last extremity."—Now we ask, what more has Gen. Hayne, or Mr. M'Duffie, or any other Representative of South Carolina, ever declared in behalf of his State? What more can be done than "*to resist to the last extremity?*" To what can Mr. Van Buren refer but to his State's interposing her authority "to *shield herself* against the injustice of the General Government," as he has himself expressed it? He certainly did not refer to the Supreme Court; for he would have said the tribunals of the Government will be our protection? He could not mean an application, to render it unnecessary for N. York to act for herself, or, in his own words, "*to take steps to shield herself against its injustice.*" What are we to suppose New York would have done, had Congress persisted in exacting Canal Licences? Why she would have declared it null and void, unauthorised by the Constitution," "an encroachment on her rights," "and resisted to the last extremity." This is what Mr. Van Buren declared in Congress, as her Senator, and his assertion would, doubtless, have been confirmed by his State, had Congress despised her application for redress.

The Rochester Telegraph has this notice of the demand of Licences at the time of its occurrence.

"We regret to learn that the Collector of the United States Revenue at Buffalo, requires a coasting license from all the Canal Boats that clear from that place. It was hoped that after the eloquent and conclusive arguments of Gen. Tallmadge on *State Rights*—the *strong expression* of the Legislature in 1824—and the Resolution of Mr. Martindale in Congress, there would be no more encroachments of the General Government upon the artificial waters of this State."

NOTE G.

OPINIONS OF DISTINGUISHED MEN.

Extract of a Letter from THOMAS JEFFERSON, to WILLIAM B. GILES, dated 26th December, 1825.

"*Dear Sir*—I see as you do, with the deepest affliction, the rapid strides with which the Federal branch of our Government, is advancing towards the usurpation of all the rights reserved to the States, and the consolidation in itself, of all powers foreign and domestic, and that too, by constructions which if legitimate, leave no limits to their power. Take together the decisions of the Federal Court, the doctrines of the President, and the misconstructions of the Constitutional compact acted on by the Legislature of the Federal branch; and it is but too evident that the three ruling branches of that department, are in combination, to strip their colleagues, the State authorities, of the powers reserved by them, and to exercise themselves, all functions foreign and domestic. Under the power to regulate Commerce, to assume indefinitely, that also over Agriculture and Manufactures; and call it regulation too, to take the earnings of one of these branches of industry, and that too, the most depressed, and put them into the pockets of the other, the most flourishing of all. Under the authority to establish Post Roads, they claim that of cutting down mountains for the construction of Roads, of digging Canals; and aided by a little sophistry on the words 'general welfare,' a right to do, not only the acts (to effect that), which are specifically enumerated & permitted; but whatsoever they *shall think, or pretend*, will be for the general welfare. And what is our resource for the preservation of the Constitution? Reason and argument! You might as well reason and argue with the marble columns encircling them. The Representatives chosen by ourselves?—They are joined in the combination, some from incorrect views of Government, some from corrupt ones, sufficient voting together, to outnumber the sound parts, and with majorities of only 1, 2 or 3, bold enough to go forward in defiance."

TO JAMES MADISON.

MONTICELLO, Dec. 24, 1826.

Dear Sir—I have for some time considered the question of Internal improvement as desperate. The torrent of general opinion sets so strongly in favor of it as to be irresistible. And I suppose that even the opposition in Congress will hereafter be feeble and formal, unless something can be done which may give a gleam of encouragement to our friends, or alarm their opponents in their fancied security. I learn from Richmond, that those who think with us there, are in a state of perfect dismay, not knowing what to do, or what to propose. Mr. Gordon, our representative, particularly, has written to me in very desponding terms, not disposed to yield indeed, but pressing for opinions and advice on the subject. I have no doubt you are pressed in the same way, and I hope you have devised and recommended some thing to them. If you have, stop there and read no more but consider all that follows as *non avenue*. I shall be better satisfied to adopt implicitly any thing which you may have advised, than any thing occurring to myself. For I have long ceased to think on subjects of this kind, and pay little attention to public proceedings. But if you have done nothing in it, then I risk for your consideration what has occurred to me, and is expressed in the inclosed paper. Bailey's propositions, which came to hand since I wrote the paper, and which I suppose to have come from the President himself, shew a little hesitation in the purposes of his party, and in that state of mind, a bold shot critically given may decide the contest, by its effect on the less bold. The olive branch held out to them at this moment may be accepted, and the constitution thus saved at a moderate sacrifice. I say nothing of the paper, which will explain itself. The following heads of consideration, or some of them, may weigh in its favor.

It may intimidate the wavering. It may break the western coalition by offering the same thing in a different form. It will be viewed with favor in contrast with the Georgia opposition and fear of strengthening that. It will be an example of a temperate mode of opposition in future and similar cases. It will give us the chance of better times and of intervening accidents; and in no way place us in a worse than our present situation. I do not dwell on those topics; your mind will develope them.

Ever and affectionately yours,

THE JEFFERSON.

From this proposed Protest of Mr. Jefferson, we subjoin the following Extracts:—

The solemn declaration and protest of the Commonwealth of Virginia, on the principles of the Constitution of the United States of America, and on the violations of them.

We, the General Assembly of Virginia, on behalf, and in the name of the people thereof, do declare as follows:

The States in North America which confederated to establish their independence on the government of Great Britain, of which Virginia was one, became on that acquisition, free and independent States, and as such, authorized to constitute governments, *each for itself*, in such form as it thought best.

They entered into a *compact*, (which is called the Constitution of the United States of America,) by which they agreed to unite in a single government as to their relations with each other, and with foreign nations, and as to certain other articles *particularly specified*. They retained at the same time, each to itself, the other rights of independent government, comprehending mainly their domestic interests.

For the administration of their federal branch, they agreed to appoint, in conjunction, a distinct set of functionaries, legislative, executive and judiciary, in the manner settled in that compact: while to each, severally and of course, remained its original right of appointing, each for itself, a separate set of functionaries, legislative, executive and judiciary, also, for administering the domestic branch of their respective governments.

These two sets of officers, each independent of the other, constitute thus a *whole* of government, for each State separately; the powers ascribed to the one, as specifically made federal, exercised over the whole, the residuary powers, retained to the other, exercisable exclusively over its particular State, foreign herein, *each to the others*, as they were before the original compact.

To this construction of government and distribution of its powers, the Commonwealth of Virginia does religiously and affectionately adhere, opposing, with equal fidelity and firmness, the usurpation of either sett of functionaries on the rightful powers of the other.

But the Federal branch has assumed in some cases, and claimed in others, a right of enlarging its own powers by constructions, inferences, and indefinite deductions from those directly given, which this Assembly does declare to be usurpations of the powers retained to the independent branches, mere interpolations into the compact, and direct infractions of it.

They claim, for example, and have commenced the exercise of a right to construct roads, open canals, and effect other internal improvements within the territories and jurisdictions exclusively belonging to the several States, which this Assembly does declare has not been given to that branch by the constitutional compact, but remains to each State among its domestic and unalienated powers, exercisable within itself and by its domestic authorities alone.

This Assembly does further disavow, and declare to be most false and unfounded, the doctrine that the compact, in authorizing its federal branch 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, has given them thereby a power to do whatever *they* may *think*, or *pretend*, would promote the general welfare which construction would make that, of itself, a complete Government, without limitation of powers; but that the plain sense and obvious meaning was, that they might levy the taxes necessary to provide for the general welfare, *by the various acts of power therein specified* and delegated to them, and *by no others*.

Nor is it admitted, as has been said, that the people of these States, by not investing their federal branch with all the means of bettering their condition, have denied to themselves any which may effect that purpose, since, in the distribution of these means, they have given to that branch those which belong to its departments, and to the States have reserved, separately, the residue which belong to them separately. And thus, by the organization of the two branches taken together, have completely secured the first object of human association, the full improvement of their condition, and reserved to themselves all the faculties of multiplying their own blessings.

Whilst the General Assembly thus declares the rights retained by the State, rights which they never have yielded, and which the State never will voluntarily yield, they do not mean to raise the banner of disaffection, or of separation from their sister States, co parties with themselves to this compact. They know and value too highly the blessings of their Union, as to foreign nations and questions arising among themselves, to consider every infraction to be met by actual resistance. They respect too affectionately the opinions of those possessing the same rights, under the same instrument, to make every difference of construction a ground of immediate rupture. They would, indeed,

consider such a rupture as among the greatest calamities which could befall them ; but not the greatest. There is yet ONE GREATER, *submission to a government. of unlimited powers.*"

Mr. JEFFERSON—says,in one of his letters respecting the United States Supreme Court, "in denying the Right they usurp of exclusively explaining the Constitution, I go further than you do, if I understand rightly your quotation from the Federalist of an opinion that 'the Judiciary is the last resort in relation to *the other departments* of the Government, but not in relation to the Rights of the parties to the compact under which the Judiciary is derived.' If this opinion be sound, then indeed is our Constitution a complete *felo de se*. For intending to establish three departments, co-ordinate and independent, that they might check and balance one another ; it has given, according to this opinion, to one of them alone the right to prescribe rules for the Government of the others, and to that too which is unelected by and independent of the nation."—"The Constitution, on this hypothesis, is a mere thing of wax in the hands of the Judiciary, which they may twist and shape into any form they please."

In another of his letters, Mr. Jefferson says "to consider the Judges of the Superior Court as the ultimate Arbiters of Constitutional questions would be a dangerous doctrine which would place us *under the despotism of an oligarchy*. They have with others, the same passions for party, for power, and for the privileges of their corps—and their power is the more dangerous as they are in office for *life*, and not responsible, as the other functionaries are, to the Elective control The Constitution has elected no single Tribunal. I know no safe depositary of the ultimate powers of society but the people themselves."

In another letter he uses this language, "with respect to *our State* and *Federal* Governments. I do not think their relations are correctly understood by Foreigners. They *suppose* the former subordinate to the latter—THIS IS NOT THE CASE—They are *co-ordinate* departments of one simple and integral whole ; but you may ask if the two departments should claim each the same subject of power, where is the *Umpire* to decide between them ? In cases of little urgency or importance, the prudence of both parties will keep them aloof from the questionable ground—but if it can neither be avoided nor compromised, a *convention of the States must be called* to ascribe the doubtful power to that department which they may think best."

MR. MADISON.—The celebrated speech of Mr Madison in 1791, against the Constitutionality of the United States Bank, (which he now, alas! in the waning power of his mind defends,) may well be regarded as a GRAMMAR OF CONSTITUTIONAL LAW—A TEXT BOOK & KEY TO THE CONSTITUTION which should be in the hands of every Patriot who would rescue our country from the *gulf of Consolidation and Monarchy.*

We subjoin a few extracts from this most able exposition of the Federal Constitution.

"Mr. Madison began with a general review of the advantages and disadvantages of Banks." "In making these remarks on the merits of the bill, he had reserved to himself, he said, the right to deny the authority of Congress to pass it. He had entertained this opinion from the date of the Constitution. His impression, might perhaps, be the stronger, because he well recollected, that a power to grant charters of incorporation *had been proposed* in general convention, and *rejected*.

Is the power of establishing an incorporated bank among the powers vested by the Constitution in the Legislature of the United States? This is the question to be examined. After some general remarks on the limitations of all political power, he took notice of the *peculiar manner* in which the Federal Government is limited. It is not a general grant out of which particular pow-

ers are excepted. It is a grant of *particular powers only*, leaving the mass in other hands So it had been understood by its foes, and so it was to be interpreted.

As preliminaries to a right interpretation, he laid down the following Rules:

An interpretation that destroys the very characteristic of the Government, cannot be just.

Where a meaning is clear, the consequences, whatever they may be, are to be admitted. Where doubtful, it is fairly triable by its consequences.

In controverted cases, the *meaning of the parties to the instrument*, if to be collected by reasonable evidence is a proper guide.

Contemporary and concurrent expositions are a reasonable evidence of the meaning of the parties.

In admitting or rejecting a constructive authority, not only the degree of its incidentality to an express authority is to be regarded, but the degree of its importance also; since, *on this*, will depend the probability of its being left to construction.

Reviewing the Constitution with an eye to these positions, it was not *possible* to discover in it the power to incorporate a Bank. The only clauses under which such a power could be pretended, are either—

1st. The power to lay and collect taxes, to pay the debts and provide for the common defence and general welfare; or,

2d. The power to borrow money on the credit of the United States; or,

3d. The power to pass all laws necessary and proper to carry into execution those powers.

The bill did not come within the first power. It laid no tax to pay the debts or provide for the general welfare. It laid no tax whatever. It was altogether foreign to the subject.

No argument could be drawn from the terms "common defence and general welfare."—The power, as to these general purposes, was limited to acts laying taxes for them; and the general purposes themselves were limited and explained by the *particular enumeration subjoined*. To understand these terms in any sense that would justify the power in question, would give to Congress an unlimited power—would render nugatory the enumeration of particular powers—would supersede all the powers reserved to the State governments. The terms are copied from the articles of confederation. Had it ever been pretended that they were to be understood otherwise than as here explained? It had been said that "general welfare" means cases in which a general power might be exercised by Congress, without interfering with the powers of the States; and that the establishment of a National Bank was of this sort. There were, he said, several answers to this *novel doctrine*.

1st. The proposed Bank would interfere so as indirectly to defeat a State Bank at the same place.

2d. It would directly interfere with the rights of the States to prohibit, as well as establish Banks, and the circulation of Bank notes. He mentioned a law of Virginia actually prohibiting the circulation of notes payable to bearer.

3d. Interference with the power of the States was no Constitutional criterion of the power of Congress. If the power *was given*, they might exercise it, although it should interfere with the laws, or even the Constitution of the States.

4th. If Congress could incorporate a Bank, merely because the act would leave the States free to establish Banks also, any other incorporations might be made by Congress. They would incorporate companies of *manufacturers*, or companies for *cutting canals*, or even religious societies, leaving similar incorporations by the States, like State Banks, to themselves; Congress might even establish religious teachers in every parish, and pay them out of the Treasury of the United States, leaving other teachers unmolested in their

functions. These inadmissible consequences condemned the controverted principle. The case of the Bank established by the former Congress, had been cited as a precedent. This was known, he said, to have been the child of necessity. It never could be justified by the regular powers of the articles of confederation. Congress betrayed a consciousness of this, in *recommending* to the *States* to incorporate the Bank also. They did not attempt to protect the Bank notes by penalties against counterfeiters. These were reserved wholly to the authority of the States.

The second clause to be examined, is that which empowers Congress to borrow money.

Is this a bill to borrow money? It does not borrow a shilling! Is there any fair construction by which the bill can be deemed an exercise of the power to borrow money? The obvious meaning of the power to borrow money, is that of accepting it from, and stipulating payment to, those who are able, and willing to lend. To say that the power to borrow involves a power creating the ability, where there may be the will to lend is not only establishing a dangerous principle, (as will be immediately shewn), but is as forced a construction as to say, that it involves the power of compelling the will, where there may be the ability to lend.

The third clause is that which gives the power to pass all laws necessary and proper to execute the specified powers.

Whatever meaning this clause may have, none can be admitted, that would give an unlimited discretion to Congress. Its meaning must, according to the natural and obvious force of the terms, and the context, be limited to means necessary to the end and incident to the execution of the specified powers.

The clause is in fact, merely declaratory of what would have resulted by unavoidable implication as the appropriate, and, as it were, technical means of executing those powers. In this sense it had been explained by the friends of the Constitution, and ratified by the State Conventions.

The essential characteristic of the Government, as composed of limited and enumerated powers, would be destroyed, if instead of direct and incidental means, any means could be used which, in the language of the preamble of the bill, "might be conceived to be conductive to the successful conducting of the finances; or might be conceived to tend to give facility to the obtaining of loans." He urged an attention to the diffuse and ductile terms which had been found requisite to cover the stretch of power contained in the bill. He compared them with the terms necessary and proper, used in the Constitution, and asked whether it was possible to view the two descriptions as synonymous, or the one as a fair and safe commentary on the other?

If, proceeded he, Congress, by virtue of the power to borrow, can create the means of lending, and in pursuance of these means, can incorporate a bank, they may do any thing whatever, creative of like means.

The East India Company has been a lender to the British Government, as well as the Bank, and the South Sea Company is a greater creditor than either—Congress, then, may incorporate similar companies in the United States, and that, too, not under the idea of regulating trade, but under that of borrowing money.

Private capitals are the chief resources for loans to the British Government. Whatever, then, may be conceived to favor the accumulation of capitals, may be done by Congress. They may incorporate manufacturers. They may give monopolies in every branch of domestic industry.

If, again, Congress, by virtue of the power to borrow money, can create the ability to lend, they may by virtue of the power to levy money, create the ability to pay it. The ability to pay taxes depends on the general wealth of society; and this on the general prosperity of agriculture, manufactures, and commerce. Congress then, may give bounties, and *make regulations on all* of these objects."

The doctrine of implication is always a tender one. The danger of it has been felt in other Governments. The delicacy was felt in the adoption of our own; *the danger may also be felt, if we do not keep close to our chartered authorities.*

Mark the reasoning on which the validity of the bill depends. To borrow money is made the end, and the accumulation of capitals implied as the means. The accumulation of capitals is then the end and a Bank implied as the means. The Bank is then the end, and the charter of incorporation, a monopoly, capital punishments, &c. implied as the means.

If implications, thus remote, and thus multiplied can be linked together, a chain may be formed that will reach every object of legislation, every object within the whole compass of political economy.

The latitude of interpretation required by the bill, is condemned by the rule furnished by the Constitution itself."

"The examples cited, with others that might be added, sufficiently inculcate, nevertheless, a rule of interpretation very different from that on which the bill rests. They condemn the exercise of any power, particularly a great and important power, which is not evidently and necessarily involved in an express power."

"The bill gives a power to purchase and hold lands. Congress themselves could not purchase lands within a State, "without the consent of its Legislature." How could they delegate a power to others, which they did not possess themselves? It takes from our successors, who have equal rights with ourselves, and, with the aid of experience, will be more capable of deciding on the subject, an opportunity of exercising that right for an immoderate term.

