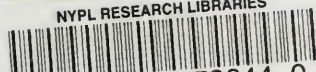


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LETTERS AND OTHER WRITINGS

OF

JAMES MADISON.

VOL. IV.





LETTERS  
AND OTHER WRITINGS  
OF  
JAMES MADISON

FOURTH PRESIDENT OF THE UNITED STATES.

IN FOUR VOLUMES.

PUBLISHED BY ORDER OF CONGRESS.

VOL. IV.

1829-1836.

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\* In Resolutions agreed to by both Houses, January 26th, 1833. [See *Acts of the General Assembly of Virginia, Session of 1832-'33*, p. 202.] A portion of this paper on Nullification was written in 1833. See *ante*, p. 270.



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# WORKS OF MADISON.

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## LETTERS, ETC.

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TO RICHARD D. CUTTS.

MONTPELLIER, Jan<sup>y</sup> 4th, 1829.

Your letter, my dear Richard, gave me much pleasure, as it shews that you love your studies, which you would not do if you did not profit by them. Go on, my good boy, as you have begun; and you will find that you have chosen the best road to a happy life, because a useful one; the more happy, because it will add to the happiness of your parents, and of all who love you and are anxious to see you deserving to be loved.

When I was at an age which will soon be yours, a book fell into my hands, which I read, as I believe, with particular advantage. I have always thought it the best that had been written for cherishing in young minds a desire of improvement, a taste for learning, and a lively sense of the duties, the virtues, and the proprieties of life. The work I speak of is the "Spectator," well known by that title. It had several authors, at the head of them Mr. Addison, whose papers are marked at the bottom of each by one of the letters in the name of the muse C L I O. They will reward you for a second reading after reading them along with the others.

Addison was of the first rank among the fine writers of the age, and has given a definition of what he shewed himself to be an example.

“Fine writing,” he says, “consists of sentiments that are natural without being obvious;” to which adding the remark of Swift, another celebrated author of the same period, making a good style to consist “of proper words in their proper places,” a definition is formed which will merit your recollection, when you become qualified, as I hope you will one day be, to employ your pen for the benefit of others, and for your own reputation.

I send you a copy of the “Spectator,” that it may be at hand when the time arrives for making use of it; and as a token, also, of the good wishes of your affectionate uncle.

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TO JOSEPH C. CABELL.

MONTPELLIER, January 5, 1829.

DEAR SIR,—I have received yours of December 28, in which you wish me to say something on the agitated subject of the basis of representation in the contemplated convention for revising the State Constitution. In a case depending so much on local views and feelings, and perhaps on the opinions of leading individuals, and in which a mixture of compromises with abstract principles may be resorted to, your judgment, formed on the theatre affording the best means of information, must be more capable of aiding mine than mine yours.

What occurs to me is, that the great principle “that men cannot be justly bound by laws, in making which they have no share,” consecrated as it is by our Revolution and the Bill of Rights, and sanctioned by examples around us, is so engraven on the public mind here, that it ought to have a preponderating influence in all questions involved in the mode of forming a convention, and in discharging the trust committed to it when formed. It is said that west of the Blue Ridge the votes of non-freeholders are often connived at, the candidates finding it unpopular to object to them.

With respect to the slaves, they cannot be admitted as *persons* into the representation, and probably will not be allowed any claim as a *privileged* property. As the difficulty and dis-

quietudes on that subject arise mainly from the great inequality of slaves in the geographical division of the country, it is fortunate that the cause will abate as they become more diffused, which is already taking place; transfers of them from the quarters where they abound, to those where labourers are more wanted, being a matter of course.

Is there, then, to be no constitutional provision for the rights of property, when added to the personal rights of the holders, against the will of a majority having little or no direct interest in the rights of property? If any such provision be attainable beyond the moral influence which property adds to political rights, it will be most secure and permanent if made by a convention chosen by a general suffrage, and more likely to be so made now than at a future stage of population. If made by a freehold convention in favour of freeholders, it would be less likely to be acquiesced in permanently.

I received your letter when I was much engaged in other matters, and am still so in a degree that obliges me to be very brief. I know not, however, that with more leisure I could do more than add to what I have said developments and applications which will readily occur to yourself, should your general view of the subject accord with mine, which I am sufficiently aware may not be the case.

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TO W. C. RIVES.

MONTPELLIER, January 10, 1829.

DEAR SIR,—Your favor of the 31st ult. was duly received. You have not mistaken my idea of the constitutional power of Congress to regulate trade; and it gives me pleasure that you take the same view of it.

The power to regulate trade is a compound technical phrase, to be expounded by the sense in which it has been usually taken, as shewn by the purposes to which it has been usually applied. To interpret it with a literal strictness, excluding whatever is not *specified*, would exclude even the retaliating

and extorting power against the unequal policy of other nations, which is not specified, yet is admitted by all to be included. The custom-house has, in fact, been more generally used as the instrument for establishing and protecting domestic manufactures, than for enforcing liberality or reciprocity abroad.

You make a very pertinent enquiry as to the object and history of the publication in 1801 subscribed "The danger not over." A lapse of nearly thirty years would account for failures of a memory more tenacious than mine. I have certainly no recollections favoring the supposition that it referred to any questions then agitated concerning the constitutional power of Congress to encourage manufactures by regulations of trade, and must believe that the passage grew out of the broad and ductile rules of construction advanced at an earlier period by Mr. Hamilton on that and other subjects, and to hypothetical abuses of the power, not less oppressive than usurpation. The language of Mr. Pendleton shows that his ideas were neither very definite nor very positive.

