*Idem.*

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PHILADELPHIA:

PRINTED BY LYDIA R. BAILEY,

NO. 26, NORTH FIFTH STREET.

November 21*st*, 1831.

As the subjects discussed in this pamphlet are of the most absorbing interest, involving no less than the permanence of our happy form of government, it will be sold, in order to insure a general circulation, at the mere cost of paper and printing, that is, at three dollars per hundred, and at the same rate for any quantity not less than twenty.

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STATE RIGHTS—USURPATION—CONSOLIDATION, &c.

"*Ambitious men, of inferior talents, finding they have no hope to be distinguished in the councils of the general government, naturally wish to increase the power and consequence of the state governments, the theatres in which they expect to acquire distinction.* It is not, therefore, a regard for the rights of the people, and a real apprehension that those rights are in danger, that have caused so much to be said on the subject of prostrate state sovereignties, and consolidated empire."—*One of the People. By George M'Duffie, Esq.*

The United States exhibit at present, a most extraordinary spectacle to the world. We are stunned with the most impassioned declamations in favour of "state rights"—and the danger they are in from the usurpations, and ambition, and despotic views of the general government, which is preparing to devour them, and labouring to produce the so-styled, most abominable of all governments, consolidation, whereby the lives, liberties, and property, of all our citizens, from Maine to Florida, will be inevitably annihilated. To guard against this conglomeration of evils, preparations are making "*to renew*" the bloody "*scenes of the revolutionary war.*"

A spectator remote from the fervid atmosphere of South Carolina, who could view the state of the country with the calm eye of a dispassionate philosopher, would pronounce that this alarming prospect was not only without foundation, but that the dangers of the nation were in a totally opposite direction. "The lion" of the United States government "is bearded in his den"—and by second or third rate members of the confederacy. He would pronounce, with Mr. M'Duffie, [see *postea* 13] that "*we have more cause of apprehension from the states than from the general government, or, in other words, that there is in our system, a greater tendency to disunion than to consolidation.*" Treaties entered into with all the solemn sanctions that bind civilized nations, are set aside without consulting either of the high contracting parties—and the dreaded monster, the United States, is powerless to enforce the observance of them, or to protect the suffering party. Maine appears disposed to be somewhat troublesome, about the decision of the boundary line. None of us has forgotten the difficulties the United States' government experienced during the late war, from the seditious opposition of individual states. To crown the whole, South Carolina, with a population of 257,000 white inhabitants, and 315,000 slaves, appears, so far as can be collected from the proceedings of the nullifiers, to be preparing to annul, and it appears from the operations of her executive, that he is preparing, *vi et armis*, to resist the operation of, laws enacted in due form by the entire confederacy of twenty-four states.

To render this procedure more ludicrous, it appears that but a bare majority, say 130,000, or 135,000, out of the 257,000, are prepared for

those outrageous measures. The residue of the population is decidedly opposed to them. Thus, suppose the adult males are about one-fourth of the whole population, it appears that less than 35,000 white males, are about to nullify, or abrogate the solemn acts of that "raw-head-and-bloody-bones," the Federal government!! And, *mirabile dictu*, all these disorganizing proceedings take place in the midst of a clamour against the usurpations of Congress!

The man who can, without deep anxiety, behold this awful state of things—the rumblings of this fierce earthquake, which is being prepared to swallow up the hopes entertained of the triumphant success of our governmental experiment, by the wise and the good, not merely in this country, but in Europe, is unworthy of the name of freeman, or the enjoyment of the blessings of liberty. He ought to live and die in an eastern despotism. What may be the result, is in the womb of time. If the nullifying citizens succeed in their projects, they will necessarily lead to a severance of the Union—and it would betray gross ignorance of human nature and of history, to expect that we should, in that case, long escape a border or civil war. "The day, the awful day, big with the fate" of republican government, that dissolves the Union, will be a day of solemn jubilee to the despots and tyrants of the Old World, and of sackcloth and ashes to the friends of the human race.

The most zealous, ardent, and influential advocates of the ultra doctrines of state rights, are Governor Hamilton and Mr. M'Duffie. How many years have elapsed since they commenced the crusade in defence of those doctrines I know not—probably five or six. Be this as it may, it is only ten years since [in 1821] both these gentlemen were among the most ardent opposers of the doctrines they now uphold so zealously! How long after 1821, it was before they changed their sentiments, I am ignorant. But one thing is highly probable, their conversion has been very recent and very sudden.

Fortunately for the nation, in regard to this "vexed question," their formerly-cherished, but now repudiated opinions, are on record. The change in the views of the authors, works no change in the opinions. If they were then true, as they appear to be, they will be eternally true, not merely at present, but through the vast range of distant ages.

Mr. M'Duffie, in a pamphlet signed "One of the People," now before me, entered into full detail, on this mighty subject, and in a manner that reflects credit on his head and heart. Many of his views are so profound, and display such consummate knowledge of the sinister workings of the human passions, and their fell operation as displayed in the foul and ensanguined pages of history, that they are worthy to be placed along side some of the luminous reflections of Tacitus, which have been the admiration of the world for sixteen centuries. Never was a case more fully made out than he has made out his case of the causes that produced the disaffection, and the alarm about the danger of "state rights," that prevailed in 1821. A single page is abundantly sufficient to settle the question, and to trace the insurrectionary movements to which he referred, to "*the ambition of men of inferior talents*," who "wished to increase the power and consequence of the state governments," for their personal aggrandizement.

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I have thought that I could not employ a few hours more advantageously to the citizens of this rising empire, than in making extracts of the leading topics of Mr. M'Duffie's Essay, in order that they may be compared with the doctrines he holds at present. It will then be easy to discover whether the spectre which he laid in the "vasty deep," in 1821, and which he has recently conjured up anew, to terrify the nation, be a creature of the imagination, or in reality a "*monstrum horrendum, ingens, informe*," against which we ought all to sally forth armed *cap à pie*, in defence of state rights, and in deadly hostility to consolidation.

The introductory advertisement, written by James Hamilton, Esq. (the present Governor of South Carolina,) sufficiently explains the circumstances, which, happily for the nation, gave rise to this luminous defence of the noblest institutions that ever the sun shone on.

I am well aware of the hostility and obloquy that this publication is likely to call forth. To be ignorant of this result, would argue that I had lived a very long life, *quoad hoc*, to little purpose. Before I entered the lists, I had "counted the costs," and prepared myself for the consequences. Whatever may be the result, I could never engage in a more glorious cause than the defence of the welfare and happiness of thirteen millions of people and their posterity.

Philadelphia, Nov. 14, 1831. HAMILTON.

P. S. When Governor Hamilton was, some months since, reproached with the great inconsistency of his conduct on this subject, he pleaded his youth and inexperience, in 1821. Governor Hamilton was, at that period, if am rightly informed, about thirty-five years of age. On this defence I might make large comments—but I forbear. Let the justification pass for what it is worth.