It takes from our constituents the opportunity of deliberating on the untried measure, although their hands are also to be tied by it for the same term.

It involves a monopoly, which effects the equal rights of every citizen.

It leads to a penal regulation, perhaps capital punishments, one of the most solemn acts of sovereign authority.

From this view of the power of incorporation exercised in the bill, it could never be deemed an accessary or a subaltern power to be deduced by implication, as a means of executing another power; it was, in its nature, a distinct, an independent and substantive prerogative, which not being enumerated in the Constitution, could never have been meant to be included in it; and, not being included, could never be rightfully exercised.

He here adverted to a distinction, which he said, had not been sufficiently kept in view, between a power necessary and proper for the Government of the Union and a power necessary and proper for executing the enumerated powers In the latter case, the powers included in each of the enumerated powers, were not expressed, but to be drawn from the nature of each. In the former, the powers composing the government were *expressly enumerated.* This constituted the peculiar nature of the government. No power therefore, not enumerated, could be inferred from the general nature of government. Had the power of making treaties, for example, been omitted, however necessary it might have been, the defect could only have been lamented, or supplied by an amendment of the Constitution."

"He proceeded next to the contemporary expositions given to the Constitution.

The defence against the charge founded on the want of a bill of Rights, pre-supposed, he said, that the powers not given were retained, and that those given were not to be extended by remote implications. On any other supposition, the power of Congress to abridge the freedom of the press, or the rights of conscience, &c., could not have been disproved.

The explanations in the State Conventions, all turned on the same funda-

mental principles, and on the principle that the terms necessary and proper gave no additional powers to those enumerated. [Here he read sundry passages from the debates of the Pennsylvania, Virginia and North Carolina Conventions, shewing the grounds on which the Constitution had been vindicated by its principal advocates, against a dangerous latitude of its powers, charged on it by its opponents.]"

"The explanatory declaration and amendments accompanying the ratifications of the several States, formed a striking evidence, wearing the same complexion. He referred those who might doubt on the subject, to several acts of ratification.

The explanatory amendments proposed by Congress themselves, at least, would be good authority with them; all these renunciations of power proceeded on a rule of construction, excluding the latitude now contended for. These explanations were the more to be respected, as they had not only been proposed by Congress, but ratified by nearly three-fourths of the States. He read several of the articles proposed, remarking particularly on the 11th and 12th: the former as guarding against a latitude of interpretation; the latter as excluding every source of power not within the Constitution itself."

"It appeared, on the whole, he concluded, that the power exercised by the bill was—

Condemned by the silence of the Constitution.

Condemned by the rule of interpretation arising out of the Constitution.

Condemned by its tendency to destroy the main characteristic of the Constitution.

Condemned by the expositions of the friends of the Constitution, whilst depending before the public.

Condemned by the apparent intention of the parties which ratified the Constitution.

Condemned by the explanatory amendments proposed by Congress themselves to the Constitution.

And he hoped it would receive its final *Condemnation*, by the vote of this House."

After a perusal of this admirable production of Mr. Madison—and of his still more celebrated Report of '98. We cannot bear to look upon his late fall from these "vantage grounds" of high Republican Principle to the latitudinary policy of Federalism, without exclaiming with the Poet—"Who would not weep if Atticus were he."

LUTHER MARTIN.—(In the Federal Convention)" Those who wish the General Government to protect the State Governments, are anxious to have the line of jurisdiction well drawn and defined, *so that they may not clash*. If we do this, the people will be convinced that we meant well to the *State Governments*; and should there be any defects, they will *trust* a future convention with the power of making further amendments. A General Government may operate on individuals in cases of *general concern*, and still be *Federal*. This distinction is with the *States, as States, represented by the people of those States*. States will take care of their *internal police and local concerns*. The general Government *has no interest* but the *protection of the whole*. *Every other movement must fail*. Yet we are proceeding in forming this Government as if there were no State Governments at all! THE STATES MUST APPROVE OR YOU WILL HAVE NONE AT ALL." "The Treaty between Virginia and Maryland, about the navigation of the Chesapeake and Potomac, is no infraction of the Confederacy The *corner stone* of a Federal Government is *equality of Votes*—States may surrender this Right, but if they do, their liberties are lost."

"*Unequal Confederacies can never produce good effects*. Apply this to the Virginia plan—out of the number 90, Virginia has 16 votes, Massachusetts 14,

Pennsylvania 12—in all 42. Add to this a State having 4 votes, and it gives a *majority* in the General Legislature--Consequently, a combination of these States would govern the remaining 9 or 10 States. *Where is the safety and Independency of those States.*"

"What is the Government now forming, over States, or persons? As to the *latter* their Rights cannot be the object of a general Government. These are already secured by their *Guardians—the State Governments.*—The General Government is therefore intended *only to protect and guard* the Rights of the States *as States.* This General Government, I believe, is the first upon earth which gives checks against Democracies, and Aristocracies. But the only *necessary* check in a General Government ought to be a restraint to prevent its *absorbing the powers of the State Governments* Representation on *Federal* principles can only flow from *State* Societies."—"The *basis* of all ancient and modern confederacies is the Freedom and the Independency of the States composing it."—"You must give each State an equal suffrage, or our business is at an end."

Again. In his address to the Legislature of Maryland on the proceedings of the Federal Convention, Mr. Luther Martin says:—"On our meeting in Convention, it was soon found there were among us *three parties* of very different sentiments and views. *One party,* whose object and wish it was to *abolish and annihilate all State Governments,* and to bring forward one general Government, over this extensive continent, of a *monarchical nature,* under certain restrictions and limitations. Those who *openly* avowed this sentiment were, it is true, *but few*; yet it is equally true, Sir, that there was a considerable number who did not openly avow it, who were, by myself and many others of the Convention, considered as being *in reality, favorers of that sentiment,* and acting *upon those principles,* covertly endeavoring to carry into effect what they well knew, openly and avowedly, could not be accomplished."—(Of these it appears were Gen, Hamilton and Mr. Madison.)

"*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 could give their own States undue power and influence in the Government over the other States"—[of these it appears was Gov. Randolph and some others.)

"*A Third Party* was what I considered truly FEDERAL AND REPUBLICAN. This party was nearly *equal* in number with the *other two,* and was composed of the Delegations from Connecticut, New York, New Jersey, Delaware, and in part, from Maryland, also of some individuals *from other representations.* This party, Sir, were for proceeding upon terms of FEDERAL EQUALITY. They were for taking our present *Federal system* as the *Basis* of their proceedings, and, as far as experience had shown us that there were *Defects,* to *remedy those defects*; as far as experience had shown that other powers were *necessary* to the Federal Government, to give those powers. They considered this the *object for which they were sent by their States,* and what their States expected from them."

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GEN. HAMILTON.(In the Federal Convention)—"I have well considered the subject, and am convinced that no amendment of the confederation can answer the purpose of a good government, so long as the State sovereignties do, in any shape, exist; and I have great doubts whether a national government on the Virginia plan can be made effectual. What is federal? An association of several independent states into one. How or in what manner this associationlis formed, is not so clearly distinguishable. We find the Diet of Germany has in some instances the power of legislation on individuals. We

find the United States of America have it in an extensive degree in the cases of piracies.

Let us now review the powers with which we are invested. We are appointed for the *sole* and *express* purpose of revising the confederation, and to *alter* or *amend* it, so as to render it effectual for the purposes of a good government. Those who suppose it must be federal, lay great stress on the terms *sole* and *express*, as if these words intended a confinement to a federal government; when the manifest import is no more than that the institution of a good government must be the *sole* and *express* object of your deliberations.

Let one body of the legislature be constituted during good behaviour or life.

And let me observe, that an Executive is less dangerous to the liberties of the people when *in office during life*, than for seven years.

It may be said this constitutes an elective monarchy? Pray what is a monarchy? May not the governors of the respective states be considered in that light? But by making the executive subject to impeachment, the term monarchy cannot apply."

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MR. MADISON—(In the Federal Convention) "Has not Georgia, in direct violation of the confederation made war with the Indians, and concluded treaties? Have not Virginia and Maryland entered into a partial compact? Have not Pennsylvania and Jersey regulated the bounds of the Delaware? Has not the state of Massachusetts at this time, a considerable body of troops in pay? It is evident, if we do not *radically* depart from a federal plan, we shall share the fate of ancient and modern confederacies."

Again—"If this point of representation was once well fixed, we would come nearer to one another in sentiment. The necessity would then be discovered of *circumscribing* more effectually the *State Governments*, and enlarging the bounds of the General Government. Some contend that States are Sovereign, when in fact they are only political Societies. There is a gradation of power in all Societies, from the lowest corporation to the highest Sovereign. The States never possessed the essential Rights of Sovereignty. These were always vested in Congress. Their voting, *as States*, in Congress, is no evidence of Sovereignty." "*The States ought to be placed under the control of the General Government—at least as much so as they formerly were under the King and British Parliament.*"

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MR. LANSING—(In the Federal Convention)—I am clearly of opinion that I am not authorized to accede to a system which will annihilate the State governments, and the Virginia plan is declarative of such extinction. It has been asserted that the public mind is not known. To some points it may be true, but we may collect from the fate of the requisition of the impost, what it may be on the principles of a national government.—When many of the states were so tenacious of their rights on this point, can we expect that *thirteen* states will surrender their governments up to a national plan?

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JUDGE ELLSWORTH—(In the Federal Convention)—'In *commercial regulations* they (the large states) will unite. In the disposition of *lucrative offices* they would unite. But I ask no surrender of any of the rights of the great states, nor do I plead *duress* in the makers of the old confederation, nor suppose they soothed the danger, in order to resume their rights when the danger was over. No, Sir; small states must possess the power of self-defence or be ruined. Will any one say there is no diversity of interests in the

states? And if there is, should not those interests be guarded and secured? But if there is none, then the large states have nothing to apprehend from an equality of rights."

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MR. BEDFORD.—(In the Federal Convention)—"That all the States at present are equally sovereign and independent, has been asserted from every quarter of this house. Our deliberations here are a confirmation of the position; and I may add to it, that each of them act from interested, and many from ambitious motives. Impartiality, with them, is already out of the question; the reported plan is their political creed, and they support it right or wrong. Their cry is, where is the danger? and they insist that although the powers of the general government will be increased, yet it will be for the good of the whole; and although the three great states form nearly a majority of the people of America, they never will hurt or injure the lesser states. *I do not, gentlemen, trust you.* If you possess the power, the abuse of it could not be checked; and what then would prevent you from exercising it to our destruction? You gravely allege that there is no danger of combination, and triumphantly ask, how could combinations be effected? "The large states," you say, "all differ in productions and commerce; and experience shews that instead of combinations, they would be rivals, and counteract the views of one another." This, I repeat, is language calculated only to amuse us. Yes, sir, the larger states will be rivals, but not against each other—they will be rivals against the *rest of the States.*"

"Let us then do what is in our power—*amend and enlarge the confederation, but not alter the Federal system.* The people expect this, and no more."

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JUDGE MARSHALL—(In the Debates of the Virginia Convention, for adopting the Federal Constitution, says in regard to the Sovereignty of the States) "I hope no gentleman will think that *a State* will be called to the Bar of the Federal Court—Is there no such case at present? Are there not many cases in which the Legislature of Virginia is a Party, and yet the State is not sued? It is not rational to suppose that the SOVEREIGN POWER shall be dragged before a Court—The *intent* is to enable States to recover claims of individuals residing in other States. If an individual has a just claim against any particular State, is it to be presumed that on application to its Legislature he will not obtain satisfaction? But how could a State recover any claim from a Citizen of another State without the establishment of these Tribunals?

Again—"What are the objects of the National Government? To protect the *United States*, and to promote the general welfare—Protection in time of War is one of the principal objects—Until mankind shall cease to have ambition and avarice, wars will arise. The prosperity and happiness of the people depend on the performance of these great and important duties of the General Government. Can these duties be performed by one State? Can one State protect us, and promote our happiness? The honorable gentleman who has gone before me (Governor Randolph) has shown that Virginia cannot do these things. How then can they be done? By the National Government only. Shall we refuse to give it power to do them? We are answered, that the powers may be abused: That though the Congress may promote our happiness, yet they may prostitute their powers to destroy our liberties. This goes to the destruction of all confidence in agents. Would you believe that men who had merited your highest confidence, would deceive you? Would you trust them again after one deception? Why then hesitate to trust the General Government? The object of our enquiry is—*Is the power necessary—and is it guarded?*"

"The State Governments did not derive their powers from the General Government. But each government derived its powers from the people, and each was to act *according to the powers given it* Would any gentlemen deny this? He demanded if powers not given, were retained by implication? Could any man say so? Could any man say that this power was not *retained by the States, as they had not given it away?* For, says he does not a power remain till it is given away? The State Legislatures had power to command and govern their militia before, and have it still, undeniably, unless there be something in this constitution that takes it away. For continental purposes, Congress may call forth the militia, as to suppress insurrections and repel invasions. But the power given to the States by the people is not taken away: For the Constitution does not say so. In the confederation, congress had this power. But the State Legislatures had it also. The power of legislation given them within the ten miles square is exclusive of the States, because it is *expressed* to be exclusive. The truth is, that when power is given to the General Legislature, if it was in the State Legislatures before, both shall exercise it; unless there be an incompatibility in the exercise by one, to that by the other; or negative words precluding the State Governments from it.—But there are no negative words here. It rests therefore, with the States."

"He then concluded by observing, that the power of governing the militia, was not vested in the States by implication, because being possessed of it antecedent to the adoption of the Government, and not being divested of it, by any grant or restriction in the Constitution, they must necessarily be as fully possessed of it as ever they had been. And it could not be said, that the States derived any powers from that system, *but retained them, though not acknowledged in any part of it.*"

PATRICK HENRY. (In the Virginia Convention). "The distinction between a National Government and a Confederacy is not sufficiently discerned. Had the Delegates who were sent to Philadelphia, a power to propose a consolidated Government instead of a confederacy? *Were they not deputed by the States*, and not by the people? The assent of the people in their collective capacity is not necessary to the formation of a Federal Government. The people have no right to enter into leagues, alliances, or confederations. They are not the proper agents for this purpose. States and *Foreign powers* are the only proper agents for this kind of government. Show me an instance where *the people* have exercised this business. Has it not always gone through their Legislatures?

"This proposal of altering our Federal Government, is of a most alarming nature---make the best of this new government—say it is composed of any thing but inspiration.—You ought to be extremely cautious, watchful, jealous, of your *Liberty*. For instead of securing your Rights, you may lose them forever. If a wrong step be now made, the Republic may be lost forever."

"And here I would make this enquiry of those worthy characters who composed a part of the Federal Convention." "I have the highest veneration for those gentlemen; but, Sir, give me leave to demand, *what right had they to say "We the people?"* My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask, who authorized them to speak the language of "*We the people*" instead of "WE, THE STATES?" States are the characteristics and the soul of a Confederation. If the States be not the agents of this compact, it must be *one great consolidated national* Government of the people of all the States."

"I need not take much pains to shew that the principles of such a system are extremely pernicious, impolitic, and dangerous. Is this a monarchy, like England? A compact between the *prince* and *people*: with checks on the former to secure the liberty of the latter? Or is this a confederacy, like Hol-

land—An Association of a number of independent States, each of which retains *its individual Sovereignty ?*"

"Here is a revolution as radical as that which separated us from Great Britain. It is as radical, *if* in this transition, our Rights and privileges are endangered and the *Sovereignty of the States* be relinquished. And cannot we see, plainly that this is actually the case. The Rights of conscience, *Trial by Jury Liberty of the Press*, all your immunities and franchises, all pretensions to human rights and privileges are rendered insecure, if not lost, by this change, so loudly talked of by some and so inconsiderately by others Is this tame relinquishment of Rights *worthy of Freemen* ? Is it worthy of that manly fortitude that ought to characterize Republicans ? It is said eight States have adopted this plan. I declare that if twelve States and a-half had adopted it, I would with manly firmness and in spite of an erring world, reject it. You are not to inquire how your *Trade may be increased*, nor how you are to become a *great and powerful people*—but *how your* LIBERTIES *can be secured*. For liberty ought to be the direct end of your Government." "Is the relinquishment of the trial by Jury and the liberty of the press necessary for your Liberty ? Will the abandonment of your most sacred rights tend to the security of your Liberty !—the greatest of all earthly blessings give us that precious jewel, and you may take every thing else ! But I am fearful I have lived long enough to have become *old fashioned*—Perhaps an invincible attachment to the dearest rights of man, may, in these refined enlightened days be deemed old fashioned. If so, I am content to be so. I say, the time *has been*, when every pulse of my heart beat for American *Liberty*; and which, I believe, had a counterpart in the breast of every true American. But suspicions have gone forth—suspicions of my integrity—publicly reported that my professions are not real. *Twenty-three years ago* was I supposed a *traitor* to my country. I was then said to be a *bane of sedition*; because I supported the rights of my country. I may be thought *suspicious*, when I say our privileges and rights are in danger. But, Sir, a number of the people of this country are weak enough to think these things are too *true*. I am happy to find that the gentleman on the other side declares they are groundless. But, Sir, *suspicion is a virtue*, as long as its object is the preservation of the public good, and as long as it stays within proper bounds. Should it fall on me, I am content; conscious rectitude is to me a powerful consolation."

"Sir, I have a strong cause for apprehension. In some parts of the plan before you, the great rights of Freemen are endangered; in other parts, absolutely taken away. How does your trial by Jury stand ? In *civil cases gone !* not sufficiently secured in criminal—this *best* privilege is gone. But we are told that we need not fear, because those in power being our *representatives*, will not abuse the powers we put in their hands. Sir, I am not well versed in history: but I will submit to your recollection whether Liberty has been destroyed *most often* by the licentiousness of the people, or by the *tyranny* of *Rulers?* I imagine, Sir, you will find the balance on the side of *tyranny*. Happy will you be, if you miss the fate of those nations who, omitting to *resist their oppressors*, or *negligently suffering* their *Liberty to be* wrested from them have groaned under intolerable despotism !"