On what authority\* it is given out that Mr. Jefferson and myself were associated in the preparation of the piece, I cannot divine. For myself, I hold it to be impossible. I do not remember even more than that it excited much attention as coming from such a source. The spirit and style would denote the pen of Mr. Pendleton, and of him singly. It is possible that Mr. Jefferson, in corresponding with him, might, at that crisis, have exhorted him to take up that weapon in order to kill the snake, which had perhaps been skotched only; and that, not doubting my political sentiments, he might have alluded to me, in known friendship with Mr. Pendleton, as sure to have the same wish with himself. I have looked over all my correspondence of that period with Mr. Jefferson, and others with whom it was constant and confidential, without finding a ray of light.

\* See Richmond Enquirer of —, in the winter of 29-'30, for a certified proof that neither Mr. Jefferson nor J. M. had any connexion with the paper of Mr. Pendleton. Mr. Ritchie was misled by his friend, who acknowledged that he had misapprehended his informer.



If Mr. Pendleton wrote in communion with any one, my conjecture would point to his kinsman and *élève*, Col. J. Taylor, with whom he was always very intimate, and who had almost an antipathy to Federal powers. It is much more probable that he concurred in all the opinions expressed by Mr. Pendleton than that both Mr. Jefferson and myself should have done so in some of them. I will renew the search into my files, and if I make any discovery will let you know it.

The authority of Col. Hamilton, I observe, is cited against the power in question. If his language in the *Federalist* was so intended, which is not probable, he must have changed his opinion at a very early day, as is proved by his official reports, which go into the opposite extreme. Such a change, if real, would not, indeed, be without his own example. In the *Federalist*, he had so explained the removal from office as to deny the power to the President. In an edition of the work at New York, there was a marginal note to the passage that "Mr. H. had changed his view of the Constitution on that point."

Mrs. Rives being now with you, Mrs. Madison joins in the offer of cordial regards and good wishes to you both.

I must ask an excuse for the marks of haste, which I could not avoid without losing a mail.

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TO RICHARD RUSH.

MONTPELLIER, Jan<sup>y</sup> 17, 1829.

DEAR SIR,—I have received your very kind letter of the 10th. The commendations you bestow on those relating to the Tariff, belong rather to what so pregnant and important a subject ought to have made them, than to what they are. They were written to a friend who wished to avail himself of the presumed result of my better opportunities of elucidating the question, and whom I considered as needing such an outline only of topics and references as might be filled up by the researches, developments, and reflections of which he was himself

very capable. I may mention that though the letters were finally published with my assent, it was given with an understanding that such a use was not to be made of them until the presidential struggle should be over, and with it the possibility of a misconstruction that might impute inconsistency to the writer, and defeat any good tendency the publication might otherwise have.

That there should be a difference of opinion on the policy of legislative encouragement in any form to manufacturing industry, was to be expected. But that a constitutional power to encourage it through the custom-house should at this day be denied, was what I certainly had not anticipated. Nor was I less surprised at the rapid growth than at the birthplace of the doctrine that would convert the Federal Government into a mere league, which would quickly throw the States back into a chaos, out of which, not order a second time, but lasting disorders of the worst kind, could not fail to grow. There are, however, such excellent talents and so much of personal worth mingled with these aberrations, that we may hope they will not be of long continuance. Opinions whose only root is in the passions, must wither as the subsiding of these withdraws the necessary pabulum.

It affords us great pleasure to have the pledge from Mrs. Rush that we are not to be finally disappointed of the visit so long expected. In the meantime, and at all times, be assured of our affectionate regards and all our best wishes.

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TO W. C. RIVES.

MONTPELLIER, January 23, 1829.

DEAR SIR,—I have received, under your cover, the newspaper containing the explanatory remarks\* on the two letters rela-

\* A communication to the Richmond Enquirer, written by W. C. R., under the signature of "A Jackson man of the School of '98," in defence of Mr Madison, who had been assailed by that paper for his letters to Mr. Cabell on the constitutionality of a protective tariff.

ting to the power of Congress to encourage domestic manufactures.

The writer of the letters is laid under great obligation by the opportune and apposite interposition in their behalf. The strange misconstructions which continue to be put on the occasion and object of the letters would produce surprise if such effects of party and other feelings were less familiarized to us.

I am truly sorry to observe the persevering and exulting appeals to the letter of Mr. Jefferson to Mr. Giles. The inconsistency is monstrous between the professed veneration for his name and the anxiety to make him avow opinions in the most pointed opposition to those maintained by him in his more deliberate correspondence with others, and acted on through his whole official life.

I cannot particularly refer to his letters to Austin and others, but have consulted his elaborate report in 1793, when Secretary of State, on the foreign commerce of the United States, and all his messages when President; and I find in them the most explicit and reiterated sanctions given to the power to regulate *trade* or commerce in favour of manufactures, by recommending the expediency of exercising the power for that purpose, as well as for others distinct or derogating from the object of revenue. Having noted the pages in the State Papers, published by Wait, as I examined them with an eye to Mr. Jefferson's opinions, I refer to them in the margin\* as abridging a research, if your curiosity should at any time prompt one.

\* State Papers, vol. i, p. 443, 4, 5, and seq., reciprocity, &c.; favour manufactures; Report of Mr. Jefferson; See MS. Report on Fisheries; Niles, Jan. 17, 1829; Ritchie, and others; vol. iv, page 324, "to encourage agriculture;" page 332, "agriculture, manufactures, commerce, and navigation, may be protected against casual embarrassments."

Vol. iv, page 449, Not too much regulation; meet inequalities in foreign intercourse.

453. "Foster fisheries for navigation and food, and protect manufactures adapted to our circumstances; these rules of action; true principles of Constitution."