A few words by way of N. B. By this publication it appears that Governor ~~Miller~~ and Mr. M'Duffie, have changed their opinions on this all-important subject of state rights, liberal construction of the constitution, consolidation, &c. &c. It further appears, by a recent publication, that Mr. Calhoun and Judge Cooper, have likewise changed opinions, on the subject of the tariff, and Mr. Calhoun on that of internal improvement. These four gentlemen are among the leaders of the nullifiers in South Carolina. How far gentlemen, whose opinions are so liable to change, and to take a direction diametrically opposite, can be safe guides, deserves the most serious consideration. Three of them, at least, cannot plead youth to justify the errors of their early heresies, if heresies they were.

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DEFENCE OF A LIBERAL CONSTRUCTION OF THE POWERS OF CONGRESS.
WRITTEN BY G. M'DUFFIE, ESQ. JULY, 1821.

"We have more cause of apprehension from the states than from the general government—or in other words, there is in our system a greater tendency to disunion, than to consolidation."—*One of the People.*

Extracts from an Essay, entitled "National and State Rights considered." By the Hon. George M'Duffie, *under the signature of "One of the People." In reply to the "Trio;" to which are prefixed extracts from the prefatory advertisement, which accompanied its republication.* By Major James Hamilton.

ADVERTISEMENT.

In preserving the subjoined Essays from the fugitive columns of a newspaper, and in placing them in a form more permanent and enduring, we conceive *we are paying no more than a just homage to the sacred principles they inculcate,* and to the genius which has given them an illustration so powerful and impressive.

It may be not altogether unnecessary to acquaint the reader with the causes, which led originally to the publication of the Letters of "One of the People."

In July last, a series of Numbers, entitled the "*Prospect before us, as seen through the Signs of the Times, by the* Trio," made their appearance in a Milledgeville Gazette.

The ostensible scope of these dissertations was, to show that the present administration is conducted on principles altogether subversive of the Republicanism of 1801, and in direct violation of a just and legitimate construction of the Constitution of the United States. To sustain these two propositions, it may be readily conceived that *assertions the most sweeping, that assumptions the most gratuitous,* were resorted to, without reference to the change which the events of fifteen years must make in the policy of a great and growing empire, or to the fresh lights, which the experience of our government is perpetually affording, for a just and infallible interpretation of its theory.

The basis of the argument in which the "Trio" indulge, is in contending, "for a strict and literal construction of the Constitution," and *in affirming an absolute negation of every thing wearing the aspect of an "implied power." This construction,* as their own reasoning proves, *would limit the sphere of our National Charter merely to those suicidal efforts, which in the end would have produced its dissolution, as a matter of inevitable consequence.* To these views the "Triumvirate" added the tocsin of "State Sovereignty;" a note which has been sounded in "the Ancient Dominion," *with such an ill-omened blast, but with no variety, by them, to relieve its dull and vexatious dissonance.*

It is against these doctrines, to support which the authority of the highest names has been brought forward, the most criminal examples

cited, the most popular prejudices addressed, that "One of the People" has taken the field.

The argument of "One of the People" is now presented in an unbroken succession, familiar to the most ordinary, and gratifying to the most comprehensive understanding. *The truths that are unfolded are in their nature essentially imperishable.* Whatever may be the fate of our National Charter, whether our descendants are long destined to admire and worship that solidity which may give duration to its existence, and those proportions that now confer grandeur on its design, or, in a far different mood, to mourn over the ruins of so fair a fabric, equivalent testimony will be afforded of the sacredness of the principles that are here inculcated, of their faithful conservation in the first case, or *of the disastrous and desolating violation and neglect they will have sustained in the last.*

Before we conclude, it would be unjust not to confess, that in spite of the criminal sophisms which the "Trio" have scattered with no unsparing hand throughout their dissertations, they have claims to our gratitude, in being the efficient cause in the occasion which produced these Essays. There is a species of compensation to the world for the most reckless career of folly and of vice, in the high and impressive energy with which genius and worth rebuke their extravagance and licentiousness. To the profligacy of Shaftesbury, we owe the exquisite poem of "Absalom and Achitophel:" and but for the flies which wantoned in the evening tide of Pope's declining life, we should have lost the amber of the "Dunciad," in which they are embalmed.

Charleston, (S. C.) October 1st, 1821.

TO THE "TRIO."

It is abundantly apparent, from the whole tenor and spirit of your speculations, that you aim to impair the confidence which the Nation so unanimously and justly reposes in Mr. Monroe's administration, by *exciting an alarm for the safety of state rights.* I trust the importance of the subject will excuse me to my Fellow-Citizens, for addressing you in a graver style than the tone and character of your essays would otherwise deserve. *In the face of the uniform tenor of our experience under the present Constitution of the United States, you affect to entertain all those idle and chimerical apprehensions for the state sovereignties, which once animated the zeal of wiser and better men.*

Now, if you will attentively follow me through the investigation which I propose to make into the theory of our complex system of government, I think I can make it clear, even to your understanding, that your fears are perfectly visionary, having no shadow of foundation, either in the organization of the general government, or the experience of its operation. I have already adverted incidentally, to the fact, that the general and state governments are organized upon precisely the same principles. The general government is as truly the government

of the whole people, as a state government is of part of the people. Its Constitution, in the language of its preamble, was ordained and established by "*the People of the United States.*" The "most numerous branch" of the National Legislature, the House of Representatives, is elected in the same way, and by precisely the same persons, that elect the corresponding branches of the State Legislature. At the end of every two years, these National Representatives depend upon the people for their re-election. The other branch of the National Legislature, the Senate, is chosen by the State Legislatures, because "the people of the United States" delegated that power to them, and *not by virtue of any inherent right which they possess as states.* For the moment the people met in convention, all the elements of political power returned to them to receive a new modification and distribution, by their sovereign will. At the end of six years the Senators cease to be such, and depend for their re-appointment upon the power that created them. The President of the United States is elected for the term of four years by a College of Electors, to be appointed "in such manner" as the State Legislatures shall respectively direct. It appears, then, that the "*people,*" "in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity," created the whole mass of political powers that constitute the general government, reserving to *themselves,* by the elective franchise, *the immediate control* over the whole mass of delegated powers. What security, then, did the Convention, or in other words, "the People of the United States," provide, to restrain their functionaries from usurping powers not delegated, and from abusing those with which they are really invested? *Was it by the discordant clamours and lawless resistance of the state rulers, that they intended to "insure domestic tranquillity, and form a more perfect union?"* Was it by the officious interference of their *inferior agents,* appointed for no other purposes than those indicated by the state constitutions, that they intended to "insure a salutary control over their *superior agents?*" No; the constitution will tell you what is the real security they have provided. It is the responsibility of the officers of the general government, not to the state authorities, but to themselves, THE PEOPLE. This, and this alone, is the great conservative principle which lies at the foundation of all our political institutions, and sustains the great and glorious fabric of our liberty. This great truth ought to be kept in constant and lively remembrance by every American. It is the very life and soul of republican freedom; and no statesman is worthy to minister at her sacred altar, who does not distinctly perceive, and deeply feel it. The state governments, too, are the absolute creatures of the people; and *have no political powers not delegated to them by their respective constitutions, and consistent with the constitution of the United States. The states, as political bodies, have no original, inherent rights.* THAT THEY HAVE SUCH RIGHTS IS A FALSE, DANGEROUS, AND ANTI-REPUBLICAN ASSUMPTION, WHICH LURKS AT THE BOTTOM OF ALL THE REASONING IN FAVOUR OF STATE RIGHTS. The tie of responsibility is as necessary