"Let not gentlemen, be told that it is not safe to reject this government! Wherefore is it not safe ? We are told there are *dangers*; but *those dangers are ideal*. They cannot be demonstrated. To encourage us to adopt it, they tell us that there is a plain easy way of *getting amendments*." "It appears that three-fourths of the States must ultimately agree to any amendments that may be necessary. Let us consider the consequence of this. However uncharitable it may appear, yet I must speak my opinion, that the most unworthy characters may get into power and prevent the introduction of amendments. Let us suppose (for the case is supposeable, and probable), that you *happen*

to deal these powers to unworthy hands---will they *relinquish powers already in their possession, or agree to amendments?* Two-thirds of Congress, or of the State Legislatures, are necessary *even to propose* amendments. If *one-third* of these be unworthy men, they may prevent the application for amendments. But what is most destructive and mischievous, is, that three-fourths of the State Legislatures, or of State Conventions, must concur in the amendments when proposed. In such numerous bodies there must necessarily be some designing men. To suppose that so large a number as *three-fourths of the States* will concur, is to suppose they will possess genius, intelligence and integrity approaching to the miraculous.—It would indeed be miraculous that theyshould concur in the *same amendments*, or even in such as bear some likeness to each other. For *four* of the smallest States that do not collectively contain one-tenth part of the population of the United States may obstruct the most salutary and necessary amendments. Nay in these four States six-tenths of the people may reject these amendments---And suppose that amendments shall be opposed to amendments [which is highly probable] is it possible that three-fourths can ever agree to the *same amendments?* A bare majority in these four small States may hinder the adoption of amendments. So that we may fairly and justly conclude that one twentieth part of the American people may prevent the removal of the most grievous inconveniences and oppressions, by refusing to accede to amendments."

"Grant that any of them (Congress), are wicked; they may *squander the public money* so as to ruin you, and yet you have no redress. *I say they may ruin you.* For where, Sir, is the *responsibility?* The yeas and nays will show you nothing, unless they be fools as well as knaves, for after having wickedly trampled on the Rights of the people, they would act like fools indeed, were they to publish and divulge their iniquity, when they have it equally in their power to suppress and conceal it. Where is the *responsibility?* That leading principle in the British Government? In that Government a punishment certain and inevitable is provided. But in this, there is no real actual punishment for the grossest mal-administration They may go without punishment, though they commit the most outrageous violations on our immunities. That paper (the Constitution), may tell me they will be punished, I ask by what Law? They must *make the Law*: for there is no existing *law* to do it. What, will they make a law to punish themselves? This, Sir, is my great objection to the Constitution, that there is no *responsibility*, and that the preservation of our liberty depends in the single chance of men being virtuous enough to *make laws to punish themselves.*"

"By the paper proposed, a majority will forever endeavour in vain to alter it. Is not this the most promising time for securing the necessary alterations? Will you go into that government where it is a principle that a contemptible minority may prevent any alteration." "The language of this paper (his proposed previous amendments) is not dictatorial, but merely a proposition for amendments. The proposition of Virginia has met with a favorable reception before. We proposed *that* Convention which met at *Annapolis.* It was not called dictatorial. We proposed *that* at Philadelphia. Was Virginia thought dictatorial? But Virginia is now to lose her pre-eminence." "Have we not a right to say, *hear our propositions?* Why Sir, your *slaves* have a *right to make their humble requests.* Those who are in the meanest occupations of human life have a *right to complain.* What do we require? Not pre-eminence, but *safety.*"

GOV. RANDOLPH, [in the Virginia Convention]. "I had objections to this constitution. I *still have* objections to it. The gentleman [Mr. Henry] asks, how comes it to pass that I am now willing to take it? I answer that I see Virginia in such danger, that were its defects still greater, I would adopt

it. These dangers though not immediately present to our view, yet may not be far distant, if we *disunite* with the other States. I will join any man in endeavouring to get *amendments*, after the danger of disunion is removed *by* a *previous adoption*."

"We need not go farther than the War to find a willing relinquishment of power. Look at the Confederation; you will there find such a voluntary relinquishment View the Convention of *Annapolis*—the object of its delegation involved in its nature some relinquishment of power. It produced this effect—all the States, except Rhode Island, agreed to call a general Convention to *revise the Confederation*, and invest Congress with more power. A general Convention has been called It has proposed a system which concedes considerable powers to Congress. Eight States have already assented to this concession"—"Were we not to look to futurity? Have we nothing to fear from the present State of Europe? We are exposed at sea. The hon Gentleman tells us, we have no hostility to fear from that quarter. That our Ambassador at Paris, would have informed us if there were any combustibles preparing. If he has not done any such thing it is no conclusive evidence of safety. Nations have passions like men. It is the disposition of nations to attack where there is a demonstrable weakness."

"But let us consider things calmly. Reflect on the *facility of obtaining amendments* if you adopt; and weigh the *danger* if you do not. Recollect that many other States have adopted it, who wish for *many amendments*. I ask you if it be not better to adopt and run the chance of amending it hereafter, than run the risk of endangering the Union? The Confederation is gone; it has now no authority If in this situation we *reject* the Constitution the Union will be dissolved, the dogs of war will break loose, and anarchy and discord will complete the ruin of the country. *Previous adoption* will prevent these deplorable mischiefs. The Union of sentiments with us in the *adopting States* will render subsequent amendments easy. I therefore rest my happiness with *perfect confidence* on this subject."

"The suffrage which I shall give in favor of this Constitution, will be ascribed by malice to motives unknown to my breast. But although for every other act of my life, I shall seek refuge in the *mercy* of God—for this I request his *justice* only Lest however, some future annalist should in the spirit of party vengeance, deign to mention my name, let him recite these truths—that I went to the Federal Convention with the strongest affection to the Union—that I acted there in full conformity with this affection—that I refused to subscribe, because I had, as *I still have, objections to the Constitution*, and wished a free enquiry into its merits; and that the accession of *eight States reduced our deliberations* to the single question of *Union or no Union*."

MR. MADISON, (in the Virginia Convention)—"The powers of the General Government relate to *external objects* and are but few. But the powers in the States relate to those great objects which *immediately concern the prosperity of the people*. Let us observe also that the powers in the General Government are those which will be exercised *mostly in time of War*, while those of the State Governments will be exercised in *time of peace*. But I hope the time of War will be little, compared to that of peace. I should not complete the view which ought to be taken of this subject, without making this additional remark, that the powers vested in the proposed Government are not *so much an augmentation of powers* in the general government, as a *change* rendered necessary for the purpose of giving *efficacy* to those which *were vested in it before*. It cannot escape any gentleman, that this power in theory exists in the *Confederation* as fully as in this Constitution. The only difference is this: that now they tax *States*, and by this plan they will tax individuals. There is no theoretic difference between the two. But in practice there will be an in-

finite difference between them. The one is an *ineffectual* power; the other is adequate to the purpose for which it is given. This change was necessary for the public safety."

Again, "The honorable member, in order to influence our decision, has mentioned the opinion of a citizen who is an *ornament to this state*. When the name of this distinguished *character* was introduced, I was much surprised." "I believe that were that gentleman now on this floor, he would be for the *adoption of this Constitution*. I wish his name had never been mentioned. I wish every thing spoken here, relative to his opinion may be suppressed. If our debates should be published. I know that the delicacy of his feelings will be wounded when he will see in print what has, and may be said concerning him on this occasion. I am in some measure *acquainted with his sentiments on this subject*. It is not right for me to unfold what he has informed me. But I will venture to assert that the clause now discussed, is not objected to by Mr. Jefferson. He approves of it because it enables the Government to carry on its operations. He admires several parts of it (the Constitution) which have been reprobated with vehemence in this house. He is cultivated with the *equality of suffrage* in the Senate, which the honorable gentleman (Mr. Henry) calls the rotten part of this Constitution. But, whatever be the opinion of that *illustrious* citizen, considerations of personal delicacy should dissuade us from introducing it here."

Again, [in the 51st No. of the Federalist], Mr. Madison says:—"It is of great importance in a Republic not only to guard society against the *oppression of its rulers*, but to guard *one part* of the society against the injustice of the *other part*. Different interests necessarily exist in different classes of citizens. If a *majority be united by a common interest*, the rights of the minority will be *insecure*." Again, "In a society, under the forms of which the stronger faction can readily unite and *oppress the weaker*, *Anarchy may be said as truly to reign as in a state of nature*, where the weaker individual is not secured against the violence of the stronger."

"Again, "In the compound Republic of America, the power surrendered by the people, is first divided between *two distinct Governments*; and then the portion allotted to each, subdivided among Districts and separate departments. Hence, a double security arises to the Rights of the people. The *different Governments will control each other*, at the same time that each will be controlled by itself."

JUDGE PENDLETON—(in the Virginia Convention)—"The two Governments act in different manners, and for different purposes—the General Government in great National concerns in which we are interested *in common with the other members of the Union*, the State Legislature in our more *local concerns*. Is it true, or merely imaginary that the State Legislatures will be confined to the care of bridges and roads? I think that they are still possessed of *the highest powers—Our dearest Rights*—Life, liberty and property, as Virginians, are still in the hands of our State Legislature. If they prove too feeble to *protect* us, we resort to the aid of the General Government for security. The true distinction is that the two governments are established for different purposes and act on different objects. So that notwithstanding what the worthy Gentleman has said. I believe I am still correct—and insist that if each power is *confined within its proper* bounds, and to its proper objects, an *interference can never happen*. Being for two *different purposes*, as long as they are limited to the different objects they can no more clash than *two parallel lines can meet*."

"Permit me to deliver a few sentiments on the great and important subject of previous and subsequent amendments. When I sat down to read that paper, I did not read it with an expectation that it was perfect, and that no

man would object to it. I had learned, Sir, that an expectation of such perfection in any institution devised by *man* was as vain as the search for the philosopher's stone. I discovered objections—I thought I saw there some sown seeds of disunion—not in the immediate operation of the government, but which *might* happen in some future time. I wish amendments to remove these. But these remote possible errors may be eradicated by the amendatory clause in the constitution. I see no danger in making the experiment, since the system itself points out an easy mode of removing any errors which shall have been experienced. In this view then, I think we may safely trust in the government. With respect to the eight states who have already acceded to it, do gentlemen believe, that, should we propose amendments, as the *sine qua non* of our adoption, they would listen to our proposal? I conceive, Sir, that they would not retract. They would tell us—*No, gentlemen, we cannot accept of your conditions. You put yourselves upon the ground of opposition. Your amendments are dictated by local considerations. We, in our adoption have been influenced by considerations of general utility to the Union. We cannot abandon principles, like these, to gratify you* Thus, Sir, by previous amendments, we present a hostile countenance. If, on the contrary, we imitate the conduct of those states, our language will be conciliatory and friendly. *Gentlemen, we put ourselves on the same ground that you are on. We are not actuated by local considerations, but by such as affect the people of America in general.* This conduct will give our amendments full weight.

I was surprised, when I heard introduced, the opinion of a gentleman [Mr. Jefferson] whom I highly respect I know the great abilities of that gentleman. Providence has, for the good of mankind, accompanied those extensive abilities, with a disposition to make use of them for the good of his fellow beings: and I wish with all my heart that he was here to assist us on this interesting occasion. As to his letter, impressed as I am with the force of his authority, I think it was improper to introduce it on this occasion. The opinion of a private individual, however enlightened, ought not to influence our decision. But admitting that his opinion ought to be conclusive with us, it strikes me in a different manner from the honorable gentleman. I have seen the letter in which this gentleman has written his opinion upon this subject—it appears that he is possessed of that constitution, and has in his mind the idea of amending it—he has in his mind the very question of subsequent or previous amendments, which is now under consideration. His sentiments on this subject are as follows. "I wish, with all my soul, that the nine first conventions may accept the new constitution, because it will secure to us the good it contains, which I think great and important. I wish the four latest which ever they be, may refuse to accede to it, till amendments are secured."

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MR. GRAYSON—(in the Virginia Convention)—"I hope that my fears are groundless, but I believe it, *as I do my creed*, that this Government will operate *as a faction of seven States, to oppress the rest of the Union.* But it may be said that we are represented, and cannot therefore be injured—*a poor representation* it will be! The British would have been glad to take America into the Union, like the Scotch, *by giving us a small representation!*"

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HENRY LEE—[In the Virginia Convention]—"If this were a consolidated *Government*, ought it not to be ratified by a *majority of the people as individuals* and not as *States?* Suppose Virginia, Connecticut, Massachusetts and Pennsylvania, had ratified it—these four States being a *majority of the people of America*, would by their adoption have made it *binding on all the States*, had this been a Consolidated Government. But it is only the Government of *those seven States who have adopted it.* If the honorable Gentleman will attend to this, we shall hear no more of Consolidation."

JUDGE PARSONS, (In the Massachusetts Convention.) "In order that the general government should preserve itself, it is necessary it should preserve justice between the several States."

"It has been objected that we have no bill of rights. If gentlemen, who make this objection, would consider what are the supposed inconveniences resulting from the want of a declaration of rights, I think they would soon satisfy themselves that the objection has no weight. Is there a single natural right we enjoy, uncontrolled by our own legislature, that Congress can infringe? Not one. Is there a single political right secured to us by our constitution, against the attempts of our own legislature, which we are deprived of by this constitution? Not one that I recollect. All the rights Congress can control, we have surrendered to our own legislature, and the only question is, whether the people shall take from their own legislatures a certain portion of the several sovereignties, and unite them in one head, for the more effectual securing of the national prosperity and happiness.

The honorable gentleman from Boston has stated at large most of the checks the people have against usurpation, and the abuse of power, under the proposed constitution; but from the abundance of his matter, he has in my opinion omitted two or three, which I shall mention. The oath the several legislative, executive, and judicial officers of the several states take to support the federal constitution, is as effectual a security against the usurpation of the general government as it is against the encroachment of the state governments. For an increase of the powers, by usurpation, is as clearly a violation of the federal constitution, as a diminution of these powers by private encroachment---and that the oath obliges the officers of the several states as vigorously to oppose the one as the other. But there is another check founded in the nature of the union, superior to all the parchment checks that can be invented. If there should be an usurpation, it will not be on the farmer and merchant, employed and attentive only to their several occupations, it will be upon thirteen legislatures, completely organized, possessed of the confidence of the people, and having the means as well as inclination successfully to oppose it. Under these circumstances, none but madmen would attempt an usurpation. But, sir, the people themselves have it in their power effectually to resist usurpation, without being driven to an appeal to arms. An act of usurpation *is not obligatory, it is not law*, and any man may be justified in his resistance. Let him be considered as a criminal by the general government, yet only his own fellow citizens can convict him---they are his jury, and if they pronounce him innocent, not all the powers of Congress an hurt him; and innocent they certainly will pronounce him, if the supposed law he resisted was an act of usurpation."

JOHN HANCOCK.—The old *Nullifier* of Sagadahock, (who was among the first to recommend the destruction of the Tea in Boston Harbor—the first signer of the Declaration of Independence—and the first Governor who resisted Federal usurpation)—in the Debates of Massachusetts for adopting the Federal Constitution, placed his assent (as President of the Convention) expressly on the ground of the *restrictive* amendments which he proposed becoming a part of that Instrument. His words are "I give my assent to the Constitution, in full confidence that the Amendments proposed will soon become a part of the system. These amendments being in no wise local, but calculated to give security and ease alike to all *the States*. I think that all will agree with them." The chief of these Amendments was in the following words "That it be *explicitly* declared that all powers not *expressly delegated* by the aforesaid Constitution are *reserved to the several States*, to be by them exercised."

SAMUEL DEXTER.—The 2d volume of the American Register in an obituary notice of Mr. Dexter says "Commerce owes Mr. Dexter obligations for the decided stand he took against a perpetual embargo—"*Unconstitutional!*" —was the Anat ema fulminated against it by him in all courts and public bodies—as Cato closed all his speeches with the words "Carthage must be destroyed"—so—"The Embargo is unconstitutional, and *should not be obeyed*"—were for some time the words of Mr. Dexter—His voice was heard *at the Capitol*—And if ever his experiment is again to be hazarded on a maratime people, it will be in a manner essentially different."

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RAWLINS LOWNDES—(in the South Carolina Debates on the Federal Constitution) said "He believed the Gentlemen that went from this State to represent us in the Convention, possessed as much integrity, and stood as high in point of character as any gentlemen that could have been selected; and he also believed that they had done every thing in their power to procure for us a proportionate share in this new Government—but the very little which they had gained proved what we might expect in future—and that the interest of the Northern States would so predominate as to divest us of any pretensions to the title of a Republic"—"A great number of gentlemen were captivated with this new Constitution because those who were in debt would be compelled to pay—others pleased themselves with the reflection that no more confiscation laws could be passed—but those were small advantages in proportion to evils that might be apprehended *from the Laws that might be passed by Congress* whenever there was a majority of Representatives from the Eastern States, who were governed by prejudices and ideas extremely different from ours"—"However they need not be uneasy, since every thing would be managed in future by great men!—and great men, every body knew, were incapable of acting under influence of mistake or prejudice—they always were infallible—so that if, at any future period, we should suffer under Laws which *bore hard upon us*, and *should think proper to remonstrate*—the answer would probably be—Go!—you are totally incapable of managing for yourselves—go! mind your private affairs—trouble not yourselves with public concerns—mind your own business—the latter expression was already the motto of some coppers in circulation, and he thought it would soon be the *style of language held out towards the Southern States.*"

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CHARLES COTESWORTH PINCKNEY.—In the South-Carolina Debates on the Federal Constitution—says "The General Government *has no powers but what are expressly granted to it.*—It therefore has no power to take away the Liberty of the Press—That invaluable blessing, which deserves all the encomiums the Gentleman has justly bestowed upon it, is secured by all our State Constitutions—and to have mentioned it in our general Constitution would perhaps *furnish an argument hereafter that the General Government had a right to exercise powers not expressly delegated to it.* For the same reason we had no Bill of Rights inserted in our Constitution—for, as we might perhaps have omitted the enumeration of some of our Rights, it might hereafter be said we had delegated to the General Government a power to take away such of our Rights as we had not enumerated; but by delegating express powers we certainly *reserve to ourselves every powerand Right not* mentioned in the Constitution."