Vol. v, page 31, "Take a broader view of the field of legislation. Whether the great interests of agriculture, manufactures, &c., can, within the pale of your

To set up against such evidence of Mr. Jefferson's direct and settled opinions, a letter, the unstudied and unguarded language incident to a hasty and confidential correspondence, is surely as unreasonable as it must be disrespectful and unfriendly to make such a letter, written under such circumstances, the basis of a charge that he had, through so many years and on so many occasions, maintained and acted on the power in question, without discovering that it was not warranted by the great Charter which he had bound himself by oath not to violate. Every rule of fair construction, as well as every motive of friendly respect, ought to favour, as much as possible, a meaning in the letter that would reconcile it with the overwhelming evidence of opinions elsewhere avowed, instead of displaying a self-contradiction by turning the letter against those opinions.

Nor would a candid critic be at any loss for a meaning that would avoid the self-contradiction. The term "indefinitely," on which the question of constitutionality turns, would seem to imply that a *definite* or limited use of the power might not be unconstitutional. And it is a fair presumption that the idea in the mind of the writer was that an unlimited or excessive abuse of the power was equivalent to a usurpation of it. Is it possible to believe that Mr. Jefferson could have intended to admit that he had been all his life inhaling despotism, and had then, for the first time, "scented the tainted breeze?" However just the distinction may be between the abuse and the usurpation of

constitutional powers, be aided in any of their relations, are questions within the limits of your functions which will necessarily occupy attention."

Page 59, "Prohibit exportation of arms and ammunition."

458, "Shall we suppress the import, and give that advantage to foreign over domestic manufactures?"

489, "Establishments of internal manufactures, &c., formed and forming, will under, &c., and protecting duties and prohibitions, become permanent."

Shall surplus revenue be hoarded or repeated, or not rather applied to roads (*a*) canals, rivers, education, and other great foundations of prosperity and union, under powers which Congress may (*b*) *already possess*, or by amendment of Constitution?

(*a*) Manufactures omitted as not on same footing.

(*b*) See case of Rivers and Canals, p. 458. Also, preventive authority in case of Treason; see vol. v, p. 484.

power, and necessary to be kept in view in all accurate discussions, it cannot be denied that there may be abuses so enormous as to be not only at war with the Constitution, whether Federal or State, but to strike at the foundation of the social compact itself, and, if otherwise irremediable, to justify a dissolution of it.

I am still in the dark as to the ground of the statement that makes Mr. Jefferson and me parties to the publication in 1801, signed "The danger not over."

Have you noticed in Niles's Register of the 17th instant, page 380, an extract from an address in 1808, signed, among others, by our friend Mr. Ritchie, wishing Congress to encourage our own manufactures by higher duties on foreign, *even if the present attack on our commerce should blow over, that we may be the less dependent? &c.*

With our joint salutations to Mrs. Rives, I pray you to accept a reassurance of my great and cordial esteem.

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TO JOSEPH C. CABELL.

MONTPELLIER, February 2, 1829.

DEAR SIR,—I received last evening yours of the 29th ultimo. It confirms, I observe, my fears that nothing could now be done for the University, though the more in need of aid in consequence of the fever, which is banishing a number of the students, and may have the effect of impairing its income.

The spirit in which my letters to you are criticised is as singular as it is illiberal. The least degree of candor would readily understand what so much effort is employed to misunderstand. If a doubt could have arisen as to the meaning of the word trade, which happened to slip from the pen instead of the word commerce, the doubt ought to have vanished before the evidence furnished by the whole scope of the letter, which has reference exclusively to the commerce with foreign nations. To apply the term to trade between man and man within the jurisdiction of a particular State, is such a violation of all probability and

propriety, that it could not be dreaded as a snare for the weakest minds, if we did not see strong ones decoyed by party spirit into such as are not less obvious.

To regard the omitted words "common defence and general welfare" as what would have limited the meaning of the quotation, is, if possible, still more extraordinary. Had they been added without a precautionary explanation, they would have been a fine treat for hungry critics. The quotation which includes imposts and duties among the revenue powers, and the remarks founded on that circumstance, were dictated by the argument from it, that a tariff on commerce could be imposed for no purpose other than revenue. To meet the argument, it was necessary to show that the circumstance did not exclude a tariff on commerce for other purposes, from the power to regulate trade, under which was claimed the constitutionality of a tariff in favour of manufactures, as of other objects, such as munitions of war, &c., &c., none of which could be favoured by a tariff on a construction exclusively appropriating it to revenue.

What the extract is to be, from Yates's account of the Convention, which convicts me of inconsistency, I cannot divine. If anything stated by him has that tendency, it must be among the many errors in his crude and broken notes of what passed in that body. When I looked over them some years ago, I was struck with a number of instances in which he had totally mistaken what was said by me, or given it in scraps and terms which, taken without the developments or qualifications accompanying them, had an import essentially different from what was intended. Mr. Yates bore the character of an honest man, and I do not impute to him wilful misrepresentation. But besides the fallible and faulty mode in which he noted down what passed, the prejudices he felt on the occasion, with those of which he was a representative, were such as to give every tincture and warp to his mind of which an honest one could be susceptible. It is to be recollected, too, that he was present during the early discussions only, which were of a more loose and general cast; having withdrawn to make his welcome report before the rough materials were reduced to the size and shape proper

for the contemplated edifice. Certain it is, that I shall never admit his report as a test of my opinions, when not in accordance with those which have been repeatedly explained and authenticated by myself. The report of Luther Martin is as little to be relied on for accuracy and fairness.