to bind the state rulers to their appropriate sphere of duty, as it is to bind, in like manner, the officers of the general government. What, then, is the true question so much agitated, under the imposing names of "state rights," and "consolidated empire," and who are the real parties to the issue involved in it? I answer emphatically, *the true question is, whether the general government shall be controlled by the people of the states, or the rulers of the states; and the parties litigant are the people of all the states, and the rulers of particular states.* Upon the issue thus presented, one would imagine there could be little diversity of opinion amongst intelligent and considerate men, as to the verdict that ought to be pronounced. What are the arguments necessarily implied in the assumption, (I hope never to see the day when I shall have to say, usurpation) of the state authorities; They say in effect to the people, (the very people, too, by a portion of whom they are created) "you have not sufficient virtue, intelligence, and vigilance, to control and restrain your agents of the general government. They are making most alarming strides in the usurpation, not, to be sure, of your rights, but of ours; and yet you are so blind as not to perceive, or so torpid as not to regard it. For these weighty reasons, us thereunto moving, we the rulers of certain states, by virtue of certain original, inherent powers in us existing, do adjudge and determine that you the people, by reason of a certain 'apathy and torpor,' that 'rages' with 'violence,' in defiance of all *our* 'usual remedies,'* are *incapable of self-government;* and we do, therefore, out of mere pity for your weakness and incompetency, and from the consciousness of our own infallibility, *resume to ourselves the supervision and control of the general government, which we find you unworthy to exercise.*" To this modest address from their "high-mightinesses," the state authorities, I beg leave, as "*one of the people,*" to make the following reply, in the name and in behalf of all my fellow-citizens: "We beg leave to inform your 'mightinesses,' that we still think ourselves capable of attending to our own business, and would respectfully suggest that you might find sufficient employment in attending to the affairs we have committed to your charge, without interfering with those matters which we have confided to other agents. In *ourselves* exists the exclusive right of supervising and controlling the conduct of all our agents, and for the better ordering of your future deportment, be it known to you, that we shall watch over your actions, with precisely the same vigilance that we do the actions of our agents of the general government. As the business committed to these latter agents is of greater importance, and of a wider range than that committed to you, we of course select the most intelligent and virtuous men to perform it. Your attempt to control them, is therefore peculiarly unbecoming and arrogant. When the officers of the general government do any act which we think unauthorized by our letter of instructions, or wrong in itself, we shall discard them from our service, in the same manner that, for similar reasons, we shall certainly discard you. But as long as we continue them in office, and approve of their conduct,

* The language of the "*Trio.*"

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their acts are ours, and any attempt on your part to resist them, is an attempt to resist the power that created you." In this brief reply I think every American, who regards the integrity and harmony of the Union as necessary to the enjoyment of practical freedom, will readily and heartily concur. But *the assumption of the state authorities will appear still more glaring and unwarrantable, when we reflect, that whatever is assumed as a "state right," pertains equally to every state in the Union, separately and individually.* For example, a question arises between the general government and the government of a particular state, as to the extent of their respective powers. Take a case that has already occurred. The National Legislature charter a bank to answer certain great national purposes. The National Judiciary decide that the act creating the corporation is constitutional and valid. The state authorities decide that the act of incorporation is unconstitutional and void, and attempt, by a Legislative Act, to destroy the bank. *Here you see the government of a single state rising up against the government of all the states, and attempting to resist that government.* Now let me ask you, which of the parties to this contest is the more worthy of the confidence of the people of the United States, the general government, which is created by them *all*, and responsible to them *all*, or the state government, created by and responsible to not more than one *twentieth* or *thirtieth* part of their number? If we can more safely trust the rulers of our choice, than those who are not the rulers of our choice, the question is answered. For to the citizens of all the other states, except the one which I have supposed to be engaged in the contest, *the government of the contesting state is perfectly alien; as much so as the British Parliament.* There cannot be a greater political absurdity than to suppose our liberties are in greater danger from those functionaries whom we elect and control, than from those whom we do not elect and control. I have already stated that the erroneous proposition, that the states, as such, have certain original, inherent rights, lies in ambush at the bottom of all the reasonings in favour of state rights; and I will now add another proposition, equally erroneous, which seems to be involved in the *arguments of those who are perpetually warning us to beware of the general government, and fly to the state governments for refuge.* Their reasonings assume that *the general government is alien to the people, who originally created it, and whose living energies continually sustain it.* Now, the functionaries of the general government, with all their grandeur and splendid projects, at which you pretend to be so much alarmed, can, in a moment as it were, be hurled from their stations, in a peaceable, constitutional mode, and by the very people whose liberties you suppose are unsafe in their custody. Are you aware that you are preaching up the same doctrines that the "Holy Alliance" of Europe are attempting to seal with blood? To assert that the general government will prostrate the liberties of the people, is to assert that our republican experiment will fail, and that our constitution is founded upon false principles. In other words, that the people are not capable of governing themselves. For my own part, I can conscientiously say, (and I stand upon constitutional ground when I say so,)