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JOHN JULIUS PRINGLE.—In the South Carolina Debates on adopting the Federal Constitution—uses these words—"If the President and Senate make such (Treaties) as violate the fundamental laws and subvert the Constitution, or tend to the destruction of the happiness and liberty of the STATES, the evils equally oppressing all, will be removed as soon as felt, as those who are oppressed *have the power and means* of redress—Such Treaties not being

made with good faith and on the broad basis of reciprocal interest and convenience, but by treachery and a betraying of Trust, and by *exceeding the powers* with which the makers were entrusted, *ought to be annulled.*"

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CHARLES PINCKNEY—(A member of the Federal Convention)—In the S.Carolina Debates, says "The smaller States declared, and perhaps with reason, that, as the *States* were the *pillars* upon which the general Government must ever rest, their *State Governments must remain*—That however they may *vary* in point of *territory, or population*, as *political Associations* they were EQUAL.—That upon these terms they formally confederated—and that *no inducement whatsoever should tempt them to unite on others*—that, if they did, it would amount to nothing less than throwing the *whole Government* of the Union into the *hands of three or four of the largest States.*"

Again—In advocating the adoption of the Federal Constitution, he says:—"I *trust* this Constitution will secure to us those Rights, which, as the citizens of a *State*, will make us happy and content *at home*—and as the citizens of the *Union*, respectable *abroad.*"

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JAMES LINCOLN.—In the Debates of South Carolina opposed, with honest and prophetic zeal, (like his great Co-adjutor Rawlins Lowndes) the adoption of the Federal Constitution—In foretelling its tendency to despotism he uses these expressions—"What have you been contending for these Ten years past?—LIBERTY!—What is liberty? *The power of governing yourselves*—*If you adopt* this Constitution will you have this power? No—You will give it into the hands of a sett of men who live one thousand miles distant from you. Let the people but once trust their Liberties out of their own hands, and what will be the consequence? First, a *hauty imperious Aristocracy*—and ultimately a *tyrannic Monarchy*"—"It may be said they will be *sworn*—Sir—the King of Great Britain, at his coronation, swore to govern his subjects with justice and mercy. We were *then* his subjects, and continued so for a long time. He would be glad to know how he has observed his oath."

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PATRICK DOLLARD (of Prince Fredericks)—This stern and blunt Republican (like the great Patrick Henry), fulminated to the last; his anathemas against the proposed Constitution. We make the following extract from his Remarks "The people of Prince Frederick's Parish, whom I have the honor to represent, are a brave, honest, and industrious people.

In the late bloody contest they bore a conspicuous part, when they fought, bled, and conquered, in defence of their *civil Rights and privileges*, which they expected to transmit *untainted* to their posterity. They are nearly to a man opposed to this new Constitution."

Notwithstanding they have the highest opinion of the virtue and abilities of the honorable gentlemen from this State, who represented us in the General Convention, and also a few other distinguished characters, (whose names will be transmitted with honor to future ages), yet I believe, at the same time they are *but mortal*, and therefore *liable to err;* and as the virtue and abilities of those gentlemen, will consequently recommend their being first employed in jointly conducting the reins of this Government; they are led to believe it will commence in a moderate Aristocracy—and that it will, in its future operations, produce *a monarchy*, or a *corrupt and oppressive Aristocracy*, they have no doubt. Lust of dominion is natural in every soil; and the love of power and superiority is as prevailing in the United States, at present, as in any part of the earth. Yet in this country, depraved as it is becoming, there still remains a strong regard for Liberty.—An American bosom is apt to glow at the sound of it, and the splendid merit of preserving that best gift of God, which is mostly expelled every country in Europe, might stimulate indolence & animate even luxury herself to sacrifice at the altar of Freedom—My constituents are

highly alarmed at the large and rapid strides which this new government takes towards despotism.—They say it is particularly calculated for the meridian of *despotic Aristocracy*—that it evidently tends to promote the ambitious views of a few able and designing men, and to enslave the rest.

That it carries with it the appearance of an old phrase, formerly made use of in despotic reigns, and especially by Archbishop *Laud* in the reign of Charles I.—that is, NON-RESISTANCE."—They say they *will* resist against it; that they will not accept it unless compelled by force of Arms which this new constitution *plainly threatens*.—And then, they say, your *standing Army*, like Turkish Janissaries *enforcing despotic laws*, must ram it down their throats with the points of bayonets. They *warn* the gentlemen of this *Convention*, as the *Guardians of their Liberty*, to *beware* how they will be accessary to the disposal of, or rather *sacrificing* their dear bought Rights and privileges.—This is the sense and language, Mr. President, *of the people*—and it is an old saying, and I believe a very true one, that the general voice of the people is the voice of God. The general voice of the people to whom I am responsible, are against it—I shall *never betray the trust reposed in me by them*—and therefore shall give it my *hearty dissent*."

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JUDGE IREDELL—(in the North Carolina Convention)—"Shall we give up any thing but what is positively granted by that instrument? It would be the greatest absurdity for any man to pretend,—that when a legislature is formed for a particular purpose, it can have any authority but what is so expressly given to it, any more than a man acting under a power of attorney could depart from the authority it conveyed to him, according to an instance which I stated when speaking on the subject before. As for example—if I had three tracts of land, one in Orange, another in Caswell, and in another Chatham, and I gave a power of attorney to a man to sell the two tracts in Orange and Caswell, and he should attempt to sell my land in Chatham, would any man of common sense suppose he had authority to do so? In like manner, I say, the future Congress can have no right to exercise any power but what is contained in that paper. Negative words, in my opinion, could make the matter no plainer than it was before."—"But when it is evident that the exercise of any power not given up would be an usurpation, it would be not only useless but dangerous, to enumerate a number of rights which are not intended to be given up, because it would be implying in the strongest manner, that every right not included in the exception might be impaired by the government without usurpation, and it would be impossible to enumerate every one."

"If the congress should claim any power not given them, it would be as bare an usurpation as making a king in America. If this constitution be adoptad, it must be presumed the instrument will be in the hands of every man in America, to see whether authority be usurped; and any person by inspecting it may see if the power claimed be enumerated. If it be not, he will know it to be an usurpation.

It is necessary to particularise the powers intended to be given in the constitution, as having no existence before; but after having enumerated what we give up, it follows of course, that whatever is done by virtue of that authority, is legal without any new authority or power. The question then under this clause, will always be—whether Congress has exceeded its authority? If it has not exceeded it we must obey, otherwise not. This constitution when adopted, will become a part of our state constitution, and the latter must yield to the former only in those cases where power is given by it. It is not to yield to it in any other case whatever. For instance, there is nothing in the constitution of this state establishing the authority of a Federal

court.' Yet the federal court when established, will be as constitutional as the Superior court is now under our constitution."

GENL. DAVIE.—(In the North Carolina Convention) "After repeated and decisive proofs of the total inefficiency of our general government, the states deputed the members of the Convention to *revise* and *strengthen* it."

"The difference in point of magnitude and importance in the members of the confederacy, was an additional reason for the division of the Legislature into two branches, and for establishing an equality of suffrage in the Senate. The protection of the small states against the ambition and influence of the larger members, could only be effected by arming them with an equal power in one branch of the Legislature. On a contemplation of this matter, we shall find, that the jealousies of the states could not be reconciled in any other way. The lesser states would never have concurred unless this check had been given them, as a security for their political existence against the power and encroachments of the great states."

"The business of the Convention was to amend the confederation by giving it additional powers. The present form of Congress being a single body, it was thought unsafe to augment its powers, without altering its organization. The act of the Convention is but a mere *proposal* similar to the production of a private pen. I think it a government which, if adopted, will cherish and protect the happiness and liberty of America; but I hold my mind open to conviction; I am ready to recede from my opinion if it be proved to be ill-founded."

MR. MACLAINE—(in the North-Carolina Convention.)—"The gentleman surely must know, that if there be certain rights which never can, nor ought to be given up, these rights cannot be said to be given away, merely because we have omitted to say that we have not given them up. Can any security arise from declaring that we have a right to what belongs to us? Where is the necessity of such a declaration? If we have this inherent, this unalienable, this indefensible title to those rights, if they are not given up, are they not retained? If Congress should make a law beyond the powers and the spirit of the constitution, should we not say to congress, "you have no authority to make this law There are limits beyond which you cannot go. You cannot exceed the power prescribed by the constitution. You are amenable to us for your conduct. This act is unconstitutional. We will disregard it, and punish you for the attempt."

But the gentleman seems to be most tenacious of the judicial power of the states. The honorable gentleman must know, that the doctrine of reservation of power not relinquished, clearly demonstrates that the judicial power of the states is not impaired".

"I would ask that gentleman who is so much afraid it will destroy our liberties, why he is not as much afraid of our state legislature? For they have much more power than we are now proposing to give this general government. They have an unlimited controul over the purse and sword—yet no complaints are made. Why is he not as much afraid that our legislature will call out the militia to destroy our liberties. Will the militia be called out by the general government to enslave the people—to enslave their friends, their families, themselves? The idea of the militia being made use of as an instrument to destroy our liberties, is almost too absurd to merit a refutation."

It would be very extraordinary to have a bill of rights, because the powers of Congress are expressly defined, and the very definition of them is as valid and efficacious a check as a bill of rights The powers of Congress are limited and enumerated. We say we have given them those powers, but we do not say we have given them more. We retain all those rights which we have

not given away to the general government. The gentleman is a professional man If a gentleman had made his last will and testament, and devised or bequeathed to a particular person the sixth part of his property, or any particular specific legacy, could it be said that that person should have the whole estate? If they can assume powers not enumerated there was no occasion for enumerating any powers. The gentleman is learned: Without recurring to his learning, he may only appeal to common sense, it will inform him, that if we had all power before, and give away but a part, we still retain the rest. It is as plain a thing as possobly can be, that Congress can have no power but what we expressly give them. There is an express claus, which, however disingenuously it has been perverted from its true meaning, clearly demonstraites that they are confined to those powers which are given them. This clause enables them to make all laws which shall be necessary and power for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or any department or offices thereof. This clause specifies that they shall make laws to carry into execution, *all the powers vested* by this Constitution, consequently they can make no laws to execute any other power. This clause gives no new power, but declares that those already given are to be executed by power laws.

EDWARD LIVINGSTON. [on the Alien Bill June 1798] - "If these things are so, and no remedy exists for the evil, one ought speedily to be provided; but even then it must be a remedy that is consistent with the Constitution under which we act. For by that instrument all powers not expressly given by it to the Union are reserved to the States. It follows that unless an *express* authority can be found, vesting us with the power, be the evil ever so great, it can *only be remedied by the several States, who have never delegated* the authority to Congress"

"So manifest do these violations of the Constitution appear to me---so futile the arguments in their defence that they press seriously on my mind and sink it even to despondency. They are so glaring to my understanding, that I have felt it my duty to speak of them in a manner that may perhaps give offence to men whom I esteem and who seem to think differently on this subject: none however, I can assure them, is intended. I have seen measures carried in this house, which I thought militated against the spirit of the Constitution. But never before have I been witness to so open, so wanton, so undisguised an attack. I have now done, sir, with the Bill---and come to consider the consequences of its operation. One of the most serious has been anticipated, when I described the blow it would give to the constitution of our country. We should cautiously *beware of the first act of violation. Habituated to overleap its bounds, we became familiarized to the guilt*, and disregard the danger of a second offence---until proceeding from one unauthorized act to another, we at length throw off *all restraint* which our *Constitution has imposed*---and very soon *not even the semblance of its form will remain*. But if, regardless of our duty as citizens and our solemn obligations as Representatives---regardless of the Rights of our Constituents---regardless of every sanction human and divine, we are ready to violate the constitution we have sworn to defend. *Will the people submit to our unauthorised acts?* Will the *States sanction our usurped power?* Sir, they *ought not to submit*. They would deserve the chains which these measures are forging for them, *if they did not resist*."

"My opinions, Sir, on this subject are explicit, and I wish they may be known. They are, that whenever our laws manifestly *infringe the Constitution* under which they were made, *the people ought not to hesitate which they should obey*. If we exceed our powers, we become *Tyrants;* and our acts have no effect. Thus, Sir, one of the first effects of measures such as this, if they be acquiesced in, will be dis-affection among the States, and opposition

amongst the people to your Government--tumults, violations, and a recurrence to revolutionary principles. If they are *submitted* to, the consequence will be WORSE. After such, manifest violation of the principles of our Constitution, the form will not long be sacred. Presently every vestige of it will be lost and *swallowed up in the gulf of Despotism.*"

"Compared to the Breach of our Constitution and the establishment of arbitrary power *every other topic is trifling.* The preservation *of wealth* the *increase* of *commerce*, however weighty on other occasions here *lose their importance*, when the fundamental principles *of freedom* are in danger I am tempted to borrow the impressive language of a foreign speaker, and exclaim "*Perish our Commerce—let our* CONSTITUTION *live.*" *Perish our riches—let our* FREEDOM *live.*"

"The people of America, Sir, though watchful against *foreign aggression*, are not careless of *domestic encroachment.* They are as jealous, Sir, of their Liberties at home, as of the power and prosperity of their country abroad. They will awake to a sense of their danger. Do not let us flatter ourselves then that these measures will be unobserved or disregarded. Do not let us be told, Sir, that we excite a fervour against foreign aggressions only to establish tyranny at home.—That, like the Arch Traitor, we cry "*Hail Columbia,*" *at the moment we are betraying her to destruction.* That we sing out, "*Happy Land,*" *when we are plunging it in ruin and disgrace*--and that we are absurd enough to call ourselves "*Free and enlightened,*" *while we advocate principles* that would have *disgraced the age of Gothic barbarity; and establish a code*, compared to which the "*Ordeal*" is wise-- and the "*Trial by battel*" is merciful and just."

WM. B. GILES. (In the Virginia Legislature of 1827; on the Resolutions and Protest against the Tariff, and in reply to Gen. Taylor)—"I shall limit myself to a very few points of a general character. One of the first, which most excited my astonishment, both in the matter, and manner of it, was, the charge brought against me, of supporting "Godwinian principles."—Permit me, to call your attention, Mr. Speaker, to the principles, which I have actually supported. What are the principles contained in the preamble, and resolutions, which are thrown back on me, in terms of contemptuous obloquy? "Godwinian principles:" The principles. I have supported, and now retorted, under the sarcastic term of "Godwinian principles," are nothing more, or less, than the principles of American fundamental laws. Fundamental laws; introduced, and supported in their original letter, tenor, and spirit;—quoted;—designedly quoted, in the original words. When these laws are sported with; treated with contemptuous disrespect;—with taunting ridicule,—branded with nick-names, as they seem to me to be, on this, as on many other occasions, can you fail to discern something alarming to all the written fundamental institutions of this country? Can you fail to see, sir; that all veneration, all decent respect for them, are gone? And whilst you contemplate, and must deprecate their loss; can you fail to remember, the political blessings, which have been diffused, by a wise practical dispensation of these contemned Godwinian principles, amongst the American people, for the first five and twenty years, after their adoption; and since the substitution of the improved, fashionable administrative principles, can you fail to see, distrust, alarm, impoverishment, and ruin overspreading the land? And, sir, under what circumstances has this sad reverse, in our political experimental results, taken place? In the midst of the most profound peace--both at home, and abroad. If ever there were truly halcyon days, for the United States, they occurred at the very moment, seized upon by our infatuated rulers, to substitute principles of despotism, for principles of freedom. Nor has any thing since happened, to change this auspicious, happy scene; except the unwise, delusive schemes for usurping ungranted powers to the General Government? and the

miserable, immoral, mistaken schemes, for increasing the wealth of the nation, by acts of most notorious injustice, between different sections of the country, and different individuals; taking from one, the proceeds of his labor, and giving them, to another? Great, and certain indeed, should be the increased wealth of the nation, from these unprincipled, trafficking schemes, to justify this outrage, upon the political morals, and the political justice of the government!"

Mr. Speaker; in the event of the introduction of a consolidated despotism in the United States, it will, indeed be *ultra despotism*, in its essence. No despotism can go beyond it.—It ought to be most deeply impressed upon our minds; before we sanction this most hazardous change; that our written constitution affords us, our only safe-guard, for our rights, and liberties. Give up these; we have no other security left.

Not so with the old, long established Governments of Europe. For there although their governments, are in theory, sovereign, and unlimited; yet in practice, there are customs, and habits coeval with the governments themselves, which afford their subjects, in the practical administration of the government, important securities in many respects. Here, sir; we have not this advantage, of customs and habits.—Spunge the written constitution, and we are perfectly at the will of the reigning dynasty, unpalsied by the will of constituents; or any thing else whatever."

"Amongst the ingenious devices adopted by the gentleman, is one, by which he derives a distinct, original, substantive power, not mentioned in the constitution; from another power, of the same description, which is mentioned in the constitution. Now, I think it self evident; if any one power not enumerated, can justly be deduced by this process of reasoning, any other power, not enumerated, can be deduced, by applying to it, the same process of reasoning. If so, then the government possesses *all power*."

"But whilst these demonstrations prove the government to possess all power, or can get all power at pleasure; its advocates still *pretend*, that they are administering a government, of limited powers."

"The argument being admitted, the government is unlimited in its powers—Notwithstanding the gentleman's acknowledged celebrity, both as a municipal, lawyer, and civil jurist; I think, he is utterly mistaken in the source of the derivation of powers, under the war power—I readily admit, the constitutional powers of the general government, to be precisely the same, in time of peace, as in time of war; but I peremptorily deny, that the power to make internal improvements is an accessorial power, to the power to make war; and I also peremptorily deny, that when, in time of war, a road, or canal is made, with a view to military operations, that it can legitimately be done, solely in consequence, of the express power to make war. The power is never legitimate, in time of war; but when it is rendered so, by necessity. It is therefore the result of necessity; not of any evpression in the constitution. It is grounded upon a principle of self-defence, which is above all law—paramount to the constitution itself. But then, the necessity must be imposed; and that too, by the act of another; before the right can accrue."