I am sorry to see the exulting appeals which continue to be made to the letter of Mr. Jefferson to Mr. Giles, as evidence of an opinion adverse to the constitutionality of a protecting tariff. It is surely a strange mode of manifesting the veneration professed for his memory, to be so anxious to place him in such pointed contradiction to himself. A true friend ought to seek rather for a meaning in the letter that would avoid the charge on him of supporting usurped power through a long life, and never making the discovery till near the end of it; he who had been one of the very first to snuff it in a tainted breeze. Of his deliberate opinion, officially and privately maintained, there is the fullest proof on record and in print. You will find it in the able report to Congress in 1793, when Secretary of State, and in his successive messages to Congress when President, published in Wait's State Papers, as referred to in the margin.\* His report on the fisheries in 1794, equally able and elaborate with the other, is not there printed, but is not less in point. His letter to Mr. Austin, in 1816, is so clear, so full, and so emphatical, that it alone ought to crush every attempt to put the weight of his opinion in the wrong scale; and such is the weight of it that it ought *to be kept in the right one*; of this I am sure you are very sensible.

You see, my good friend, that my disinclination to go into the newspapers was more justified than you were disposed to allow. What is occurring was anticipated, and was a sufficient motive for wishing to avoid the dilemma of leaving a good cause to be borne down by the persevering efforts of zealous partisans, or throwing the defence of it on reluctant though adequate hands. In mine an "*imbelle telum*" only could now be wielded.

Can you conveniently ascertain the authority on which it

\* See my letter to Mr. Rives, 23d January, 1829. [Ante, p. 6.]

was stated that Mr. Jefferson and myself were parties to the publication of Mr. Pendleton in 1801, under the signature of "The danger not over."

With cordial regard, &c.

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TO FREDERICK LIST.

FEB<sup>r</sup> 3, 1829.

I have received, sir, your letter of January 21, with the printed accompaniments; of which none can say less than that they contain able and interesting views of the doctrine they espouse. The more thorough the examination of the question which relates to the encouragement of domestic manufactures, the more the true policy (until all nations make themselves commercially one nation) will be found to lie between the extremes of doing nothing and prescribing everything; between admitting no exception to the rule of "*laissez faire*," and converting the exceptions into the rule. The intermediate Legislative interposition *will be* more or less limited, according to the differing judgments of Statesmen, and *ought to be so*, according to the aptitudes or inaptitudes of countries and situations for the particular objects claiming encouragement.

Having found it convenient to adopt the rule which contracts my subscriptions of every sort, and for reasons strengthened by every day withdrawn from the scanty and uncertain remnant of life, I must deny myself the pleasure of adding my name to the list which patronises, in that way, the work you contemplate; and which, I doubt not, will well repay the attention of readers who set a due value on the subjects to be investigated. That your knowledge of our language is not incompetent for the task is sufficiently shewn by specimens which place you among the foreigners who have studied the idiom of the country with most success.



TO JAMES BARBOUR.

FEBRUARY 6, 1829.

D<sup>R</sup> SIR,—I am glad to find that the Duke of Wellington, now understood to be the mainspring of the Cabinet policy, and, more than his predecessors, a manager of the public will, holds a language so friendly towards this country. The longer a practice corresponding with it is postponed, though not the better for us, the worse it will be for the other party. I sincerely wish, on every account, that you may succeed in bringing about a satisfactory arrangement on all the points in controversy between the two countries, particularly that of the trade with the West Indies, which, more than any other, may be an obstacle to commercial harmony. Not only the Government, but the British shipowners, ought to be sensible that nothing can be gained on that side by the existing prohibition of *direct* intercourse. And as the Eastern States, which alone ever questioned our right to a reciprocity, or were willing to waive it, are now the champions for asserting it, no hope ought to be indulged that the British monopoly of the navigation will ever be acquiesced in. The present and prospective dependence of the Islands for necessary supplies on the United States, makes the period favorable for pressing on the Government hard arguments in soft words.

It seems to be understood that Congress will hand over the most difficult subjects to their successors; particularly the tariff, on which the discord between the South and the Centre and the West will be not a little embarrassing, and require the compromising management of a masterly hand. The proceedings of Georgia and South Carolina against the Tariff were sent to Governor Giles, and have been laid before the Legislature, in the hope of an echo of them. The report of the committee to which they were referred, if made, has not been published. The large proportion of members committed by their recorded votes at the last session will, probably, in the event of a *direct* question, turn the scale in the House of Delegates in

favour of those proceedings. It is suggested that the Senate will either negative or postpone the subject.

The session has been almost exclusively occupied with the proposed Convention for improving the Constitution of the State. Various plans have been offered, discussed, amended, and rejected, as the basis of representation in the Convention. The prevailing opinion, I believe, is that the white population in the Senatorial districts will be the basis, with a right of suffrage extended to non-freeholders.

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TO JOSEPH C. CABELL.

MONTPELLIER, February 13, 1829.

DEAR SIR,—Since mine of January 29, I have received one of the papers of Hampden. But it is number 2, the Enquirer containing the first number, and a number from the fellow pen having not come into the neighbourhood. Be so good, when at leisure, to procure and enclose it to me.