that *I have, as a citizen of the Union, precisely as much confidence in the general government, as I have in the government of my own state, and infinitely more than I can or ought to have in the government of the other states.* I think too highly of the people of the United States, to suppose that they will tolerate any encroachments of the national government, that shall endanger their liberty. *As to those imaginary rights, that are by some supposed to exist in the states, in contradistinction to the people of the states, I neither understand nor regard them. They are mere sounds, used by misguided or designing men, for the advancement of their popularity in particular sections of the Union.* While the rights and liberties of the people are safe, (and they must be, while they are true to themselves) all the ends of government are accomplished. Thus have I endeavoured to convince you, from the organization of the general government, and its responsibility to the people, that it is as safe a depository of the rights of all the people, as the state governments are of the rights of part of them. But as strong prejudices and apprehensions do exist in some of the states on this subject, I will endeavour to trace these prejudices to their origin. I think they are to be ascribed to two causes: large states, and men whose ambition exceeds their talents. All history proves that in a mere confederacy of states, the largest and most powerful member will ultimately attain such an ascendency as to govern the whole. It is equally clear, that in proportion as the confederacy approaches to the form of one common national government, the ascendency of the largest members will be diminished. At the time our present constitution was adopted, Virginia was, in all that constitutes political power, decidedly the largest state in the Union. Accordingly, in that State, the most violent and persevering opposition was made to the present constitution of the general government: and since we have become a united people, *the politicians of Virginia have been most loudly clamorous about state rights, and have given the tone to particular factions in other states, on the subject.* The other cause which I have assigned for the prevalence of the false doctrines I am considering, is in some measure connected with the cause just mentioned. AMBITIOUS MEN OF INFERIOR TALENTS, FINDING THEY HAVE NO HOPE TO BE DISTINGUISHED IN THE COUNCILS OF THE NATIONAL GOVERNMENT, NATURALLY WISH TO INCREASE THE POWER AND CONSEQUENCE OF THE STATE GOVERNMENTS, THE THEATRES IN WHICH THEY EXPECT TO ACQUIRE DISTINCTION. *It is not, therefore, a regard for the rights of the people, and a real apprehension that those rights are in danger, that have caused so much to be said on the subject of prostrate state sovereignties and consolidated empire. It is the ambition of that class of politicians, who expect to figure only in the state councils, and of those states who are too proud to acknowledge any superior;* an ambition and a pride of the most alarming and dangerous tendency, which, if not discountenanced by moderate and reflecting men, may at some future day dissolve our happy union, *and sweep away, in a tide*

of civil blood, all that constitutes the happiness of individuals or the glory of a nation.

I will now proceed to show, in a few words, that from an experience of the actual operation of the general government, we have as little cause to apprehend danger as from the principles of its organization. Have we not as a nation enjoyed all the happiness which it is in the power of government to confer? *Where is the man that has felt the oppressive arm of the general government? In the whole history of its progress you cannot point to one solitary act of oppression.* It has wrested from no man his property; it has deprived no man of his liberty. But we have seen its salutary and protective energies directed against a foreign foe. We have seen the pride of that haughty foe humbled by the victorious arms of the republic. We have seen our wrongs avenged; our rights vindicated, and our national character exalted; all by the general government. And seeing all this, we have rejoiced that it is the government of our choice. On the other hand, we have been involved in great embarrassments *by the refractory and unconstitutional proceedings of some of the states.* In the very war which raised the character of the general government so much in the confidence and affections of the people, the refusal of the Governor of one of the Eastern States to obey the call of the President, threatened to throw the country into the most alarming condition, and to paralyze the very arm to which we all looked for protection. *Rest assured, then, the general government is not an object of dread.* Our ancestors did not create it to be an object of terror to the people, but "to secure the blessings of liberty to themselves and their posterity."—They reared it as a durable monument, which should carry their names, in glory, to future ages. They will not be deceived. As long as there shall be a heart to feel for freedom, and a head capable of understanding its principles, those who organized the general government will be hallowed as the wisest of statesmen and the best of patriots. And I am well assured that the government they created, will not be the less evincive of the wisdom of its framers, because it departs from the principle of a mere confederacy. I shall show, that *its admirable balance can be jeopardized only by the eccentric and centrifugal tendencies of the States.*

But I will first offer some additional views tending to show that the fears you profess to entertain, that the general government will prostrate the state sovereignties, are wholly unfounded either in the nature of things, or the history of nations.—That there is, in reality, no such danger, will be apparent to any man at all familiar with the history of human ambition, who will attentively consider the nature of the powers which, under our federative system, fall to the share of the state governments.—For it can be conclusively shown, that these constitute precisely the class of political powers that has the least attractions for ambition, and which, even the most despotic governments, possessing extensive territories, have voluntarily thrown off, as inglorious incumbrances, and committed to local or provincial authorities. The powers of the state governments are limited to those measures of local regulation, which, taken together, constitute the internal police of the respective states. They establish the rules of property; fix and define the rights of persons; and provide for the security of both by appropriate civil remedies, and criminal sanctions administered and enforced by their judicial tribunals. The subjects embraced within the scope of these regulations, though highly important in the estimate of national happiness, have nothing of that imposing and attractive splendour which can dazzle the minds of ambitious rulers. Cast your eyes into history, that bloody record of the sufferings of the people, and the sins of their rulers. Survey with attention those mighty wastes, through which Ambition has held his lofty career, and in which he has reared his proudest and bloodiest trophies. And when you have done so, consult the record to ascertain the objects that stimulated, and the means that facilitated, those mighty and desolating achievements. Was that ambitious Conqueror, who waves his iron sceptre over the trembling and subject nations that have yielded to the terror of his arms, stimulated in his bloody march by a desire to regulate the domestic police of the conquered nations? Was it the power of fixing and defining the individual and private rights of his subjects, that furnished the means of his aggrandizement? No. He was stimulated by higher, though less worthy aims, and sustained by mightier means. These I shall presently consider. The states are constitutionally restrained from "entering into any treaty, alliance, or confederation; granting letters of marque and reprisal;" and also from "laying any duty of tonnage; keeping troops or ships of war in time of peace; entering into any agreement or compact with another state, or with a foreign power, or engaging in war unless actually invaded, or in such imminent danger as will not admit of delay; without the consent of Congress." The powers of the state governments, then, are not only limited in their operation, but essentially pacific in their nature. From all "the pride, pomp, and circumstance of glorious war;" from all that class of political actions, in short, which furnish the most interesting themes of history, and attract in their recital, the almost exclusive attention of the mass of mankind, the states are absolutely and wisely excluded. When, therefore, we consider the nature of ambition; when we reflect that it is desirous of performing those actions, only, which history records with her brightest and most enduring colours, and nations behold with the highest admiration, *the folly of the apprehension that the general government will subvert the governments of the states, is most strikingly apparent.*