"I considered that usurpation at an end—at least suspended in its operation. That its impracticability had been demonstrated, without the accompaniment of complete jurisdiction, over territory, within the limits of the respective States; and that, I did not believe; that one State in the Union would surrender that jurisdiction to the general Government." "If the States should surrender their jurisdiction over the territory, persons, and things within their respective limits, the last vestige of their sovereignty, is gone—This jurisdiction is the only sheet anchor of their sovereignty—of their existence." "The gentleman has attempted to ridicule an argument, under the appellation of, "a Yankee argument," which went to prove, that the power to regulate commerce, excluded the power to destroy commerce. The gentleman com-

plimented the argument, as extremely ingenious; and the only objection he had to it, was; that it was totally destitute of "common sense." Now, sir, I must beg leave to differ totally with the learned gentleman, in the *real* characteristics of this "Yankee argument"—totis viribus.—I think, it consists very little of ingenuity, and almost all of common sense The argument is; that the power to regulate commerce, excludes the power, to destroy commerce. I think the position self-evident: Because it is self-evident that no power can exist to regulate that; which has no existence in itself: I think the position so replete with common sense; that the dogma of the learned gentleman excited my utter surprise; and but for the very high respect, I sincerely entertain for the gentleman's talents, I should almost be tempted to say; that the opposite position, for which he contends, is common nonsense. Suppose there had been introduced into the constitution, a written clause, to the precise effect, of the power claimed by implication to wit: "Congress shall have power, to put down, destroy, and annihilate commerce"—Does the gentleman believe; that it would have met with a single advocate in the United States? Suppose an amendment, now, were proposed to the constitution, to the same effect; does the gentleman believe, that it would now meet with a single advocate?"

"The fact which I assert, is; that the British nation and government have denounced the principles of the restrictive system, as unwise in theory, and infinitely destructive in practice; and, as far as practicable, in the present state of things, have endeavored to abandon it in practice. Particularly is this the case, with the corn laws, the corner stone of the whole system. These once universally admired laws, are found to be as mischievious in their operations, as they are unsound in principle. Through their operations, the poor operative is obliged to pay double the price for his bread, at which it could be furnished in foreign markets Hence, destruction to the manufacturing occupations; and ruin, pauperism, and starvation, to the poor operatives employed in manufacturing establishments. Hence, two hundred and eighty thousand persons, hold all the property in the British empire; and twenty millions two hundred thousand are stripped of all property—a great proportion of them, both of food and raiment. This is the effect, mainly, of the long continued system of monopoly. Is this a desirable condition for any population under the sun?"

"The gentleman is a most learned and practised lawyer; and of course, must delight in precedents. But he should recollect; that whilst precedents are binding on courts, they are not on legislatures, particularly are they not in the interpretation of the constitution. The constitution is a written instrument, is always the same, and at all times, as much open to the interpretation of one legislature, as another. If any laws passed by a preceding, should be found, by a subsequent legislature, to violate the provisions of the constitution, so far from being binding, it would furnish the best reason for the repeal of the unconstitutional act."

"The law establishing the Cumberland Road, has so frequently, and so triumphantly been brought forward, as a precedent, directly in point, that it has been generally believed to be so; whereas, it is wanting in almost every property of a precedent. This statement has been so often repeated, and so generally believed, that the public seem determined, not to be convinced of their error, by the most positive contradictions, supported by the most authentic documents." "The Cumberland Road law cannot be deemed a precedent in this case, for another reason—the principle upon which it is founded, is at this day, thought by many, not to involve in any degree, the question of the power of the general government to make internal improvements, but it is an exception to the general rule; and depends, for its own peculiar justification, upon its own peculiar circumstances. It is, at this day, therefore, a fair matter for difference in opinion I am well informed, that this was *Mr. Jefferson's*

most deliberate opinion till a short time before his death. The gentleman is not willing however, to exempt me entirely from his charge, of having been the father of the Cumberland Road Bill, although I was not present at any stage of it, till its passage. He asserts, that it grew out of a report, I had the honor to make, for the admission of the state of Ohio into the Union. That there was a condition in that report, which went to pledge a certain portion of the proceeds of the sales, of the public lands, within Ohio, towards opening, roads, through the public lands within that state, with an extension of such roads through the Atlantic States to the city of Washington. I think it not improbable myself, but that the Cumberland Road Bill, did grow out of the report referred to by the indefatigable gentleman, and yet, I cannot think I was in the remotest degree, entitled to the appellation of the "father of the Cumberland Road."

"But the gentleman informs us; he has been for several months searching my speeches; for detection of inconsistencies, in my opinions, at different periods of my political life; the gentleman no donbt, had anticipated a rich, and delicious mental banquet upon my reported inconsistencies. He seems, however, not to have spread a very rich repast before this house; but even if the gentleman, had been much more fortunate, in his researches, than he seems to have been, I can assure him, it would have been labour in vain. I have never aspired to the perfectibility of absolute inconsistency; under all circumstances, and in every period of my life. I readily acknowledge I have often committed errors; and if the gentleman had been so fortunate, as to have presented me with an error, I should instantly have acknowledged it without hesitation." "All the pledge I ever make, is, that of good intention; I yield to none in that respect; I pledge myself, that whenever called upon to express an opinion, or give a vote, that I express that opinion, or give that vote, which results from the honest conviction of my best judgement, *at the moment of performing either act;* perfectly regardless, of what my opinion, or vote may have been, upon the same subject, at any former time."

"In 1798–'99, under much more discouraging circumstances than the present, Virginia was again threatened for daring to assert her rights. For daring to resist the alien and sedition laws. Her representatives on this floor, were threatened with arms, with incarceration: Did they then meanly, and timidly yield to these alarms? No sir! They determined again to regain their rights, or perish in the attempt; they then went earnestly and systematically to work. The first measure they then adopted, was, to pass a law, to protect them in the freedom of debate; requiring the State Judges, in the event of any member, being imprisoned for words used in debate, to issue a writ of habeas corpus; and to replace the incarcerated member in his place, on this floor. They then determined to arm the militia, and to make provision to purchase 5,000 stands of arms. Then it was Sir, that the foundation for the regular supply of arms to the militia was laid, in the establishment of your armory. To defray the expenses of these measures, they raised the whole taxes of the State 25 per cent, with a single scrape of the pen. Backed by these measures, they entered a solemn protest against the offensive laws. These were measures truly worthy of Virginia. Did they eventuate in war? in disunion? No sir. *They saved the Union*—they saved the nation. These measures *regained our liberties;* and once more we were free. These measures well deserved success, and they were successful."

JOHN RANDOLPH, (In his speech against the Tariff System in1824)—"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 paliament by, I

think, a majority of one vote"—"I do not stop here, Sir, to argue about the Constitutionality of this Bill—I considder 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 Catham,) 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 unworthly son—in the power of *those Carolinas* and of *that Georgia*, in her antient and utmost extent to the Mississipi, 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 assumtion 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."

Again, (on the Internal Improvement system in 1824) "Miserable indeed would be the condition of every free people, if, in expounding *the charter of their Liberties* if were necessary to go back to the Anglo Saxon, to Junius, and Skinner, and other black letter etymologists—not, Sir, that I am skilful in language, although I have learned from a certain Curate of Brentford, whose name will survive when the whole contempraneous bench of Bishops' shall be buried in oblivion, that *words are the Counters of wise men and the money of fools*—that it is by the dextrous cutting and shuffling of this pack that is derived one half of the Chicanery, and more than one half of the profits of the most lucrative profession in the world—And, Sir, by this drextrous exchanging and substituting of words, we shall not be the first Nation in the World which has been *cajoled*, *if we are to be cajoled*, out of our *Rights and Liberties*"—"Sir we live under a Government of a *peculiar structure*, to which the doctrines of the European writers on civil polity—*do not apply*—And when gentlemen get up and quote Vatel as applicable to the powers of the Congress of the United States, I should as soon have expected them to quote *Aristtotle* or the *Koran*. Our government is not like the *Consolidated* monarchies of the old World—It is a *Solar System*—An *Imperium in Imperio*—And when the question is about the one or the other; what belongs to the *Imperium*; and what to the *Imperio*, we gain nothing by reffering to Vattel—He treats of an *integro Government, a compact structure*—totus teres atque rotundus"—But ours is a system composed of *two distinct Governments*—The one *external in its nature*, the other *internal*—Now Sir, a Government may be admirable for external and yet execrable for internal purposes—And when the question of power in the Government arises, this is the problem which every honest man has to work"—"The question for every honest man to ask himself is, to which of these two divisions of Government does the power in contest belong."

"I know that we are told—and it is the first time that the doctrine has been openly avowed—that upon the responsibility of this House to the people, by means of the elective franchise, depends all the security of the people of the United States against the abuse of the powers of this Government, But Sir, how shall a man from *Mackinaw*, or the *Yellow Stone River* respond to the sentiments of the people who live in New-Hampshire? It is as great a mockery *a greater mockery*, than it was to talk to these Colonies about their viatual Representation in the British Parliament—I have no hesitation in saying that the Liberties of the Colonies were safer in the custody of the British Parliament than they will be in any portion of this County, *if all the powers of the States*, as well as those of the General Government are devolved on this House—And in this opinion I am borne out, and more than borne out, by the authority of

Patrick Henry himself "Sir, if I cannot give reason to the Committee, they shall at least have *Authority*---*Thomas Jefferson*, then in the vigor of his intellect was one of those who denied the existence of such powers---*James Madison* was another---He, in that masterly and unrivalled Report in the Legislature of Virginia, which is worthy to be the *Text Book* of every American Statesman, has *settled* this question---For me to attempt to add any thing to the arguments of that paper, would be to attempt to gild *refined Gold*---to paint the lilly---to throw a perfume on the Violet---to smooth the ice---or add another hue unto the Rainbow---in every aspect of it, wasteful and ridiculous excess---neither will I hold up my farthing rushlight to the blaze of that *Meridian Sun*---But Sir, I cannot but *deplore*, and to my *dying day I shall deplore*---my heart ache's when I think of it---that the hand which erected that monument of political wisdom should have *signed the Act to incorporate the present Bank of the United States!*"

Again, (on the same subject in 1828) "If I were unrestrained by other considerations, and wished to super-add to an *Aggression upon the Rights of the States*, insult the most offensive to their pride, I would vote for this Bill---If I wished to bring about collision and discord between the Federal and State Authorities---I would vote for this Bill---What Sir, shall the Federal Authority seize upon the great passes and thorough fares of our Land, and construct Barriers, which no man shall be permitted to pass, to Mill or Market, to Church, to Court, or to an Election, *without paying unto Cæsar such tribute as the imperial pleasure shall prescribe?* If we are to erect a splendid imperial Government, let us at least endeavour to emulate the *Virtues* of the *Roman Despots*---since we will copy their *crimes*---It never entered into the head of *Tiberius* himself---that perfect *model of a tyrant*, to levy Tolls upon the *Appian or Æmilian*---Sir, when these gates shall be erected *within her territory* it will be the BOUNDEN DUTY *of the Commonwealth of Virginia to abate the nuisance*---This must bring her in direct collision with the Federal Power---You leave no alternative---FOR SUBMISSION CANNOT *be endured, even in supposition.*"

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DANIEL WEBSTER, (In his resolutions in the Boston town meeting of 1820)—"*Resolved*—That no objection ought ever to be made to any amount of Taxes equally apportioned and imposed for the purpose of *raising revenue, necessary for the support of Government*—But that Taxes imposed on the people for the sole benefit of *any one class of men*, are equally *inconsistent* with the principles of our *Constitution*, and with sound judgment.

Resolved, That the *supposition* that until the proposed Tariff, or some similar measure be adopted we are and shall be *dependent on Foreigners* for the means of *subsistence and defence*, is, in our opinion, *altogether fallacious* and *fanciful*, and derogatory to the character of the Nation."

Resolved, That high Bounties on such domestic manufactures as are principly benefitted by that Tariff, favor great Capitalists rather than personal Industry, or the owners of small Capitals—and therefore that we do not perceive its tendency to promote national Industry.

"*Resolved*, That we are equally incapable of discovering its beneficial effects on agriculture, since the obvious consequence of its adoption would be, that the farmer must give more than he now does for *all he buys*, and *receive less for al he sells.*

Resolved, That in our opinion the proposed Tariff and the principles on which it is avowedly formed would, if adopted, have a tendency, however different may be the motives of those who recommend them, to *deminish the Industry, impede the prosperity* and *corrupt the morals* of the people"

Again, (In his speech against this system in 1824 Mr. Webster says) "*With me* it is a *fundamental axiom*, it is *interwoven with all my opinions* that the great interests of the Country are united and inseperable—That *Argriculture, Com-*

merce and Manufactures, will prosper together, or languish together—and that all *Legislation is dangerous* which proposes to benefit *one* of these without looking to consequences which may fall on the others.

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JUDGE ROWAN.--(In his speech on Foot's Resolutions, in reply to Mr. Webster, says)—"The gentleman has referred to the words of the Constitution, "We the People." The Constitution was a *discriptio personæ*. The people were citizens when the Constitution was framed. 'We the People," was not the people indiscriminately in their confluent capacity, but their Representatives. The first clause of the Constitution explained what it meant by "We the People." It said, Congress shall be composed of members chosen by the *people of the several States*. There were no people of the United States *as one solid Government*. They were *citizens of thirteen distinct States*. When it said the President should have resided in the *United States fourteen years*, it meant *some of the States*, because the Government at that time had not existed fourteen years; and no President could have been chosen. It is evident therefore that the Constitution recognized the States as States." "The states remained in full vigor, while the Constitution of the United States was forming. They were not even shorn of any of their sovereign power by that process, for the gentleman says, that that instrument was brought into existence, among other reasons, for the purpose of imposing certain salutary restraints upon state sovereignties.

Now that which does not exist, cannot be restrained. He, therefore, admits the existence of the soveignties of the states, not only at the time, but ever since the formation of the Constitution, If the sovereignty of each state was separate and distinct, and consisted in the concentrated will of the people of each, by what authority could the people of the state of Georgia interfere in the reduction or modification of the sovereign power of the state of Virginia, and if they could not interfere in the regulation of the power of the state of Virginia, by what mode could the people of Virginia itself, other than their collective, their state capacity, diminish or modify the sovereign power of that state! The people of no one state could interfere with the rights of another, nor with its own, in any other capacity, than as the collective body which composed the state. But, upon the supposition, that the people of all the states, not in their state capacities, but at large, and by their confluent voice or agency, formed the constitution. The difficulty still presents itself. By what authority did all unite in modifying the Constitution of each. They had not entered all into one general compact, and thereby conferred power on the majority, to form the Constitution, by the adoption of the state machinery, which they had thrown off This government is not formed by the people at large, out of the *exuviæ* of the states. But will the gentleman (Mr. Sprague) have the goodness to tell us, what is the power, and where does it reside, which is employed in altering the Constitution of a state? Does it not reside *exclusively* in the people of the state, and in their collective capacity, and must it not be exerted in that capacity, to produce any alteration in their Constitution? And must it not be exerted according to the mode prescribed in the Constitution? Can the people, pursuing that mode, be viewed in anyother light than their state capacities The gentleman, I am sure, will answer these questions in the affirmative. Well, the state Constitutions were all effected, and seriously too, by the Constitution of the United States.

Now, if none but the people of a state, in their distinct state capacity, could affect its constitution, then their action in forming the constitution of the United States, must have been exerted in their state capacity. The states, whereby I mean the people of each, as a distinct political body, then must have formed the Constitution, and not the people at large. If these views are correct, how can the gentleman reconcile his idea, that the Constitution was formed by the people, and not by the States, with his other idea, that it was formed by the *peo-*

ple to impose certain *restraints* upon State Sovereignty. If the people acted in their distinct State capacities, then they could consistently impose restraints upon the exercise by the States of their Sovereign power---but that they acted as States--and imposed the restraints by *compact*, and in no other capacity could they act, nor by any other mode than by compact, could they achieve that object.

"The gentleman tells us that the States must submit to the Judicial restraints upon their sovereignty, or incur, by resistance, the guilt of rebellion. That the decision of the Supreme Court, affirming a *palpably unconstitutional* law, which invades the sovereignty of a State must be submitted to by the State, or it must incur the guilt of rebellion!--Mr. President, could the doctrine of *passive obedience and non-resistance* have been more explicitly urged? Has it ever been more zealously advocated in any country?" "Sir, it is, I must repeat, *too soon* for those who rule, or hope to rule, to address their arguments to our *credulity and our fears*—to deny us the intelligence to discern our rights, and the right to maintain them.--Will the gentleman say that the States of Virginia and Kentucky, in the steps which they took to *nullify* the Alien and Sedition laws were guilty of rebellion? Were their Acts treasonable? If they were, then all the States were guilty of treason--at least, as accessaries after the fact—for they all sanctioned by the moral force of their opinion, the proceedings of the resisting States But against whom did those States, or can any State rebel? Rebellion means the resistance, *by an inferior to the lawful authority of a superior.* It implies the violation of allegiance. To what power does a State owe allegiance? To what power is it subordinate? Will the gentleman say that a sovereign State can owe allegiance to any earthly power?"

"The idea that a *Sovereign State* can commit treason, rebellion, or any crime whatever is utterly inadmissible in the science of politics. The idea of crime cannot exist, where there is no conceivable, or possible Tribunal before which the culprit could be arraigned, and convicted." "But the threats which are brandished against States, or even individuals, who shall oppose the encroachment of the General Government upon the States, are uncalled for and can only have the effect to provoke illegal resistance, or to awe into a degrading submission. If the States are true to themselves, and faithful in the discharge of their high duties, they will move on in *the majesty of their Sovereign power*, and maintain with a steady and equal hand *both their Governments, by restraining each, in the exercise of its legitimate powers, within its appropriate sphere.*"—"Mr President, for security against oppression *from abroad* we look to the sovereign power of the United States, to be exerted according to the compact of Union; for security against oppression *from within*, or *domestic oppression* we look to the sovereign power of the State. Now, all sovereigns are *equal*—the sovereignty of the State is equal to that of the Union—for the sovereignty of each is but a moral person."