I observe that some stress is laid on the reference to our Colonial relations to Great Britain, as having originated with me. The fact is, that I found them used as a source of argument against the power claimed for Congress, in a speech of Mr. Alexander, which I received as printed in a pamphlet form. His object was to show that the power to regulate commerce did not embrace the tariff power, by the distinction made between them in the revolutionary controversy with Great Britain, and by the specific insertion of "imposts" on commerce among the revenue powers. My object was to clear the way for my view of the general question, by removing this particular error. Had not the attention been called to that controversy, I should not have noticed it, because it was desirable to keep the subject as simple and within as small a compass as possible. For a like reason, I made no reference to the "power to regulate commerce among the several States." I always foresaw that difficulties might be started in relation to that power which could

not be fully explained without recurring to views of it, which, however just, might give birth to specious though unsound objections. Being in the same terms with the power over foreign commerce, the same extent, if taken literally, would belong to it. Yet it is very certain that it grew out of the abuse\* of the power by the importing States in taxing the non-importing, and was intended as a negative and preventive provision against injustice among the States themselves, rather than as a power to be used for the positive purposes of the General Government, in which alone, however, the remedial power could be lodged. And it will be safer to leave the power with this key to it, than to extend to it all the qualities and incidental means belonging to the power over foreign commerce, as is unavoidable, according to the reasoning I see applied to the case.

The quotations from the Virginia Convention prove nothing but the poverty of the cause that would avail itself of them. It would be wrong to detract from the talents or integrity of the opponents of the Constitution. But their eulogists, in the praises bestowed on their prophetic sagacity, seem to forget that where one prediction has been fulfilled, a hundred have been contradicted by the events. And well it is that such has been the case, for otherwise every calamity involved in monarchy, aristocracy, oligarchy, and military and fiscal oppression, would, ere this, have been the lot of our country.

I hope Lloyd's Debates of the First Session of the First Congress, on the subject of commerce and revenue, will be fully used in case the tariff should be brought up by the report of the Committee of the House of Delegates on the Georgia and South Carolina resolutions. The debates contain the most ample proof that manufactures were as much an object as revenue; that the encouragement of them aimed at was by regulations *diminishing* and even *preventing* revenue, as well as producing it; that such regulations previously existed in particular States, and were looked for from the new Congress; that the power was not questioned by a single member, and that the use of it was

\* See Federalist, No. 42.

expressly proposed, not only by Northern members, but particularly by those from Virginia and South Carolina, to the extent not only of imposts, but prohibitions.

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TO N. P. TRIST.

MONTPELLIER, Mar. 1, 1829.

DEAR SIR,—Your favor of the 24th ult. was received by the mail of Thursday last. The copies of Mr. Monroe's paper had been just before forwarded to Mr. Johnson and Mr. Cabell; and I sent to Mr. Randolph by the earliest mail the copies of Mr. Jefferson's letters to the senior Mr. Adams, and to myself, having previously adverted to the passages [of which] you wished to have my consideration. The word "species" last repeated I found to be preceded by the word "only" in the original letter to me; and the restoration of it seeming to improve the expression, I did not insert the word "itself" as a substitute for the repetition. It appeared to me, as [to] you, that a fastidious criticism only would notice the passages which speak of pamphlets; and as a literal consistency results from the order of dates, I did not suggest any change. I took the liberty, however, of inviting the attention of Mr. Randolph to the charges—one implied, the other express—against Col. Hamilton, the nature of which made it probable that proofs would be called for by those who watch over his fame, observing, that if these could not be readily given, an anticipation of the call might have a just influence on the question of publishing the charges. I annexed also a marginal "quere" to the sentence which contrasts the disciplined policy of New England in party votings with the less artful course of the Southern people.

We are thankful for your careful attention to the letter you kindly took charge of. It was safely received.

Had the style of criticism on the letters to Mr. Cabell been suspected, much trouble might have been saved to the pen and the press. A very few words *ex abundanti cautelâ* would have obviated the effect of brevity. But we must not look to the

*misunderstanding* of the text for the strain of the comment on it.

I have glanced at the papers sketching the views you mean to take of two important subjects. That they admit and deserve elucidation cannot be doubted. But some care in discussing the question of a distinction between literal and constructive meanings may be necessary in order to avoid the danger of a verbal character to the discussion. The best aids in investigating the true scope of "contracts," a violation of which is prohibited by the Constitution, will be found where you intend to look for them. I wish I could abridge your researches. The *Federalist* touches on the origin of the prohibition; but my copy not being at home, I cannot refer to the passage. The debates in the State Conventions would seem to promise much information, but I am not sure that such will be the case. The cotemporary state of things will be the best resource, if the publications exhibiting it can be met with. They are numerous in pamphlet form and in newspapers. But I am unable to make any specific references that would be useful to you, and I am sorry for it.

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TO SAMUEL KERCHEVAL.

MONTPELLIER, Sep<sup>r</sup> 7, 1829.

I have received, sir, your letter of August 27, and thank you for the little pamphlet containing Mr. Jefferson's letters to you, which I did not before possess in that convenient form. In reply to your request, the infirm state of my health, with particular claims at present on my time, obliges me to say that on the points in which I do not exactly concur with Mr. Jefferson, I could offer nothing beyond opinions without the proper explanations, which would not be either sufficiently respectful to the subject or worthy of your acceptance.

*Outline.*

SEPTEMBER, 1829.

The compound Government of the United States is without a model, and to be explained by itself, not by similitudes or analogies. The terms Union, Federal, National, ought not to be applied to it without the qualifications peculiar to the system. The English Government is in a great measure *sui generis*, and the terms Monarchy, used by those who look at the executive head only, and Commonwealth, by those looking at the representative member chiefly, are inapplicable in a strict sense.

A fundamental error lies in supposing the State governments to be the parties to the constitutional compact from which the Government of the United States results.

It is a like error that makes the General Government and the State governments the parties to the compact, as stated in the fourth letter of "Algernon Sidney," [Judge Roane.] They may be parties in a judicial controversy, but are not so in relation to the original constitutional compact.