But still more strikingly apparent will be the folly of such an apprehension, when we come to compare the powers, which have been clearly and unequivocally delegated to the general government, with those which it can acquire by encroachments on the state authorities. By the express letter of the National Charter, Congress has power "to lay and collect taxes, duties, imposts, and excises;" to "declare war," to "raise and support armies," and to "provide and maintain a navy." These powers are granted in the most general and unlimited terms. Upon the discretion of Congress in "laying and collecting taxes," and in "raising and supporting armies," there are no restrictions but those imposed by nature. Congress may push these powers to the utmost

verge indicated by the physical capacity of the country. They may, upon the slightest occasion, and for the most unwise, improvident, and wicked ends, draw from the people (of the "states" too!) the uttermost farthing that can be spared from their suffering families, to fill the national coffers; and call out the last man that can be spared from raising the necessaries of life, to fill the national armies and fight the battles of ambitious rulers. And all this, however inexpedient, unjust and tyrannical, they can do, without transcending the limits of their constitutional authority. The general government is thus invested, (safely and constitutionally invested) with an unlimited command over the purse and the sword of the nation, those mighty and resistless instruments of lawless ambition and encroaching power; and yet the very rulers, in whose hands these tremendous engines are harmless to the people, and terrible only to their enemies, are held up and denounced by your warning voices, as the depredators upon the more peaceful, inefficient, and unattractive powers of the state governments. We are called upon to believe that our federal rulers will use with moderation the very powers by which ambitious men have, in all ages, built up the monuments of their own aggrandizement upon the ruins of the constitution, and amidst the execrations of the people; and yet that these rulers will consummate their ambitious purposes, and subvert our liberties by the paltry and petit larceny process of pilfering little fragments from the temples of state sovereignty!!! If one of you were to trust a madman with a broad-sword, and yet be alarmed lest he should arm himself with a weapon to attack you, by invading your wife's pincushion, your fears would not be more ridiculous, nor your inconsistency more palpable.—Be assured it is not in the course of ambition to descend; for "in its proper motion" it "ascends." The supreme judiciary of a state would hardly be inclined to usurp jurisdiction over the class of cases that fall within the exclusive and humble jurisdiction of a common magistrate. Abstractedly considered, power has no allurements. It is only desirable from its imposing associations.

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If, after all that has been said, you still continue to dread the extinction of the state governments in one great consolidated empire, I must, for the present, give you up as incurable; in the hope, however, of producing some effect hereafter, by showing that there are dangers, much more imminent and alarming, to be apprehended from an opposite direction.

That the real danger, which it demands all the wisdom and patriotic vigilance of the American statesmen to obviate, proceeds from the centrifugal tendencies of the states, was the doctrine invariably held by the framers of the federal constitution. And I wish distinctly and emphatically to impress it upon you, that at the very era of the constitution, when the true "principles of the revolution" burned with a living and holy fervour in the bosoms of those who had breasted the rudest shocks of the revolutionary war: WASHINGTON, MADISON, and HAMILTON, were the firm and masterly supporters of this very doctrine. The views of the two last named statesmen are recorded in "*The Federalist*," that able and unanswerable commentary on the federal constitution; which is now almost universally received as the standard of political orthodoxy. And it is most extraordinary that in your affected "recurrence to fundamental principles," you have entirely overlooked the opinions and commentaries of the friends and authors of that constitution, which will stand amidst the wreck of empires as an imperishable monument of their wisdom; and have *based yourselves upon the visionary fears and dismal forebodings of those who were opposed to it.* Whether I am to understand that you are at this day not only opposed to the *administration*, but the *constitution* of our government, and wish not only to change our rulers, but to destroy that constitution; or that you suppose that the *opponents* of that instrument understand its principles better than its *authors;* I confess I am at a loss to determine. For if you are sincere in your professions of attachment for the "principles of the revolution," and of the federal constitution, and are not acting a part in a great political manœuvre; if you are honestly seeking for the truth of principles, and not for the means of individual aggrandizement; to what oracles could you have applied so likely to give you an unerring response, as the immortal patriots and statesmen whose names I have just mentioned? But with an infelicity which seems to be your peculiar characteristic, you place your principal reliance upon those opinions of PATRICK HENRY, which, by your own admission, he himself renounced, after experience had dispelled the delusions by which his warm imagination had been carried away. Pretermitting, however, any further remarks on the question of authority, I will endeavour to show by arguments drawn as well from the "fundamental principles" of genuine representative republicanism, as from our actual experience, that WE HAVE MORE CAUSE OF APPREHENSION FROM THE STATES, THAN FROM THE GENERAL GOVERNMENT; OR, IN OTHER WORDS, THAT THERE IS IN OUR SYSTEM A GREATER TENDENCY TO DISUNION THAN TO CONSOLIDATION.

It will be recollected that the *responsibility of public functionaries* is the only true and adequate security for liberty, connected with the organization of the various departments of our political system. And, whenever, in the ramifications of that system, we find any part in which the principle of responsibility does not operate co-extensively with the sphere and compass of the power which it is intended to restrain, we have just grounds to apprehend that the harmony of the system will be disturbed by the irregular and eccentric wanderings of the power thus inadequately restrained.—Now it results from the practical operation of our complex system, that the government of each state, though elected by the people of that state, and responsible to *them only*, may notwithstanding, affect by their proceedings the vital interests of the *whole Union.* So far, then, as the interests of the "people of the United States" are liable to be impaired or destroyed by the measures of the government of a particular state, they are exposed to the action of a power absolutely irresponsible to them. If the general government should encroach upon the powers and violate the rights of the states, they would be infringing upon the interests, and rousing the indignation of the sovereign power that created them, the *people* of the states; and would of course feel all the restraint that responsibility

could impose. But the converse of the proposition does not hold true. If a state government should infringe upon the interests of the Union, or, more precisely, of the people of all the other states, their indignation, however just, would be vain and powerless; for *the principle of responsibility could not be brought to bear upon the usurping or aggressing state government.* Suppose, for example, that during a war, upon which the very liberty of the country depended, a particular state, under the influence of some violent local excitement, should attempt to paralyze the arm of the general government, by restraining and limiting their power of recruiting soldiers, or by refusing to order out the quota of militia constitutionally demanded by the general government. These are not extreme cases; for the latter actually occurred in one of the Eastern states, and the former either occurred or was agitated in another, during the late war with Great Britain. I ask what constitutional means have the *people* of the Union, in such cases, to bring back the rulers of the refractory states to a sense of their duty? Can they hurl them from the "bad eminence" to which, perhaps, their very views, [these very views?] have raised them? Can they take from them *the power thus perverted to the unhallowed purposes of faction and sedition?* Can they snatch from their grasp the firebrand, which from the heights of their constitutional power *they threaten to cast "hideous ruin and combustion" into the* TEMPLE OF UNION? No. As long as the local excitement of their constituents shall prevail, the unanimous and indignant voice of all the people of the Union besides, cannot shake the foundations of their power. If, then, there be any virtue in the great principle of political attraction which sustains the harmony of our admirable system of practical freedom; it is quite obvious that whenever a case occurs, in which the real or imaginary interests, the passions or prejudices of a particular state, shall stand opposed to the interests of the Union; that attraction instead of binding the state rulers to the general interest, will absolutely carry them from it. And are we permitted, either by a knowledge of the principles of human nature, or a view of our own brief experience as a nation, to doubt that such cases will frequently occur? HE MUST HAVE READ THE LESSONS OF HISTORY TO LITTLE PURPOSE, WHO DOES NOT PERCEIVE THAT THE PEOPLE OF PARTICULAR STATES ARE LIABLE TO FALL, OCCASIONALLY, INTO A DANGEROUS AND MORBID EXCITEMENT UPON PARTICULAR SUBJECTS; AND THAT UNDER THIS EXCITEMENT, THEY WILL IMPEL THEIR RULERS INTO THE ADOPTION OF MEASURES IN THEIR TENDENCY DESTRUCTIVE TO THE UNION. Nor will any considerate man look upon this source of danger, but with the deepest concern. How many local causes are there, calculated to generate feelings hostile to the general government? Diversity and peculiarity of *local* interest, whether real or imaginary. Political prejudices and opinions, peculiar to one or a few states. Embarrassments growing out of a vitiated currency, which the general government may find it necessary to correct; a duty of the highest moral and political obligation, yet ungracious in its nature, and, for a time, apparently oppressive. If to these we add, THE SELFISH AND AMBITIOUS VIEWS OF DESIGNING DEMAGOGUES, we shall have a specimen of the numerous and multifarious causes of disunion, which exist in the passions of men and the pride of the states.