"And what, you will ask me, will be the result of this resistance by a State to an unconstitutional Act of Congress or an unconstitutional decision of the Supreme Court? I answer, that the first result will be, the *preservation of the sovereignty of the State, and of the liberty of its citizens*, at least for a time. The next result will be that the attention of the people of the other States, will be awakened to the aggression, and the Congress, or the Supreme Court, which ever shall have been the aggressor, will be *driven back, into the sphere of its legitimacy by the rebuking force of public opinion.* Such was the result of the nullifying Resolutions of the States of Virginia and Kentucky, in relation to the Alien and Sedition laws; and such was the rebuking effect of public opinion, in relation to the famous compensation laws. But if these results *should not follow*, you ask me what next? Must the State forbear to resist the aggression upon her sovereignty, and submit to be shorn of it altogether? I answer *no Sir, no!* She must maintain her sovereignty, by every means within her power. She is *good for nothing, even worse than good for nothing, with-*

out it. This, you will tell me must lead to civil war! To war between the General Government and the resisting State. I answer, not at all; unless the General Government shall choose to *consecrate its usurpations by the blood of those it shall have attempted to oppress.* And if the States shall be led by apprehensions of that kind to *submit to encroachments upon their sovereignties*, they will, most certainly, *not remain sovereigns long.* *Fear* is a *bad counsellor*, of even an individual, it should *never be consulted by a sovereign State* No, Sir,--It is in the power of Congress, instead of shedding the blood of the citizens, who assert the sovereignty of their State, and resist its prostration, to refer the question to an *infinitely more exalted* tribunal than the Supreme Court. I mean *to the States of this Union*—they *formed the Constitution*—and they are the *fit and proper judges of questions involving sovereignty, between themselves as sovereigns.*"

MR. GRUNDY—(In his speech on Foot's Resolutions, Feb. 29, 1830) says: —"The States existed prior to this Government. Each of them possessed all the rights and powers which appertain to sovereign and independent nations. For all the purposes of self Government, no want of power, or the means of using it, was felt by any of these communities." There were objects, however, of high importance, to which the States, separately, were not equal or adequate to provide. These are specified in the recommendatory letter issued by the Convention, and signed by General Washington, which accompained the Constitution, when presented to the old Congress for its consideration; the language is. "The friends of our Country have long seen and desired, that the power of making war, peace, and treaties; that of levying money and regulating commerce, and the correspondent, executive, and judicial authorities, should be fully and effectually vested in the General Government of the Union." Here is an enumeration of the objects which made it necessary to establish this Government; and when we are called on to decide whether a subject be within our powers, we ought not to lose sight of the purposes for which the Government was created. When it is recollected that all the powers now possessed by the General and State Governments belonged originally to the latter, and that the former is constructed from grants of power yielded up by the State Governments, the fair and just conclusion would be, that no other power was conferred, except what was plainly and expressly given. But if doubt could exist, the 10th Article in the Amendments to the Constitution settles this question. It declares, that "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." The conclusion hence arises, that this Government is one of limited, delegated powers, and can only act on subjects expressly placed under its control by the Constitution, and upon such other matters as may be necessarily and properly within the sphere of its action, to enable it to carry the enummerated and specified powers into execution, and without which, the powers granted would be inoperative."

"In cases of disagreement between the Federal and State Governments, as to their respective powers, who is to decide?" "It will be readily granted that, in settling questions of right or power between different nations, one party ought not to be the exclusive judge; otherwise, so strong is the love of dominion and rule, it will include within its grasp all the power possessed by both. This is the very principle for which gentlemen contend, when the subject is stripped of a fallacy which at first obstructs the mental vision of the inquirer after truth. Gentlemen seem to consider the Supreme Court of the United States, as a separate distinct tribunal, erected by all the parties concerned, and as dependent on one party as on the other. Not so; it is a portion or part of one of the parties, created by the Legislative and Executive branches of the General Government, and responsible alone to that Gov-

ernment. The Federal Judiciary, although the tenure of office be during good behaviour, is greatly dependent on the other branches of the General Government."

"In every contest for power, there would exist in the Judiciary, the same motives to lead it astray, as would exist in the other departments, with this difference—they would be stronger, because the Judges hold their offices by a tenure of greater duration. If the position of gentlemen be well founded, then the State Governments have been guilty of the folly and weakness of creating a Government which can adjudge away all their sovereign rights and powers; a creature competent to the destruction of its creators; and all this by the easiest operations imaginable. A case is presented to the court by the Attorney General, an opinion is written on a few sheets of paper, and Mr. Peters (the reporter) is directed to put it in his book, and forthwith twenty-four Sovereign and Independent States are prostrated and destroyed."

"If those from whom I differ be right, the only security the States have, is in the integrity of a majority of seven men; and as the Constitution did not direct what number of Judges should constitute the Supreme Court, *one* could have been placed there; and upon *his* will alone, according to the argument on the other side, would depend the fate of twenty-four sovereign States

In all questions of *meum* and *tuum*, embraced within its Constitutional jurisdiction, this Court is the Supreme tribunal, and incidentaly between individuals, it must decide upon all questions necessary to enable it to come to a result or final determination; and the decision will be binding upon the parties. This however, by no means proves that the Court can decide upon the sovereign rights of the States, so as to effect them. What then is to be done if Congress pass an act beyond the limits of its Constitutional powers, and it is found to operate oppressively, say upon Virginia. I name this old, leading, champion State for the purpose of illustrating my argument more clearly. Shall Virginia submit? No. She is oppressed, unconstitutionally oppressed. The General Government has declared in all its departments that the act is binding. The Legislature of Virginia is of a different opinion. Has she no right to say to the General Government, we did not give up this power which you have exercised. May she not say it is an authority you have usurped? Such language has been held—It was done by Virginia and Kentucky by their resolutions in 1798 and 1799; and it produced the desired effect. Those who had exercised unconstitutional powers were put down, and the administration of Mr. Jefferson succeeded."—"If the State posseses the power to act as I have shown, the necessary consequence is, that the act of Congress must cease to operate in the State; and Congress must acquiesce by abandoning the power, or obtain an express grant from the great source from which all its powers are drawn. The General Government would have no right to use force. It would be a glaring absurdity to suppose that the State had the right to judge of the constitutionality of an act of the General Government, and at the same time to say that Congress had the right to enforce a submission to the act. This would involve a palpable contradiction. This may be illustrated by reference to the powers of the Supreme Court in analogous cases; All admit that this high tribunal has the right, in a case properly before it, and within its jurisdiction, to declare an act of Congress unconstitutional; the effect of which is to render the act inoperative, not only in one State but in all. In this case, Congress is obliged to acquiesce and abandon the power, or obtain an express grant from the original source after the manner already stated. No force can be applied to give effect to the act thus declared void by the Supreme Court, or to compel it to change its decision. But gentlemen, instead of meeting our arguments fairly, exclaim that such a power on the part of the State is inconsistent with the existence of the General Government, and is placing twenty-three States at the mercy of one, and the Union, by such an act, would be dissolved. I cannot but think that all such objections arise from an imper-

fect view of our admirable system of Government. They originate in a supposition that Congress possesses an independent and uncontrollable power, which is unknown to our system. If the gentlemen will but advert to the fifth article of the Constitution, they will find a redeeming power—a power above all others, which can mould the Constitution, and define anew, the relations between the State and General Governments: I mean the Constitutional number of States. This is not a mere dormant power. The mode in which it is to be called into action is expressly laid down; and, when properly invoked will at all times prove adequate to save this glorious system of ours from disorder and anarchy. Whenever a conflict, such as I have described, arises between one of the States acting in its sovereign capacity, and the General Government, it is to this high arbiter (a Convention of the States) the parties must resort and not to the Supreme Court, the creature of one of the parties. But who is to make the appeal? Surely the party claiming to exercise the power, and which alone possesses the means of making it." "I do not hesitate to say, that the power on the part of the States to compel such an appeal, is indispensable to the existence of their sovereignty, and to the preservation of their reserved rights. Without it the General Government, in its practical operation, would be an unlimited, consolidated government, not withstanding the limitations imposed by the provisions of the Constitution *Its construction of the Constitution would be the Constitution.* Those who know the force and influence of construction, how it can pervert the plainest import of words, when under the influence of self interest, well understand the fearful changes it is capable of producing. If there be no check, an interested majority, using the powers of the General Government, which were given for the protection and benefit of all, as the instrument of aggrandizing themselves at the expense of the minority, may, by construction, gradually undermine and render obsolete, the sacred provisions of this instrument."

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MR. CALHOUN—(In the South Carolina "Exposition" of 1828)—"The General Government is one of specific powers, and it can rightfully exercise only the powers expressly granted, and those that may be "necessary and proper" to carry them into effect; all others being reserved expressly to the states, or to the people. It results necessarily, that those who claim to exercise a power under the constitution, are bound to shew, that it is expressly granted, or that it is necessary and proper, as a means to some of the granted powers. The advocates of the Tariff have offered no such proof. It is true, that the third section of the first article of the constitution of the United States authorizes Congress to lay and collect an impost duty, but it is granted as a tax power, for the sole purpose of revenue; a power in its nature essentially different from that of imposing protective or prohibitory duties. The two are incompatible; for the prohibitory system must end in destroying the revenue from imposts. It has been said that the system is a violation of the spirit and not the letter of the constitution. The distinction is not material. The constitution may be as grossly violated by acting against its meaning as against its letter."—"The constitution grants to Congress the power of imposing a duty on imports for revenue; which power is abused by being converted into an instrument for rearing up the industry of one section of the country on the ruins of another. The violation then consists in using a power, granted for one object, to advance another, and that by the sacrifice of the original object. It is, in a word, *a violation of perversion*, the most dangerous of all, because the most insidious, and difficult to resist. Others cannot be perpetrated without the aid of the judiciary; this may be, by the executive and legislative alone. The courts by their own decisions cannot look into the motives of legislators—they are obliged to take acts by their titles and professed objects, and if *they* be constitutional they cannot interpose their power, however grossly the acts may violate the constitution. The proceedings of the last session sur-

ficiently prove, that the House of Representatives are aware of the distinction, and determined to avail themselves of the advantage."

"Ours is not a government of precedents, nor can they be admitted, except to a very limited extent, and with great caution, in the interpretation of the constitution, without changing in time the entire character of the instrument. The only safe rule is the *constitution itself*, or, if that be doubtful, the *history of the times*. In this case, if doubts existed, the journals of the convention would remove them. It was moved in that body to confer on Congress, the very power in question, to encourage manufactures, but it was deliberately withheld, except to the extent of granting patent rights for new and useful inventions. Instead of granting the power to Congress, permission was given to the States to impose duties, with consent of that body, to encourage their own manufactures; and thus in the true spirit of justice, imposing the burden on those, who were to be benefitted."—"So partial are the effects of the system, that its burdens are exclusively on one side and its benefits on the other. It imposes on the agricultural interests of the South, including the South West, and that portion of our commerce and navigation engaged in foreign trade, the burden, not only of sustaining the system itself, but that also of sustaining government. In stating the case thus strongly, it is not the intention of the committee to exaggerate. If exaggeration were not unworthy of the gravity of the subject, the reality is such as to render it unnecessary."

"That the manufacturing States, even in their own opinions bear no share of the burden of the Tariff in reality—we may infer with the greatest certainty from their own conduct. The fact, that they incessantly demand an increase of duties, and consider every addition as a blessing, and a failure to obtain one, a curse, is the strongest confession, that whatever burden it imposes, in reality falls, not on them, but on others. Men ask not for burdens, but for benefits. The tax paid by the duty on imports by which, with the exception of the receipts from the sale of the public lands, the government is wholly supported, and which, in its gross amount, is annually equal to about $23,000,000, is then in truth no tax on them. Whatever portion of it they advance, as consumers of the articles on which it is imposed, returns to them from the labour of others, with usurious interest, through an artfully contrived system."

"If the duty were imposed upon exports, instead of imports, no one would doubt its partial operation. It would clearly fall on those engaged in rearing products for foreign markets, and as Rice, Tobacco and Cotton, constitute the great mass of our exports, such a duty would, of necessity, mainly fall on the Southern States, where they are exclusively cultivated; and to prove that the burthen of the Tariff also falls on them almost exclusively, it is only necessary to show, that, as far as their interest is concerned, there is little or no difference between an export and an import duty. We export to import. The object is, an exchange of the fruits of our labour, for those of other countries." "A duty, whether it be laid on imports or exports, must fall *upon this exchange*, and on which ever laid in our country, must in reality be paid by the American producer of the articles exchanged. Such must be the operation of all taxes on sales or exchanges."—"The exports of domestic produce in round numbers, may be estimated at averaging $53,000,000, annually, of which, the States growing Cotton, Rice and Tobacco, produce about $37,000,000." "It follows that one third of the Union exports near two thirds of the domestic products. Such then is the amount of labour which our country annually exchanges with the rest of the world, and such our proportion. The government is supported almost entirely by a tax on this exchange, in the shape of an import duty, the gross amount of which is annually about $23,000,000, as has been already stated.—Thus making the present duty to average at least 45 per cent. which on $37,000,000 the amount of our share of the exports will give the sum of 16,650,000 as our share of the general contributions to the Treasury."

"The maxim that the consumers pay, strictly applies to us. We are mere consumers, and destitute of all means of transferring the burden from ourselves to others. We may be assured, that the large amount paid into the Treasury, under the duties on imports, is really derived from the labour of some portion of our citizens. The government has no mines. Some one must bear the burden of its support. This unequal lot is ours. We are the serfs of the system, out of whose labour is raised, not only the money that is paid into the Treasury, but the funds out of which are drawn the rich reward of the manufacturer and his associates in interest. Their encouragement is our discouragement. The duty on imports which is mainly paid out of our labour gives them the means of selling to us at a higher price, while we cannot, to compensate the loss, dispose of our products at the least advance. It is then not a subject of wonder, when properly understood, that one section of country though blessed by a kind Providence with a genial sun and prolific soil, from which spring the richest products, should languish in poverty and sink into decay;—while the rest of the Union though less fortunate in natural advantages is flourishing in prosperity beyond example."

"The case then, fairly stated between us and the manufacturing states, is, that the Tariff gives them a prohibition against foreign competition in our own market in the sale of their goods, and deprives us of the benefit of a competition of purchasers for our raw material."

"No government based on the naked principle, that the majority ought to govern, however true the maxim in its proper sense and under proper restrictions, ever preserved its liberty, even for a single generation. The history of all has been the same, injustice, violence and anarchy, succeeded by the government of one, or a few, under which the people seek refuge, from the more oppressive despotism of the majority. Those governments only, which provide checks, which limit and restrain within proper bounds the power of the majority, have had a prolonged existence, and been distinguished for virtue power and happiness. Constitutional government, and the government of a majority, are utterly incompatible, it being the sole purpose of a constitution to impose limitations and checks upon the majority. An unchecked majority, is a despotism—and government is free, and will be permanent in proportion to the number, complexity and efficiency of the checks, by which its powers are controlled."

"If it be conceded, as it must by every one who is the least conversant with our institutions, that the sovereign power is divided between the states and general government, and that the former holds its reserved rights, in the same high sovereign capacity, which the latter does its delegated rights; it will be impossible to deny to the states the right of deciding on the infraction of their rights, and the proper remedy to be applied for the correction. The right of judging, in such cases, is an essential attribute of sovereignty of which the states cannot be divested, without losing their sovereignty itself; and being reduced to a subordinate corporate condition."—"But the existence of the right of judging of their powers, clearly established from the sovereignty of the states, as clearly implies a veto, or controul on the action of the general government on contested points of authority; and this very control is the remedy, which the constitution has provided to prevent the encroachment of the general government on the reserved rights of the states."—"As high as is the power of the states in their individual sovereign capacity, it is not the highest power known to our system. There is a still higher power, placed above all, by the express consent of all, the creating and preserving power, deposited in the hands of three fourths of the United States, which under the character of the amending power, can modify the whole system at pleasure, and to the final decision of which, it would be political heresy to object".

Again, in his Exposition in 1831, Mr. Calhoun says:—"Their great and

leading principle (of State Rights Doctrines) is, that the General Government emanated from the people of the *several States*, forming distinct political communities, and acting in their separate sovereign capacity, and not from all of the people forming one aggregate political community—that the Constitution of the United States is in fact a *compact*, to which *each State* is a party, in the character already described—and that the several States or Parties have a *right to judge of its infractions*, and in cases of a deliberate palpable, and dangerous exercise of a power not delegated, they have the right, in the last resort, (to use the language of the Virginia Resolutions,) "*to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights and liberties appertaining to them.*" This Right of Interposition thus solemnly asserted by the State of Virginia, be it called what it may, STATE RIGHT, VETO, NULLIFICATION, or by any other name, I conceive to be the *fundamental principles of our system*, resting on facts historically as certain as our Revolution itself, and deductions as simple and demonstrative as that of any political or moral truth whatever: And I firmly believe that *on its recognition depends the stability and safety of our political institutions.*" "With these strong feelings of attachment (to the Union), I have examined with the utmost care, the bearing of the Doctrine in question—and so far from anarchical, or revolutionary, I solemnly believe it to be *the only solid foundation of our system and of the Union itself*, and that the opposite Doctrine, which denies to the States the Right of protecting their reserved powers, and which would vest in the General Government (it matters not through what department) the right of determining, exclusively and finally, the powers delegated to it, is incompatible with the Sovereignty of the States, and with *the Constitution itself*, considered as the basis of the Federal Union."