In No. XI of "Retrospects," [by Gov. Giles,] in the Richmond Enquirer of Sept. 8, 1829, Mr. Jefferson is misconstrued, or, rather, *misstated*, as making the State governments and the Government of the United States *foreign* to each other; the evident meaning, or, rather, the express language of Mr. Jefferson being, "the *States* are foreign to each other, in the portions of sovereignty not granted, as they were in the entire sovereignty before the grant," and not that the State governments and the Government of the United States are foreign to each other. As the State governments participate in appointing the functionaries of the General Government, it can no more be said that they are altogether foreign to each other, than that the people of a State and its government are foreign.

The real parties to the constitutional compact of the United States are the *States*—that is, the people thereof respectively in their sovereign character, and they *alone*, so declared in the resolutions of 1798, and so explained in the report of 1799. In these resolutions, as originally proposed, the word *alone*, which

guarded against error on this point, was struck out, [see printed debates of 1798,] and led to misconceptions and misreasonings concerning the true character of the political system, and to the idea that it was a compact between the governments of the States and the Government of the United States; an idea promoted by the familiar one applied to governments independent of the people, particularly the British, of [?] a compact between the monarch and his subjects, pledging protection on one side and allegiance on the other.

The plain fact of the case is, that the Constitution of the United States was created by the people composing the respective States, who alone had the right; that they organized the Government into Legislative, Executive, and Judiciary departments, delegating thereto certain portions of power to be exercised over the whole, and reserving the other portions to themselves respectively. As these distinct portions of power were to be exercised by the General Government and by the State governments, by each within limited spheres; and as, of course, controversies concerning the boundaries of their power would happen, it was provided that they should be decided by the Supreme Court of the United States, so constituted as to be as impartial as it could be made by the mode of appointment and responsibility for the judges.

Is there, then, no remedy for usurpations in which the Supreme Court of the United States concur? Yes: constitutional remedies, such as have been found effectual, particularly in the case of the alien and sedition laws, and such as will in all cases be effectual, while the responsibility of the General Government to its constituents continues: remonstrances and instructions; recurring elections and impeachments; amendment of Constitution, as provided by itself, and exemplified in the 11th article limiting the suability of the States.

These are resources of the States against the General Government, resulting from the relations of the States to that Government, while no corresponding control exists in the General to the individual governments, all of whose functionaries are

independent of the United States in their appointment and responsibility.

Finally, should all the constitutional remedies fail, and the usurpations of the General Government become so intolerable as absolutely to forbid a longer passive obedience and non-resistance, a resort to the original rights of the parties becomes justifiable, and redress may be sought by shaking off the yoke, as of right might be done by part of an individual State in a like case, or even by a single citizen, could he effect it, if deprived of rights absolutely essential to his safety and happiness. In the defect of their ability to resist, the individual citizen may seek relief in expatriation or voluntary exile,\* a resort not within the reach of large portions of the community.

In all the views that may be taken of questions between the State governments and the General Government, the awful consequences of a final rupture and dissolution of the Union should never for a moment be lost sight of. Such a prospect must be deprecated, must be shuddered at by every friend to his country, to liberty, to the happiness of man. For, in the event of a dissolution of the Union, an impossibility of ever renewing it is brought home to every mind by the difficulties encountered in establishing it. The propensity of all communities to divide, when not pressed into a unity by external danger, is a truth well understood. *There is no instance of a people inhabiting even a small island, if remote from foreign danger, and sometimes in spite of that pressure, who are not divided into alien, rival, hostile tribes.* The happy Union of these States is a wonder; their Constitution a miracle; their example the hope of Liberty throughout the world. Woe to the ambition that would meditate the destruction of either!

\* See letter to N. P. Trist; and see also the distinction between an expatriating individual withdrawing only his person and movable effects, and the withdrawal of a State mutilating the domain of the Union.



*Notes on Suffrage,\* written at different periods after his retirement from public life.*

## I.

As appointments for the General Government here contemplated† will in part be made by the State governments, all the citizens, in States where the right of suffrage is not limited to the holders of property, will have an indirect share of representation in the General Government. But this does not satisfy the fundamental principle that men cannot be justly bound by laws in making which they have no part. Persons and property being both essential objects of government, the most that either can claim is such a structure of it as will leave a reasonable security for the other. And the most obvious provision of this double character seems to be that of confining to the holders of property the object deemed least secure in popular governments, the right of suffrage for one of the two legislative branches. This is not without example among us, as well as other constitutional modifications, favouring the influence of property in the Government. But the United States have not reached the stage of society in which conflicting feelings of the class with, and the class without property, have the operation natural to them in countries fully peopled. The most difficult of all political arrangements is that of so adjusting the claims of the two classes as to give security to each and to promote the welfare of all. The Federal principle, which enlarges the sphere of power without departing from the elective basis of it, and controls in various ways the propensity in small Republics to rash measures, and the facility of forming and executing them, will be found the best expedient yet tried for solving the problem.

## II.

These observations (in the speech of James Madison, see De-

\* See Debates of the Federal Convention, vol. III, p. 1253, where Mr. M. indicated a preference for *freehold* suffrage.

† Referring to his speech in the Convention of 1787.—*Ed.*

batus in the Convention of 1787, August 7) do not convey the speaker's more full and matured view of the subject, which is subjoined. He felt too much at the time the example of Virginia.

The right of suffrage is a fundamental article in republican constitutions. The regulation of it is, at the same time, a task of peculiar delicacy. Allow the right exclusively to property, and the rights of persons may be oppressed. The feudal polity alone sufficiently proves it. Extend it equally to all, and the rights of property or the claims of justice may be overruled by a majority without property or interested in measures of injustice. Of this abundant proof is afforded by other popular governments, and is not without examples in our own, particularly in the laws impairing the obligation of contracts.