Unfortunately for us, we are not left to mere theoretical reasoning upon this subject. We have seen embodied, in the living current of events, the very dangers of which I have been speaking. Who can forget how all the energies which state organization could confer, were in certain states exerted to impair our national energies, in the late war, and prostrate our country, degraded, disgraced, and discomfited, at the feet of a proud and imperious foe? Who can forget that the prayers of "states," almost in the very forms of constitutional proceeding, were, from the very temples of state sovereignty, sent up to the throne of Heaven, breathing maledictions on the armies of the republic? Who, that feels any interest in the true glory of his country, does not wish the story of the Hartford Convention blotted for ever from her annals; and who that regards her permanent happiness would not deprecate the recurrence of such another infamous association, as the greatest calamity that could befall her?

And do we not see almost passing before us, in this tranquil period of peace, an example of state insubordination, less glaring, but even more alarming than that to which I have just alluded? *The laws of the Union, clothed with the most solemn sanctions of the constitution, have been, under the extreme pressure of local embarrassment, absolutely resisted by the state authorities.* After the supreme tribunal of the country pronounced an act of Congress constitutional, and consequently *the supreme law of the land,* a state government has openly opposed its execution. It will be readily understood, that I allude to the embarrassing conflict of authority between the general government and the state of *Ohio,* in relation to the National Bank. And I hesitate not to pronounce it one of the most portentous events that has occurred since the adoption of the federal constitution. *For if, after the National Judiciary have solemnly affirmed the constitutionality of a law, it is still to be resisted by the state rulers, the constitution is literally at an end; a revolution of the government is already accomplished, and anarchy waves his horrid sceptre over the broken altars of this happy union!*

In the examples to which I have alluded thus briefly, of insubordination in state rulers, we distinctly perceive the effects of that unavoidable want of responsibility to the Union, which I consider the weakest part of our federative system. And what is still more alarming, every member that shall be admitted into the Union, will increase the danger to be apprehended from this source. It requires but little skill in ringing the changes of political permutation, to enable us to perceive that in proportion as we increase the number of states that compose the Union, we multiply the chances of local combinations unfriendly to it. And, although by enlarging the confederacy, we shall diminish the *relative* strength of any such probable combination, and of course the probability of a forcible disruption; yet the increased frequency of collisions between the general and state governments, will be scarcely less to be deprecated. For it ought never to be forgotten, that this Union is not to be sustained by physical force, but by kindred sympathies and mutual good will.

Let us now consider the principles of construction which ought to prevail in ascertaining the extent of the powers delegated by the Constitution to the national government; and of the means provided for the application of those principles. As far as I can collect any distinct propositions from the medley of unconnected quotations you have made on these very important subjects, I understand you to affirm, that in expounding the Federal Constitution, we should be "tied down to the strict letter" of that instrument; and that the general government "was not made the exclusive or final judge of the extent of the powers delegated to itself, but that, as in all other cases of compact among parties having no common judge, *each party has a right to judge for itself.*" *As these may be considered the concentrated essence of all the wild and destructive principles that have ever been advanced, in relation to the subjects under consideration,* and as they constitute the basis of a contemplated revolution in the administration of the general government; I have been particular in using your very language, lest I should be suspected of giving my own impressions of the result of your arguments, or, more correctly speaking, of your *quotations.*

In asserting that we ought not to travel out of the "strict letter" of the Constitution, I am almost disposed to believe, in charity, that you were ignorant of the nature of your own proposition. For if, with its obvious and necessary consequences before you, I could believe you would still maintain it, I should be compelled to think very unfavourably of your characters; as nothing is more clearly demonstrable than that *your rule of construction would paralyze every living energy of the Constitution, and absolutely annihilate the government. Without implied and incidental powers, almost the entire mass of means by which the machine of government is kept in motion, could not be wielded a single moment, but would fall from the hands of the administration.* Congress have power, for example, by "the strict letter" of the Constitution, to "declare war," and "raise and support armies;" but not to erect arsenals and fortifications, and provide for the purchase of the munitions of war. They have power "to lay and collect taxes and imposts," but the "strict letter" of the constitution gives them no authority to create officers and custom-houses, any more than to incorporate banks, for their collection. They have power to "borrow money," and to "pay the debts of the Union;" but here "the strict letter" does not confer any authority to create commissioners of loans, or commissioners to apply the sinking fund, or any other means of "borrowing," in the one case, or "paying" in the other. They have power to "coin money:" but regarding merely the "strict letter," the establishment of a mint would be an unconstitutional extension of the "patronage" of the government.*

Now if you will but imagine to yourselves a war without permanent structures for national defence; an army without arsenals, magazines, or munitions of war; a system of revenue without officers or custom-houses; a funding system without commissioners to carry it into

* See Appendix A, page 21.