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JUDGE CHEVES—(In his speech at the State Rights Celebration, July 1st 1830.)—"What is the condition of this State, and of all the Southern States, but one of *colonial suffering, dependence and disgrace?*

There are no less than seven Sovereign States whose principal Agricultural staples require a foreign market to be of *any value*" "The actual Legislation by which these interests are bound and controlled, instead of cherishing them by facilitating the enjoyment of a foreign market, denies the possesion of that market, and *destroys the value* of all the great products of your soil—If this were to foster any other interests of the same region of country, there would at least be a mitigating pretext for legislation apparently so extraordinary—But the motive of it is *avowedly* to encourage the industry, and promote the distinct and separate interests of *another clime and another people*—By whom are these laws enacted? Have you participated? No! From whose legislative will do they derive their efficacy? From yours? Not in the smallest degree! *Not one vote of all the Representatives*, in both Houses of Congress, from at least *six Sovereign States*, in immediate junction and connection, was given in support of the passage of these laws—and their legislative voice was only heard *in Protests* against their injustice and *unconstitutionality* They were enacted by a legislative will (in every just political and moral sense affecting the subject), of a *Foreign People!* In every such sense, a people as distinct and separate from you, as those of *Canada!* If the burthens imposed by these laws, when collected in the shape of revenue, were returned in the expenditures of Government to the people *who bear them*, they would have some *semblance* of the Legislation of a people self-governed—but, the vast revenue exacted by them from the suffering States is expended in the States by whose power and whose pleasure it is imposed. This is, of all the effects of bad legislation, the *most afflictive and destroying.*"

"It is not for an humble individual like me to anticipate legislative wisdom, nor to suggest the time and manner in which a remedy for these evils is to be sought—but for myself as a private citizen, I declare my belief that they pre-

sent a state of things *not to be borne, and which ought to be resisted, in some way or manner, at* ANY AND EVERY HAZARD."

CHANCELLOR HARPER—(In his speech at Columbia, Sept. 1830.)—"I am among those who believe that the losses and dangers imposed and threatened by the American System, instead of being exaggerated, have not been fully estimated—I agree with those who estimate at the highest our present pecuniary burdens—I believe that the South has been *cheated out of bounties of nature*, richer than ever were bestowed on any section of the earth, by the policy, or the selfish instincts of man—I believe that the *continuance* of the system tends *not doubtfully*, to the *total destruction* of our *commerce*, to the subversion of our domestic institutions, and, in the words of the author I have quoted, "to *the depopulation and abandonment of the whole lower region of the Southern States.*"

"I will not effect to disguise my own opinion, though abler men may differ from me, that if all other efforts fail, the *Sovereign power of the State ought to interfere for the purpose of arresting the operation of the unconstitutional laws of which we complain*—thus compelling the General Government to abandon its oppressive policy, and to apply to a Convention of the States for the purpose of obtaining by a vote of three fourths, an express grant of the powers which it claims—I believe this course to be necessary—I believe it to be *constitutional*, and that the State may adopt it *without relinquishing her character as a member of the Union*—I believe it to be *safe and peaceful.*"

"It has been often remarked that the simplest truths are the last to be acknowledged—It is difficult to illustrate them—Men *cannot believe that there is no more in it than this!* And such I conceive to be the proposition that the Sovereign power of the State has the Right, *consistently with the Constitution*, to arrest the operation *within its own limits*, of a law which it shall judge to be unconstitutional, until the disputed power shall be expressly granted by a vote of three fourths of the States, or of a Convention."

"Our intention is to proceed *according to law*—and to resist by means of its *peaceful process*—In the first place we shall have a question which "the forms of the Constitution," will allow to be presented to the Federal Judiciary if it should attempt to take jurisdiction of a question which the competent authority has already decided."

"We shall have a question, too, to present to the *Juries* of those Tribunals, uninvolved in the *disguise of a false and fraudulent title.* It is a modern *heresy*, and the most dangerous of the Mansfield School, and utterly at war with the free spirit of the old common law, that Juries are not to decide according to their own conviction, *both of the law and the fact.* The most important, the most sound, and durable accessions to public liberty have been made by the Verdicts of Juries—and the most important in future will be gained by the same means. This is the legitimate organ through which public opinion is heard, in countries where the common law obtains. They are the *true Judges of those questions of "common Right" which are better decided by plain sense and the heart of a freeman than the acutest dialectician that ever wrangled.*"

"What room is here for the interposition of force? Will the United States commanding officer send a *detachment to take charge of the Jury* 'till they find a verdict *in pursuance of the direction of the court?* Or if *damages be recovered against a Collector who commits a trespass on the property of a citizen, will a General and Army be sent to make war on the Bailiff who executes his fi: fa:?*"

"It is because we are satisfied that we are pursuing a peaceful and constitutional cause, and do not look to war or dis-union, that we do not seek the co-operation of the other Southern States. We believe that a Convention of the Southern States would be *unconstitutional*, and more than any thing else would tend to dis-union. But if a time of extremity shall arrive, there can be no doubt of their co-operation. Their interests, their condition in the Union, cir-

cumstances inevitable as the workings of destiny must drive them to the stand which we shoud take."

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COLONEL DRAYTON—[In his speech in St. Paul's Parish, 1828, against the Tariff System]—"If these things be consistent with a Constitution formed to establish justice and secure the blessings of liberty to ourselves and our posterity, then have words *lost their meaning*—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 *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 not guilty of forging the chains ourselves, with which our liberty was manacled."

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JUDGE SMITH—[in his Speech in Congress, onthe South Carolina Protest against the Tariff February, 1829]—"Mr President," said Mr. Smith, "South-Carolina, although her citizens have, at no period of her history, *been more borne down by oppression*, in their pecuniary affairs, *attributable to your Tariffs of protecting duties*, her interests are not limited to the calculations of dollars and cents only."

"When South-Carolina entered into this *compact*, and surrendered a *portion of her powers*, it was that she might *secure equal protection to the residue*. In this *she has been mistaken*. There is no *despotic government* in christendom but pays some respect to its own *fundamental principles*. It seems reserved for the government of the United States, the only Republican Government existing, to *prostrate and trample upon those sacred principles*. The *reserved rights of the States* are forgotten, and the rights of *certain classes* only respected. To protect the rights of ten millions of citizens, is by no means an object of this government; whilst to protect a jobber or a bungler in the mechanic arts, is a matter of national importance."

"Members of Congress that are manufacturers, or interested in manufacturing establishments, have voted for the Tariff Laws, to advance their own immediate pecuniary profits, which were to be drawn from the labor of the agriculturist, and that in no sparing degree. Mr. S. said, should he be called upon to do so, he could name the members."—"Agents had been sent here, by manufacturers, upon pay, to lay their pamphlets upon the tables of the members, and hang about Congress, and trumpet their cause, and to give information of favorable moments for action—some of whom had been rewarded with seats in Congress for their faithful services.

He had said there was no despotic government that did not pay some regard to the fundamental principles of their own government. It might justly be said there was no despotic government in the civilized world, *where such encroachments had been made in so short a time*, upon the rights and liberties of its people, as have been made upon the rights and liberties of the *people of the Southern States within the last twelve years*. It is utterly impossible to imagine that such a state of things could have been contemplated at the formation of the Constitution, unless the English language can be distorted to mean any thing we are determined it shall mean, as some late expositors had endeavored to make it." "If *commerce* could be made to signify '*trade*,' and trade to signify *manufactures*, the Constitution had vested in Congress the power to impose duties upon foreign manufactures, to their total exclusion, because it had given "the power to regulate commerce with foreign nations." And by this far-fetched exposition, the Constitution, the first written Constitution the world has ever seen—instead of defining and limiting its powers gave to a majority in Congress *unlimited control* over the minority. For what purpose was the Constitution adopted? Surely not for the protection of the majority—because

majorities want no such aid—but to protect minorities, which are always under the perfect control of majorities."

"Was it possible it had come to this? That, in a government of only forty years standing, formed for the express purpose of securing to every portion of its people the same rights, when one portion were *driven to the brink of ruin*, by oppressive laws, it must "like the animal whose fleece forms so material a portion of this system quietly lie down and be shorn," and yet not be allowed to complain? The people of South-Carolina had complained—they would continue to complain—and where their complaints were to end, unless they found redress, Mr. S said he had not the prophetic power to foresee.—Some of these States in which the people of South Carolina had been much reproached for even complaining of the laws of the General Government, had themselves, in their Sovereign capacity directly opposed the laws of the General Government."

"This being a Government limited and controlled by a written Constitution that defined its powers, he, as a Senator from South Carolina was bold to announce that this Government *recognized no such principle* that the *majority should rule*. The fact was that a majority in the enacting of these laws *had ruled*; they could have succeeded on no other principle. But the fundamental principles of our Government recognize no principle of rule but that prescribed by the Constitution, and to this it *must be brought again, or we as a people are undone*."

"For the first thirty years of the General Government, when the Constitution was better understood, the "*General Welfare*" was understood to mean *that only* in which the *whole community were to be equally benefitted*—such as *paying the public Debts—raising an Army when necessary for the public defence —Building a Navy for the same*. It now means *any thing and every thing*. It is the *Tyrant* of this Government, and must *prostrate it* in deep humility, unless it can be brought back in good time, to its proper, original and plain, common sense meaning—And whosoever shall accomplish this important Restoration, will *redeem his country from early destruction, and secure to himself immortal fame*."

THE Theory of those who deny the Right of a State "to judge of infractions of the Constitution, and of the mode and measure of redress," and "of interposing (her VETO) to arrest the progress of the usurpation," is that these United States, are not independent and Sovereign States—and that the Federal Constitution is *not* a compact of alliance between the several States (that is between the *people of each State* and the *people of every other State*), as separate, pre existing Bodies, or Commonwealths—each ceding by that compact certain specific powers to a General Government, and reserving all others to themselves.—But that it is a form of Government made and adopted by the *people of North America* collectively—and that from this Constitution or form of Government these States (as corporations) derive all the powers which they possess, having no right to exercise any other powers than such as are thereby granted to them.

To expose the utter fallacy of such a theory, we need but adduce the simple and actual facts of the early history of our country.

From the dawning resistance of the colonies against the usurpations and tyranny of Great Britain, we find those colonies acting independently of each other.

As early as the year 1765 the colony of SOUTH-CAROLINA forcibly resisted the Stamp Tax; her citizens in Charleston having in that year surprized the Garrison of Fort Johnson and seized upon the stamps which were there deposited.--(See Drayton's Memoirs of the Revolution, vol. 1, p. 45.)

In the same year (May 1765), VIRGINIA adopted, in her House of Burgesses, the famous Resolutions of Patrick Henry, which *declared void* (or nullified) the Stamp Act.

In December, 1773, MASSACHUSETTS resisted the *Tea Tax*—her citizens in Boston having destroyed the Tea which was at that time in their harbour.

In March, 1776, SOUTH-CAROLINA, in consequence of the British Act for confiscating American property, formed a *separate Constitution*, and established a General Assembly for her own separate Government, holding herself thereby *independent* of Great Britain, and resolving that this Constitution should remain in force *until a reconciliation* with Great Britain should take place, (an event which never occurred.)—[See Ramsay's So. Carolina, vol. 1, p. 263, and Drayton's Memoirs, vol. 2, p. p. 174, 180.] This Constitution forms the *first general Act of Independence*, in our country, as well as the first written frame of Government, which either this Country or the World has witnessed. It is drawn up with great ability, and is ascribed to the venerated *John Rutledge*, (who was elected under its provisions to the office of President and Commander in Chief.)

It commences thus:—

"SOUTH CAROLINA.—*In a Congress begun and holden at Charleston, on Wednesday, the first day of November, one thousand seven hundred and seventy five, and continued by divers adjournments to Tuesday the Twenty-sixth day of March one thousand seven hundred and seventy six.*

A CONSTITUTION OR FORM OF GOVERNMENT, AGREED TO AND RESOLVED UPON BY THE REPRESENTATIVES OF SOUTH-CAROLINA.

WHEREAS The British Parliament, claiming of late years a right to bind the North American Colonies by law, in all cases whatsoever, have enacted statutes for raising a Revenue in those colonies and disposing of such revenue *as they thought proper, without the consent, and against the will of the Colonists.* And WHEREAS it appearing to them that (they not being represented in Parliament), such claim was altogether *unconstitutional*, and if *admitted*, would at once reduce them from the rank of *Freemen* to a state of the most *abject slavery*, the said Colonies therefore *severally remonstrated* against the *passing*, and *petitioned* for the *repeal* of those Acts; *but in vain.* And *whereas* the said claim being *persisted* in, other *unconstitutional and oppressive* statutes have been since enacted," &c.—(proceeding to enumerate the various acts of oppression, amongst which are perished). "Statutes *prohibiting the intercourse* of the Colonies with each other, *restricting their Trade*, and depriving many thousands of people of the means of subsistence by restraining them from fishing on the American coast." [See Drayton's Memoirs, vol. 2, p. 186.]

In 1778, SOUTH CAROLINA formed another independent Constitution; and in 1790, another, [which is the one now in force.]

In *May* 1775, the people of NORTH CAROLINA, in Mecklenburg county adopted, for that county, a *Declaration of Independence* which is the first on the records of our History, and by the terms of which they solemnly abjured all allegiance to the British Crown.

In June 1776, VIRGINIA declared herself Independent, and adopted her *Bill of Rights and first Constitution.*

On 2d July 1776, NEW JERSEY adopted a separate and independent Constitution—And in Dec. 1776, NORTH CAROLINA did the same.

On the 4th of July 1776, The Thirteen States, or Colonies, in General Congress assembled "solemnly *published and declared* that these United Colonies are, and of right ought to be, *Free and Independent States*,"—which Declaration was ratified and signed by the Representatives of *each State*, under the name of their respective States—and was merely a *formal Annunciation or Proclamation to the world* of the existing fact that these States had *achieved their Independence.* This Proclamation had, of itself, no power or

efficacy to render them Independent, if their own courageous love of Liberty and invincible hatred of oppression had not enabled them to effect this glorious object. Had they been destitute of these exalted and efficient virtues all the parchment Declarations in the world, [however sacred they may be as RECORDS] would have been but vain and empty Boastings.

On the 9th of July, 1778, "Articles of Confederation and perpetual Union" were adopted, "between the States of New Hamshire, Massachusetts Bay, &c." to the number of thirteen States—which articles commence thus:—"The style of this confederacy shall be the United States of America

"*Each State retains its Sovereignty, Freedom and Independence*, and every power, jurisdiction and right, which is not by this Confederation expressly delegated to the United States in Congress assembled."

There had been since the year 1774, an annual Congress of *Deputies from the Colonies* held in Philadelphia, first [like the original Congress at New York in 1765] to *remonstrate*, and afterwards to concert measures of Defence. But none for the purposes of Government until the Confederation was formed in 1778.

The Congress of the old Confederation soon finding itself put to great inconvenience and embarrassment for the want of power to regulate the external relations—especially the Commerce—of the Country (which power was at that time under the almost entire control of the States individually,) made repeated representations to the State Legislatures of the necessity of enlarging their powers on these subjects by amendments of the Articles of Confederation. In consequence of these applications, and under a conviction of their reasonableness and importance, several of the State Legislatures as early as the year 1786 recommended the holding of a general Convention to consider these representations, and to "revise and amend the articles of Confederation"—and a few of the States actually appointed Delegates to meet those of other States "*that might be appointed*" for this purpose, some time before the Federal Congress passed the Resolution calling for, and authorizing the meeting of the said Convention.

Thus, we find that Virginia [who appears to have been the first to adopt measures on this subject] recommended the holding of a Convention *first at* Annapolis, "to consider the state of Trade."—at which [in Sept 1786], only 5 of the States attended, to-wit, Virginia, New York, Maryland, New Jersey, and Delaware. Finding however, that their deliberations would be of little importance without a more general action of the States, Virginia again recommended a Convention of *all* the States, "*to revise and amend the Articles of Confederation*," to be held at Philadelphia the ensuing year. In pursuance of which on the 16th of October, 1786, the Virginia Legislature passed an Act for the "appointment of seven Deputies by joint ballot of both Houses of Assembly"—"to meet such Deputies *as may be appointed by other States*, to meet in Philadelphia, for the purpose of *revising the Federal Constitution*"—(See the Act—Elliott's Debates, Vol. 4, p. 30.) Which deputies were accordingly so appointed on 4th Dec. 1786.

So also *the Pennsylvania Legislature* on the 30th Dec. 1786, passed an Act appointing Deputies to the Convention intended to be held in the city of Philadelphia, "for the purpose of *revising the Federal Constitution*."

So also the New Jersey Legislature appointed Delegates for the same purpose on 23d Nov. 1786.

So also the Delaware Legislature appointed Delegates on 3d Feb. 1787.

On the 21st Feb. 1787, The Congress of the Confederation adopted the resolution which recommended and authorized the meeting of the said Convention at Philadelphia.

The Resolution is in these words:—"*Whereas*, there is provision in the Articles of Confederation and perpetual Union for making alterations therein, by the assent of a Congress of the United States, and of the Legislatures of the several States; and *whereas* experience has evinced that there are defects in the present Confederation; as a mean to remedy which several of the States, and particularly the State of New York, by express *instructions to their Delegates in Congress, have suggested a Convention* for the purposes expressed in the following Resolution; and such Convention appearing to be the most probable mean of establishing in these States a firm National Government.

"*Resolved*, That in the opinion of Congress it is expedient that on the second monday in May next, a Convention of Delegates, who shall have been appointed by the *several States*, be held at Philadelphia, for the *sole and express purpose of revising the Articles of Confederation*, and reporting to Congress, *and the several Legislatures*, such *alterations and provisions therein*, as shall, when agreed to in Congress, and *confirmed by the States*, render the Federal Constitution adequate to the exigencies of Government, and the preservation of the Union."

In conformity with this Resolution the States, which had not previously done so, appointed, by their Legislatures, Delegates to attend the said Convention [except Rhode Island, who refused to appoint];—each appointing separately *as a State*, without any rule, or standard, as to the *number of Delegates*, which was wholly *immaterial* as each was to be represented but as a State, and to have *one equal vote*, the smallest with the largest. Hence, we find that whilst New York appointed but *three* Delegates, Delaware appointed *five*.