In civilized communities, property as well as personal rights is an essential object of the laws, which encourage industry by securing the enjoyment of its fruits; that industry from which property results, and that enjoyment which consists not merely in its immediate use, but in its posthumous destination to objects of choice, and of kindred or affection.

In a just and a free Government, therefore, the rights both of property and of persons ought to be effectually guarded. Will the former be so in case of a universal and equal suffrage? Will the latter be so in case of a suffrage confined to the holders of property?

As the holders of property have at stake all the other rights common to those without property, they may be the more restrained from infringing, as well as the less tempted to infringe, the rights of the latter. It is nevertheless certain, that there are various ways in which the rich may oppress the poor; in which property may oppress liberty; and that the world is filled with examples. It is necessary that the poor should have a defence against the danger.

On the other hand, the danger to the holders of property cannot be disguised, if they be undefended against a majority without property. Bodies of men are not less swayed by interest than individuals, and are less controlled by the dread of re-

proach and the other motives felt by individuals. Hence the liability of the rights of property, and of the impartiality of laws affecting it, to be violated by legislative majorities having an interest, real or supposed, in the injustice. Hence agrarian laws and other levelling schemes. Hence the cancelling or evading of debts, and other violations of contracts. We must not shut our eyes to the nature of man, nor to the light of experience. Who would rely on a fair decision from three individuals if two had an interest in the case opposed to the rights of the third? Make the number as great as you please, the impartiality will not be increased, nor any farther security against injustice be obtained, than what may result from the greater difficulty of uniting the wills of a greater number. In all Governments there is a power which is capable of oppressive exercise. In monarchies and aristocracies, oppression proceeds from a want of sympathy and responsibility in the Government towards the people. In popular Governments the danger lies in an undue sympathy among individuals composing a majority, and a want of responsibility in the majority to the minority. The characteristic excellence of the political system of the United States arises from a distribution and organization of its powers, which, at the same time that they secure the dependence of the Government on the will of the nation, provide better guards than are found in any other popular Government against interested combinations of a majority against the rights of a minority.

The United States have a precious advantage also in the actual distribution of property, particularly the landed property, and in the universal hope of acquiring property. This latter peculiarity is among the happiest contrasts in their situation to that of the Old World, where no anticipated change in this respect can generally inspire a like sympathy with the rights of property. There may be at present a majority of the nation who are even freeholders, or the heirs and aspirants to freeholds; and the day may not be very near when such will cease to make up a majority of the community. But they cannot always so continue. With every admissible subdivision of the

arable [land,] a populousness not greater than that of England or France will reduce the holders to a minority. And whenever the majority shall be without landed or other equivalent property, and without the means or hope of acquiring it, what is to secure the rights of property against the danger of an equality and universality of suffrage, vesting complete power over property in hands without a share in it; not to speak of danger in the mean time from a dependence of an increasing number on the wealth of a few? In other countries, this dependence results in some from the relations between landlords and tenants; in others, both from that source and from the relations between wealthy capitalists and indigent labourers. In the United States the occurrence must happen from the last source; from the connexion between the great capitalists in manufactures and commerce, and the numbers employed by them. Nor will accumulations of capital for a certain time be precluded by our laws of descent and distribution; such being the enterprise inspired by free institutions, that great wealth in the hands of individuals and associations may not be unfrequent. But it may be observed, that the opportunities may be diminished and the permanency defeated by the equalizing tendency of the laws.

No free country has ever been without parties, which are a natural offspring of freedom. An obvious and permanent division of every people is into the owners of the soil and the other inhabitants. In a certain sense the country may be said to belong to the former. If each landholder has an exclusive property in his share, the body of landholders have an exclusive property in the whole. As the soil becomes subdivided, and actually cultivated by the owners, this view of the subject derives force from the principle of natural law, which vests in individuals an exclusive right to the portions of ground with which they have incorporated their labour and improvements. Whatever may be the rights of others, derived from their birth in the country; from their interest in the highways and other parcels left open for common use, as well as in the national edifices and monuments; from their share in the public defence, and from their concurrent support of the Government, it would

seem unreasonable to extend the right so far as to give them, when become the majority, a power of legislation over the landed property without the consent of the proprietors. Some shield against the invasion of their rights would not be out of place in a just and provident system of Government. The principle of such an arrangement has prevailed in all Governments where peculiar privileges or interests held by a part were to be secured against violation, and in the various associations where pecuniary or other property forms the stake. In the former case a defensive right has been allowed; and, if the arrangement be wrong, it is not in the defence, but in the kind of privilege to be defended. In the latter case, the shares of suffrage allotted to individuals have been with acknowledged justice apportioned more or less to their respective interests in the common stock.

These reflections suggest the expediency of such a modification of Government as would give security to the part of the society having most at stake and being most exposed to danger. Three modifications present themselves.

1. *Confining* the right of suffrage to freeholders and to such as hold an equivalent property, convertible, of course, into freeholds. The objection to this regulation is obvious. It violates the vital principle of free Government, that those who are to be bound by laws ought to have a voice in making them. And the violation would be strikingly more unjust as the lawmakers became the minority. The regulation would be as unpropitious also as it would be unjust. It would engage the numerical and physical force in a constant struggle against the public authority, unless kept down by a standing army, fatal to all parties.

2. *Confining* the right of suffrage for one branch to the holder of property, and for the other branch to those without property. This arrangement, which would give a mutual defence where there might be mutual danger of encroachment, has an aspect of equality and fairness. But it would not be, in fact, either equal or fair, because the rights to be defended would be unequal, being on one side those of property as well as of persons, and on the other those of persons only. The temptation also

to encroach, though in a certain degree mutual, would be felt more strongly on one side than on the other. It would be more likely to beget an abuse of the legislative negative in extorting concessions at the expense of propriety [property?] than the reverse. The division of the State into two classes, with distinct and independent organs of power, and without any intermingled agency whatever, might lead to contests and antipathies not dissimilar to those between the patricians and plebeians at Rome.