effect; and a scheme of coining money without a mint establishment; you may form a pretty adequate conception of the result of your rule of constitutional interpretation. I will now show that you have not the semblance of authority to sustain that rule. It is laid down, in an elementary writer, deemed the first authority in every state in the union, that "the most universal and effectual way of discovering the true meaning of a law, when the words are dubious, is by considering the *reason* and *spirit* of it." This rule prevails throughout the civilized world, both in the construction of municipal laws and of treaties and confederacies between independent nations. It results from the essential imperfections of the human mind and of human language. Without it the affairs of nations would be arrested in their progress. And yet you utterly deny that we have any warrant for construing the constitution with reference to *its spirit.* Even in the construction of private instruments, where the subjects to which they relate are within the actual presence of the contracting parties, the same liberal regard to the spirit and intention of the parties generally prevails. Is there, then, any reason why the Constitution of the United States should receive a more strict and technical construction than a municipal law or a private contract? Was it intended merely to furnish themes for the disputations of professional men? Far from it. It was formed by the people, and for the people. Popular in its creation and its objects, *it was intended that it should be construed by the plain and obvious dictates of common sense, and with a liberal regard to the great national ends it was designed to accomplish.* Any man who will consider for a moment the vast field of human affairs embraced within the scope of the constitution, and that in its very nature it must be applied to all those vicissitudes which, in the succession of ages, shall mark our progress as a nation, cannot but perceive the absurdity of construing this great national Charter, as a lawyer would construe an *indictment.* The officer who draws an indictment, and the scrivener who draws a private conveyance, *have the whole matter immediately before them,* to which these documents respectively refer; and there is, of course, no difficulty in making a specific enumeration of particulars. But the framers of a constitution have to provide for all those modifications and combinations of human events, and all those varying interests of society, for which human wisdom cannot make any specific provision. To enumerate the various and detailed operations of a government for centuries to come, and the infinite variety of means that shall be employed, is not therefore the object of a constitution. Its true object is to distribute the great political powers amongst the several departments of the government, giving a liberal discretion to public agents, in selecting the means by which those powers shall be carried into effect, but providing at the same time, by their responsibility to the people, the only adequate security against the abuse of that discretion. *You seem quite alarmed at the idea of discretionary powers; when in fact a government never did exist nor never can exist for a single year without such power.* Such a government would be a political phenomenon. Its first act would be an act of usurpation, *founded upon necessity.* An entire misconception of the true theory of political freedom

seems to pervade all your reasonings. Frail, indeed, would be the tenure by which we hold that great national blessing, if it solely depended upon the smaller or the larger portions of political power, committed to this or that class of political functionaries. I have already shown, that our true security was to be found in the constant control, which, by means of the elective franchise, we can exercise over our political agents. All the classes and departments of our government have ample powers for all the purposes of despotism, *if they were independent of the people;* but as long as their constitutional dependence continues, we have nothing to fear. If they abuse their discretion, we have nothing to do but to discard them from office.

Having thus shown the true principles by which the federal constitution ought to be construed, I shall proceed to inquire, what are the means provided to apply and enforce those rules. You assert that when any conflict shall occur between the general and state governments, as to the extent of their respective powers, "EACH PARTY HAS A RIGHT TO JUDGE FOR ITSELF!" I confess I am at a loss to know how such a proposition ought to be treated. No CLIMAX OF POLITICAL HERESIES CAN BE IMAGINED, IN WHICH THIS MIGHT NOT FAIRLY CLAIM THE MOST PROMINENT PLACE. IT RESOLVES THE GOVERNMENT, AT ONCE, INTO THE ELEMENTS OF PHYSICAL FORCE; AND INTRODUCES US DIRECTLY INTO A SCENE OF ANARCHY AND BLOOD. There is not a single power delegated to the general government, which it would not be in the power of every state government to destroy, under the authority of this licentious principle. It would be only necessary for a State Legislature to pass a law forbidding that which the Federal Legislature enjoins, or enjoining what the Federal Legislature forbids, and the work is accomplished. Perhaps you would require the State Judiciary to pronounce the State Law constitutional. I will illustrate your principle by a few examples.

Suppose Congress should pass a law to "lay and collect taxes, duties, imposts, and excises," and that a State Legislature should pass another, declaring the objects for which the revenue was intended, *unconstitutional,* and therefore prohibiting the officers of the general government, by severe penalties, from collecting the "taxes, duties, imposts, and excises." Suppose Congress should pass a law to "raise an army" for a national war, and a State Legislature pass another, declaring the war "wicked, unrighteous, and unconstitutional," and therefore prohibiting the officers of the general government, under heavy penalties, from recruiting soldiers within the limits of the state. Suppose Congress should pass a law "for the punishment of counterfeiting the securities and current coin of the United States," and a State Government should pronounce it unconstitutional, and provide heavy penalties against all officers, judicial or ministerial, who should attempt to enforce it. I need not multiply cases; for if you will duly consider these, you will find enough to satiate your keenest relish for anarchy and disorder. In all the above cases, you would say, "*each party has a right to judge for itself,*" and of course to enforce its judgment. You might, then, behold a revenue officer of the United States confined in a state dungeon for obeying the revenue laws of Congress. *You might see a*

gallant officer of the army, covered with the glorious scars of many a hard-fought battle, bearing the scourge of a state constable at a whipping post, for attempting, under a law of Congress, to recruit soldiers to fight the battles of his country. You might even see a Federal Judge arraigned before a State Tribunal for pronouncing sentence against a counterfeiter of the current coin of the United States! And all this would unavoidably result in giving the state rulers the right to resist the general government, or in a civil war to establish its legitimate authority; consequences, either of which is incompatible with the very notion of government. *To suppose that the general government have a constitutional right to exercise certain powers, which must operate upon the people of the states, and yet that the government of each state has a right to fix and determine its own relative powers, and by necessary consequence, to limit the powers of the general government, is to suppose the existence of two contradictory and inconsistent rights.* In all governments there must be some *one* supreme power; in other words, every question that can arise as to the constitutional extent of the powers of different classes of functionaries, must be susceptible of a legal and peaceable determination by some tribunal of acknowledged authority, or force must be the inevitable consequence. And where force begins, government ends. And it is the more astonishing that you have assumed positions involving such tremendous consequences, when we consider that they are in direct opposition to the "strict letter" of the constitution, your favourite test of the extent of delegated powers. It is therein provided, "that the constitution, and the laws of the United States which shall be made in pursuance thereof," "shall be the supreme law of the land; and the *Judges in every state* shall be bound thereby, *any thing in the constitution or laws of any state to the contrary notwithstanding.*" And again, "the Judicial power [of the United States] shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made or which shall be made under their authority." Nothing can be more plain, than that the "*strict letter*" *of the constitution does make the laws of Congress supreme, enjoining obedience upon the state functionaries, and making void the laws of a state if contrary thereto.* And to give this provision a sanction of a nature peculiarly impressive, "the members of the several *state legislatures, all executive and judicial officers,* both of the United States *and of the several States,* shall be bound by oath or affirmation to support the constitution of the United States." It is not less evident that it belongs to the *national judiciary* to pronounce upon the constitutionality or unconstitutionality of the laws of the national legislature. Its jurisdiction extends to "all cases" arising under them; and it is hard to conceive how in any possible case a federal Judge can decide a case, arising under a law, without pronouncing upon the constitutionality of that law. In fact it would be vain and idle to make the laws of Congress supreme, if the national judiciary had not the power of enforcing them. For you can hardly be ignorant that a law is a dead letter, without an organ to expound and an instrument to enforce it. I should suppose, therefore, that no professional man could hesitate in saying, that a forcible oppo-

sition to the judgment of the Federal Court, founded upon an act of Congress, by whatever state authority that opposition might be authorized, would be the very case which the convention had in view, when they made provision for "calling forth the militia to execute the laws of the Union." But *I sincerely hope that your licentious doctrines will never have the effect of misleading the state authorities so far as to render this terrible resort unavoidable.* I trust the farewell Address of WASHINGTON, admonishing his fellow-citizens to "frown indignantly" upon those who preach up doctrines tending to disunion, is not yet forgotten.