The *Credentials* of each of these Delegates consisted of *attested copies of the Acts* of their several Legislatures, so appointing them. Many of which Acts recite, or refer to, the terms of the said Resolution of the old Congress; and all of them are similar in purport. The Act of *Delaware* however, contained a *specific proviso* that no alterations or amendments should extend to *deprive each State of an equal vote* in deciding all questions in Congress, according to the 5th Article of Confederation." And the Act of New York, [which uses the words "for the sole and express purpose of revising the Articles of Confederation"] bears the following teste, "In testimony whereof, I have caused the privy seal of the said State to be hereunto affixed this 9th day of May, in the *Eleventh* year of the *Independence of the said State*." [Signed] Geo. Clinton.

According to appointment the Convention met at Philadelphia, and the said Credentials of the members were read to entitle them to a seat,—and, officers being appointed, they proceeded to business, each State voting on every question *as a State*, and giving but a *single vote*, whether she had one Representative, or *six*. By which means the seven smaller States outvoted and controlled the five larger States, though possessing but a third of their population.

On *the 17th Sept.* 1787, was drawn up, and agreed to, in this General Convention, the present Constitution, or frame of Government, by twelve of the thirteen "Sovereign, Free, and Independent States"—[Rhode Island refusing to alter the old compact]—which Constitution or frame of Government, did not, in any respect, alter the *essential* conditions of Union on which the said Sovereign States had previously Confederated. It did not, and could not, affect the distinct and separate nature of the parties; but was expressly declared to be for the purppose, [not of changing the fundamental character of the Co-partnership], but merely, on account of certain defects in the existing frame of Government. "To form a *more perfect Union*, establish peace,

ensure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of *Liberty*, to ourselves and our posterity."

This Constitution, or form of Government, *in its then state*, was merely a *recommendation* or Report of the Convention, *to be adopted or rejected by the* STATES; its last article specifying expressly that it should be considered as *ratified* only when the Conventions of "NINE STATES" should adopt it. It had therefore, no *efficacy*, and was but a DRAFT OF AN AGREEMENT, until these nine States should so adopt and ratify it.

This ratification by the several States did not take place until 1788, the year after its formation by the said General Convention of the States,—and *then* with a requisition for the adoption of sundry suggested amendments and alterations, which were agreed to by Congress and adopted by the State Legislatures in 1789. The chief of which amendments [as expressed by Massachusetts] was, "That it be *explicitly* declared, that all powers not *expressly delegated* by the aforesaid Constitution are *reserved* to the *several* STATES *to be by them* exercised"—or [as expressed by New Hamshire] "That it be *explicitly* declared, that all powers not *expressly and particularly* delegated by the aforesaid Constitution are reserved to the several States to be by them exercised—or [as expressed by South Carolina] "This Convention doth declare that *no section, or paragraph* of the said Constitution warrants a construction that the States do not *retain every power* not *expressly relinquished* by them, and vested in the General Government of the Union."

To this compact, or Constitution, however the States of North Carolina, Rhode Island, and Vermont *did not assent* for several years after its original formation and adoption, and if they had never chosen to assent, *they could not be compelled* to do so.

In the separate Conventions of the several States for adopting the Federal Constitution, the number of Delegates in each bore no correspondence to the *population* of the different States—and this is another strong answer to the absurd doctrine that the people of this Union, as one collective body, (instead of the people of each State acting as distinct Sovereignties] adopted the Federal Constitution. For instance, the State of *Connecticut*, had in her Convention for adopting or rejecting the Federal Constitution *three times* as many Representatives as the State of *New York* in her Convention, viz. 168 to 55. Massachusetts nearly five times as many as Pennsylvania, viz: 355 to 71 North Carolina upwards of one third more than Virginia, viz. 268 to 168—and South Carolina nearly *ten times* as many as Georgia, viz: 222 to 25.

Again, many of the States adopted that Constitution with much reluctance and by bare majorities of 5, 2, 10, 11, &c. viz: New York 5—Virginia 10—New Hamshire 11, and Rhode Island 2.

On the 2d July 1788 the Congress of the Confederation received the ratification of the 9th State (New Hamshire), when the President laid it before the members, proclaiming it to be the *9th Ratification;* and a motion was immediately submitted and carried that the Ratifications received be referred to a Committee to consider the same and "*report an Act to Congress for putting the said Constitution into operation in pursuance of the Resolutions of the late Federal Convention*"—which Committee reported an Act accordingly, and it was finally resolved that the 1st Wednesday in March, 1789, be the time for *commencing proceedings under the said Constitution.* This Resolution contains the following words "And whereas the Constitution so *reported* by the Convention, and by Congress transmitted to the several Legislatures, has been *ratified in the manner therein declared to be sufficient for the establishment of the same;* and such Ratifications *duly authenticated have been received by Congress*, and are filed in the office of the Secretary—therefore Resolved, &c: (as above.)

From this it appears that the Ratification of the *ninth State*, alone gave validity, (the moment it was received,) to that Instrument which previously was regarded as a mere "*Report*" of the Convention, (as termed by the above Resolutions of Congress.)

Now what is the Evidence furnished by the above detailed facts of our early History, to establish the proposition of the Independent Sovereignty of the States, and of the formation of our Federal Government *by such States*, and not by the collective Body of the people. The evidence is this—

1st. That the several Colonies commenced with separate Acts of resistance to the Tyranny of Great Britain.

2d. That some of these Colonies adopted separate Constitutions and Declarations of Independence previous to the adoption of similar measures by a *general action of the Colonies*—for instance South-Carolina and Virginia established independent Constitutions and forms of Government several months previous to the General Declaration of Independence—upwards of *Two years* antecedent to the "Articles of Confederation"—and *twelve years* before the adoption of the present Federal Constitution—acting for *all that period* as perfectly distinct and independent sovereignties.

3d. That the original Colonies, by the general Declaration of Independence formally proclaimed themselves Free and Independent States with all their Rights of Sovereignty unlimited and uncontrolled.

4th. That by their original Articles of Confederation these Free and Independent States acknowledged and agreed that "each State retained its *Sovereignty, Freedom* and *Independence*."

5th. That these Sovereign Rights have not been sacrificed, or surrendered, beyond a *certain limited portion*, which, by their *constitutional compact* the several States have bestowed upon their Federal Government—But have, by *the very terms of that compact expressly retained all others* undiminished and unimpaired.

6th That the Federal Government, as established by the said constitutional compact is in fact the creature of the *several States* and not of the collective body of the people, 1*st*. Because the number of Delegates to the Convention which framed that Government, were *not in the ratio of population*, the smaller States having in many instances a *greater number than the larger*, 2*d*. Because the votes in that Convention were taken *by States*, and not by members, or according to population—each State giving *but one vote*—(so that a *minority of the people* constituting 7 *States* in the Convention with a population of 936,700,) may have framed the Constitution *against a majority of three to one* (2,084,600) constituting the 5 remaining States which attended—or against a still larger majority, if *all* the States had attended—3*d*. Because the *adoption and ratification* of the Constitution was submitted, by its own provisions, to a *majority of the States* to effect, and not to a majority of the *people*; by which means the nine smaller States containing a population of 1,760,200 may have ratified and given life to that instrument, which was previously a mere "dead letter," in opposition to the 4 larger States with a population of 2,124,800; in other words a minority may have overruled a majority of over 360,000. By this means also, if the *five smaller* States (with a population of 622,000) had *refused to accede*, they could have *prevented the adoption* of that Instrument by the *eight larger* States (with a population of 3,299,300)—in other words a minority may have overruled a majority of *five to one*. 4*th*. Because the number of Delegates in each State Convention for adopting the Constitution bore *no proportion* to their *relative population*, some of the States having *ten times* the number of Delegates appointed by others. 5*th*. Because when the Constitution was adopted and ratified by the nine States it had *no virtue or efficacy* in those States which *did not adopt it* (as North Carolina and Rhode Island) and never could have such efficacy until they chose to ac-

cede—even though a majority of the people of five to one had given it their assent

In addition to these considerations, it is further evident from the 5th Article of this Constitution that it is the work of the separate States; for that Article provides that no amendments or alterations shall be made (or ratified) *but by three fourths of the several States* either by their Legislatures or Conventions—and whilst this power is possessed by the States, not all the powers of the Federal Government can touch the Constitution of the *smallest State of the Union*. So *again*, each of these States has an equal Representation in the higher Branch of the Federal Legislature, *of which it cannot be deprived*—and in this Branch a majority of the States, forming perhaps a *minority of the people* may arrest (or nullify) the measures of a *majority* of that people in the same house, and of a *vast majority* of the people in the house below.

From all these facts in the early History of our Country, and from the true nature of the Compact itself, it would assuredly seem to be beyond cavil or dispute that our Federal Constitution is but a compact between Sovereign and Independent States who thereby agreed to form a General Government for certain limited and specific powers, retaining all other powers to themselves.

If then this General Government be in reality the creature of the States, is it preposterous to contend that *certain judicial officers appointed by one Department of this creature* is to rule and govern its own paramount creators—and to decide upon their Rights and Privileges, when infringed too by the very "approved judicial masters" of this deciding Tribunal—Does it not on the contrary result inevitably from the very nature of the compact that each of these creating Sovereigns must judge for itself of every infraction of its own reserved Rights and of the "mode and measure of redress"—That it must, *as its only remedy* (after employing argument and remonstrance in vain) put its *Sovereign Veto or Injunction* upon the usurpation in order to protect its own citizens, within its own limits, from tyranny and oppression, and to obtain from a convention of its fellow States a restitution of its violated Rights.

And what more (as I have heard it well asked,) is this Right of Injunction or Nullification, than the power which, in the instance of Jury Trials, may be, and is in fact, enforced by a *single Juryman* upon the verdict of his numerous companions, in every case in which the convictions of his conscience are firmly fixed in opposition to their verdict. Yet these cases do not, and will not, frequently occur: for in *ordinary cases* it is ever found that Juries are content to abide by the opinion of a majority—But in those rare cases in which an individual Juryman finds himself bound, on principle, to resist to the utmost, and under every privation and suffering, a decision, of whose injustice he has a perfect conviction, he practises a *rightful and a righteous* Nullification which has often effected the most blessed results, and established the most sacred ends of Justice.

Even thus it is with each State of our Union in similar cases of insidious and intolerable injustice—each has the power and the right to arrest the oppression of a majority, by her Veto, until justice is vindicated, and the Right prevails

The operation of this remedy would be wholly through the Juries of the Country—and we consider the following to be a perfect definition of Nullification—viz: The arresting of Federal usurpation by carrying an entire case to a Jury, under a State Law, enabling that Jury to give a Verdict upon the blended fact and law (under the direction of the Judge): and thus by defeating the ends of Tyranny to compell the call of a Convention of the States either to confirm or deny the power whichis claimed.

All apprehensions of the too frequent assertion of this power are surely idle and unfounded: for the odium of the World would not readily be encountered without abundant cause to justify, and ample grounds to sustain its adoption.

But it has been said that this power in each State, of arresting within its own Limits, the unlawful Acts of the Federal Government, would render that Government less powerful than even the little State of Delaware. To this we reply, that this peculiarity in our system (which is urged as a defect) is its *greatest excellence*—namely—that the *smallest State* in our Union is more powerful for all CONSTITUTIONAL purposes, than the combined departments *of the Federal Government* for UNCONSTITUTIONAL objects.

And in regard to the supposed danger of a civil War resulting from the employment of this remedy; such danger has already been shown not to exist, the Executive of this Union having no power by the Constitution, (from which alone he derives his powers) to resort to force—which fact is the more evident from that very power having been denied him in the Convention which formed the Constitution: for we find in the Journals of the Convention (page 68) that it was proposed to clothe the Congress with a power "to call forth the force of the Union against any member of the Union failing to fulfil his duty under its articles." But the Convention refused to listen to the proposition—so, again, at page 126, it was proposed that "if any State, or body of men in any State shall oppose or prevent the carrying into execution such Acts, &c. the Federal Executive shall be authorized to call forth the powers of the Confederated States, or as much thereof as may be necessary to enforce and compel an obediénce to such Acts." But the Committee who drafted the Constitution unhesitatingly rejected it as repugnant to the spirit of our Institutions and in derogation of the Sovereignty of the States

Indeed the entire scheme of our Government, on its very face, and from its very nature, is simply one of mutual benefits, and separate advantages. The idea of *Force* is utterly *abhorrent to its character*. Has it ever been pretended that the States which have entered into the Union and adopted the General Compact, were *compelled* by co-ercion to do so? Were they not, on the contrary, induced voluntarily to unite by the proffered advantages of *great security and protection from foreign dangers?* Has it not always been held out to the Territories that they will be allowed to join the Confederacy and *enjoy its advantages* upon certain specified conditions? Have we ever heard of a Territory, even though the soil belonged, by purchase, to the Country, being *compelled* to come into the Union and to yield up its entire Right of self Government? Most absurdly not! How then can it be pretended that the Executive Department of the Federal Government has a right to employ force against the Sovereignty of a State?

No, indeed, it is neither the Duty, nor the Right, of the President to attempt the use of force in these cases of disputed Right. It is, on the contrary, his solemn duty to recommend, either the abandonment of the usurpation or the call of a Convention of the States.—And hence, if the Executive perform his duty, [and he has no power to do otherwise] there can be neither violence nor any risk of Dis-union. It is, in fact, the very repugnance and aversion which we entertain to the idea of Disunion that causes us to revolt at the remedy of SECESSION which has been maintained by Col. Drayton to be the only rightful Remedy of the States, on the failure of reason and remonstrance. We desire no Secession—for that is of itself and "ex vi termini" Disunion. Our great end and aim is *to preserve the Union* IN ITS PURITY—the Union *according to the compact of the Constitution*—by arresting every perverse and wilful violation of its sanctity—and this, we contend, is to be effected by the exertion of a legitimate and rightful Injunction without departing from the pale of that Union, to which, in its state of purity, we are too much attached to bear with patience its continued violation and abuse.

But it is objected by Col. Drayton that, this Doctrine of Nullification asserts the right of a State's being *in* the Union and *out* of it at the same time. Let us allow this to be so; it assuredly, even then, is but *half* as dangerous and

and extreme a measure as Col. Drayton's Right of Secession, which *professedly* goes the whole length of Disunion—and if that gentleman contends that a State possesses the *ultra* right of Secession, why should he express such horror at the *half* way measure of Nullification? Surely here is an utter inconsistency. For whilst he advocates a Right of *direct* Dis-union, he yet denounces what he thinks *will lead* to that result through the lawless despotism and perverse aggression of the *original oppressor*. But it will be said that Col. Drayton would only resort to the remedy of Secession when argument and remonstrance have been utterly exhausted.—And what more, we will ask, has been claimed, for the Remedy of Nullification? No period but *that* has ever been fixed for its adoption—We have been contending solely for the RIGHT—Our object has been the *establishment of the* PRINCIPLE. It will be for our State, through her appropriate Representatives, in her Legislature, or in Convention, to determine, in their sound discretion, upon the fit time for its application. Let all doubts but be satisfied as to the RIGHT, and the question of *expediency* will be of lesser moment and easier solution Though we cannot for ourselves see aught to be gained by continued delay, save the steady increase and permanent fixture of the usurpation and the gradual destruction of our powers and our spirit of resist. We surely can have no hope of Relief from our *oppressors*, after the Declaration in the last message of the Federal Executive that "The Tariff is Constitutional, and the abandonment of the policy in which it originated can neither be expected nor desired"—and the concurrent report of the committee on Manufactures, that "they perfectly agree with the president as to the constitutionality of the Tariff—that the States have delegated to Congress the *whole power* over imposts—and that it may be used either for the purposes of Revenue, or *Protection*, and that the happiness and prosperity of the United States depend upon its *continuance*,"

We are told indeed by our opponents, that the Northern States, with few exceptions, are equally opposed to the Tariff with ourselves, and that they equally suffer from its oppressions; as *Consumers alone* are the subjects of the Tax. To these assertions we have briefly, and [as we consider] conclusively, to reply that those States [with the exception of the importing Merchants in their cities] are eternally *clamoring aloud* FOR THESE TAXES, whilst we are clamoring *against* them.—That even if it be the consumer alone who pays the Tax, those States receive back in the *Bounty* upon their Manufactures infinitely more than the tax paid upon the amount of their purchases; whilst the Southern States sustain the *unmitigated burthen of this* Tax in their extensive purchases. But we deny in toto this theory of the Consumer alone being the sufferer from this system, and aver it to be our perfect conviction that the tax upon the Consumer is comparatively insignificant, whilst the almost entire burthen falls upon the Southern Planter in the diminished value of his produce, resulting from this restriction upon its *exchangeable values*. In this respect we concur most fully with our distinguished Representative Mr. M'Duffie. For no sophistry [however ingenious] can blind our eyes to the simple and self-evident proposition that *as much of the European Articles with which our produce is purchased, as is taken in Duties from the Merchant, so much the less can he pay the planter for that produce*; nor can he, at pleasure, [as is asserted] repay this loss by enhancing his prices on the consumer, for he must necessarily sell at the market price, and *that* (tho' inevitably increased by the restriction), is yet *entirely regulated by the domestic competition*.

But, as we have said before it is not the precise extent of our oppressions, [great as we esteem them] that we regard; it is the principle, for which we contend—the principle of LIBERTY—and of resistance to usurpation. For, strip this question of all its technicalities—all its minor considerations; reduce it at once to its elements and substance; and what is the contest in which we are engaged? It is simply and essentially a Contest, *on the one side* for the PRINCIPLES OF DESPOTISM, and on the other, for the PRINCIPLES OF LIBERTY!

And now great would be the crowning GLORY of our beloved State, were she not crippled by the obstructions of the SMITH PARTY, which now clog her noble efforts, to succeed by arresting Federal usurpation [whilst yet it *can be arrested*], in restoring the violated charter of our Rights to its hallowed purity; and thus to reap the enviable and exalted Distinction of being the REDEEMER OF THE CONSTITUTION, and, for all time to come, the SAVIOUR OF THE UNION!

HAMPDEN.

FINIS.

ERRATA.

Page 45, line 12, for Rules read Rulers.
Page 46, line 19, after "should" read "require."
Page 48, line 11, after "restriction" read "upon the powers of our Legislature."
Page 52, line 29, for "should" read "would."
Page 107, lines 7 and 8 are transposed.
Page 134, line 6th from end of the Page, read "virtual" for "viatual."