But you seem to think your work will not produce the intended effect, unless you can render the *judicial* department odious and suspected. You say, "where is the country in which the rights of man" have always been protected by the judiciary? It is not to be found. But we can scarce turn our eyes to the history of any nation, in which, on the contrary, the judicial department has not become the "*agents of corruption.*" You then go through a train of reasoning, to prove that the national judiciary are in "perfect habits of obedience and subordination" to the legislative and executive departments!

I cannot exactly determine from your equivocal denunciations, whether you wish the judicial department *differently organized, or entirely abolished.* As to its organization, it is such as the will of the people pleased to give it, and upon the whole I think the best it could have received. Perhaps it would have suited your taste better if the Governors of the States had been clothed with the power of appointing the Federal Judges. But, accustomed as I have been to consider an independent Judiciary, next to the responsibility of public agents, as the most important improvement which we have made upon the political systems of antiquity, I cannot suffer you to denounce the judiciary as being the "agents of corruption," without giving the charge a serious refutation.

Appealing to the experience of nations, we shall find that the judiciary has generally been justly regarded with veneration, as the upright and inflexible ministers of the law. The very education of a Judge, accustomed to confine his views to the results of a stiff, technical, and artificial system, indisposes him to that course of flexible and unsteady reasoning, by which usurpation is too often palliated. On this subject the experience of Great Britain may be more profitably consulted than that of any other foreign nation. The judiciary of that country is the boast and glory of her patriots and statesmen. I do not mean to say that she never had a judicial tyrant; but I may safely assert, that where she has had one tyrant on the *bench*, she has had ten on the *throne*, and thousands in *Parliament*. The "*Habeas Corpus*" act would not be so highly prized, but for the independence of the judiciary, by whose instrumentality alone, its benefits can be administered.—Where all the other departments are tyrannical and corrupt, it cannot be expected that the judiciary will be always perfect. My end is accomplished when I show that in other countries it is better than the other departments in these particulars.

I have long thought that the brief and turbulent course of freedom

in the republics of antiquity, was to be ascribed principally to the want of an independent judiciary. Those violent passions, to which popular and even deliberative assemblies are occasionally subject, do not reach *them.* Elevated above the scenes of ambition and political intrigue, they behold with calmness the storm's impetuous rage; they wave the magic wand of their peaceful power, and the elemental strife is heard no more. And it is my ardent prayer that we may never see the bloody day, when that wand shall lose its power.

* * * *

APPENDIX. A.

(*See page* 16.)

It is thus, in the second number, that this writer illustrates some of the implied or incidental powers under the Constitution:

The first measure which you touch upon, not in the body of your essay, but in your notes, by which you certainly intend to produce your greatest effect, is internal improvement; over which you say, PATRICK HENRY never supposed the general government would usurp any power. There *is no incidental power more clearly given by the Constitution, (and even you admit incidental powers) and certainly there is none at once more* harmless and salutary, than that of making internal *improvements.* Congress has the power to "declare war," and "regulate commerce between the several states," If there is any such thing as an incidental power, *that in question must be incidental to these two* grants. The power to declare war necessarily involves the power to make war; and the power to make war necessarily involves the right to use at least the ordinary means of making that war efficient. Now *are not the roads and canals to facilitate the transportation of troops and all the apparatus of war, means indispensable to the prosecution of a war?* If it should become necessary to march troops and transport arms, through an impassable wilderness in a state, would not any General be authorized to cut his way, and make the marshes and swamps through which he would pass, sufficiently firm to convey his carriages and troops? And would he not have a right to appropriate the public money for this purpose? Most surely. And yet the whole legislative power of the general government cannot do what a General in the field, the mere creature of the Executive, could certainly accomplish, and that most rightfully. *If Congress have not a right to make a military road, they have no right to march men through a state, without its consent; for the one is as much a violation of sovereignty as the other.* But you will say that military roads are not *indispensably necessary*; for wars might be conducted without them, and have been. I confess I was surprised to see, even such politicians as you are, fall into an argument so perfectly puerile. Do you not see that it would destroy all the powers of the general government, and leave it disarmed and at the mercy of a foreign foe? Let us apply your argument. It is proposed in the cabinet to use cannon and cavalry, and Congress are

solicited to make an appropriation for the purchase. You would of course say no—Congress has no power to make the appropriation, for wars have been conducted *without cannon* or *cavalry;* they are, therefore, not *indispensably* necessary. It is proposed to buy muskets. You say no; wars have been carried on by bows and arrows, and muskets cannot, consequently, be of indispensable necessity. In short, the very fact that there are more ways than one to carry on war, by your mode of argument, would deprive the general government of using either. For while there are two ways of doing a thing, neither of them, according to your refined logic, is necessary, and, therefore, neither can be used. *The power of regulating internal commerce, equally involves the power to make roads and canals, necessary and proper for the transportation of merchandise.* It is a power, too, that in the nature of things ought to belong to the general government; for as it extends over the whole of our national territory, it is the only power competent to make improvements that will pervade the whole extent of our country. Now, I ask you, gentlemen, in the name of common sense, *where is the danger of trusting the general government, elected by, and frequently responsible to the whole people, with the power of making a road, or opening a canal;* a power that exists in the little local corporation of almost every county and district in the United States? What is there in the thing itself, that is calculated to alarm you? Is it the means of enslaving the country? Is there any thing in making a road, or digging a canal, that is calculated to rouse the ambition of our federal rulers? Making a road is not in itself a very captivating work; nor can I very well see what ambitious purpose the general government could answer, merely by *making* a road. Your objection, it would seem to me, ought rather to be against the *use* of it by the general government, after it is made. Now every body will admit that good roads are desirable in every point of view. For a sketch of their utility, I will only refer to the masterly speech of Mr. CALHOUN on that subject, delivered shortly before he left Congress, and his able report on that subject since he has been Secretary of War. Then if roads are desirable, and ought to be used by the general government, if they had an existence, your objection resolves itself entirely into this! "That Congress ought not to *make* the roads." How the states can be injured, by improvements made by the general government, I cannot perceive. The power to make a road is not a distinct, substantive political power at all. It is simply and essentially a means, as much so as the power to manufacture a musket, and is certainly not more dangerous.

ERRATA.

The population of South Carolina is incorrectly stated on page 1, at 280,000 whites, and 260,000 slaves. The real numbers are, 257,878 whites, 315,665 slaves, and 7,915 free coloured people. Total, 581,458.