3. Confining the right of electing one branch of the Legislature to freeholders, and admitting all others to a common right with holders of property in electing the other branch. This would give a defensive power to holders of property, and to the class also without property, when becoming a majority of electors, without depriving them, in the meantime, of a participation in the public councils. If the holders of property would thus have a twofold share of representation, they would have at the same time a twofold stake in it, the rights of property as well as of persons, the twofold object of political institutions. And if no exact and safe equilibrium can be introduced, it is more reasonable that a preponderating weight should be allowed to the greater interest than to the lesser. Experience alone can decide how far the practice in this case would accord with the theory. Such a distribution of the right of suffrage was tried in New York, and has been abandoned, whether from experienced evils or party calculations may possibly be a question. It is still on trial in North Carolina, with what practical indications is not known. It is certain that the trial, to be satisfactory, ought to be continued for no inconsiderable period, until, in fact, the non-freeholders should be the majority.

4. Should experience or public opinion require an equal and universal suffrage for each branch of the Government, such as prevails generally in the United States, a resource favourable to the rights of landed and other property, when its possessors become the minority, may be found in an enlargement of the election districts for one branch of the Legislature, and a pro-

longation of its period of service. Large districts are manifestly favourable to the election of persons of general respectability and of probable attachment to the rights of property, over competitors depending on the personal solicitations practicable on a contracted theatre. And although an ambitious candidate of personal distinction might occasionally recommend himself to popular choice by espousing a popular though unjust object, it might rarely happen to many districts at the same time. The tendency of a longer period of service would be to render the body more stable in its policy, and more capable of stemming popular currents taking a wrong direction, till reason and justice could regain their ascendancy.

5. Should even such a modification as the last be deemed inadmissible, and universal suffrage and very short periods of election within contracted spheres be required for each branch of the Government, the security for the holders of property, when the minority, can only be derived from the ordinary influence possessed by property, and the superior information incident to its holders, from the popular sense of justice, enlightened and enlarged by a diffusive education, and from the difficulty of combining and effectuating unjust purposes throughout an extensive country; a difficulty essentially distinguishing the United States, and even most of the individual States, from the small communities where a mistaken interest or contagious passion could readily unite a majority of the whole under a factious leader, in trampling on the rights of the minor party.

Under every view of the subject, it seems indispensable that the mass of citizens should not be without a voice in making the laws which they are to obey, and in choosing the magistrates who are to administer them. And if the only alternative be between an equal and universal right of suffrage for each branch of the Government, and a confinement of the *entire* right to a part of the citizens, it is better that those having the greater interest at stake, namely, that of property and persons both, should be deprived of half their share in the Government, than that those having the lesser interest, that of personal rights only, should be deprived of the whole.

## III.\*

The right of suffrage being of vital importance, and approving an extension of it to housekeepers and heads of families, I will suggest a few considerations which govern my judgment on the subject.

Were the Constitution on hand to be adapted to the present circumstances of our country, without taking into view the changes which time is rapidly producing, an unlimited extension of the right would probably vary little the character of our public councils or measures. But as we are to prepare a system of government for a period which it is hoped will be a long one, we must look to the prospective changes in the condition and composition of the society on which it is to act.

It is a law of nature, now well understood, that the earth under a civilized cultivation is capable of yielding subsistence for a large surplus of consumers beyond those having an immediate interest in the soil; a surplus which must increase with the increasing improvements in agriculture, and the labour-saving arts applied to it. And it is a lot of humanity, that of this surplus a large proportion is necessarily reduced by a competition for employment to wages which afford them the bare necessaries of life. The proportion being without property, or the hope of acquiring it, cannot be expected to sympathize sufficiently with its rights to be safe depositories of power over them.

What is to be done with this unfavoured class of the community? If it be, on one hand, unsafe to admit them to a full share of political power, it must be recollected, on the other, that it cannot be expedient to rest a republican government on a portion of the society having a numerical and physical force excluded from, and liable to be turned against it, and which would lead to a standing military force, dangerous to all parties and to liberty itself. This view of the subject makes it proper to embrace in the partnership of power every description of citi-

\* Written during the session of the Virginia Convention of 1829-'30.—*Ed*



zens having a sufficient stake in the public order and the stable administration of the laws, and particularly the housekeepers and heads of families, most of whom, "having given hostages to fortune," will have given them to their country also.

This portion of the community, added to those who, although not possessed of a share of the soil, are deeply interested in other species of property, and both of them added to the territorial proprietors, who in a certain sense may be regarded as the owners of the country itself, form the safest basis of free government. To the security for such a government, afforded by these combined members, may be farther added the political and moral influence emanating from the actual possession of authority, and a just and beneficial exercise of it.

It would be happy if a state of society could be found or framed in which an equal voice in making the laws might be allowed to every individual bound to obey them. But this is a theory which, like most theories, confessedly requires limitations and modifications. And the only question to be decided in this, as in other cases, turns on the particular degree of departure in practice required by the essence and object of the theory itself.

It must not be supposed that a crowded state of population, of which we have no example here, and which we know only by the image reflected from examples elsewhere, is too remote to claim attention.

The ratio of increase in the United States [makes it probable] that the present 12 millions will in 25 years be 24 millions.

24	"	50	"	48	"
48	"	75	"	96	"
96	"	100	"	192	"

There may be a gradual decrease of the ratio of increase, but it will be small as long as the agriculture shall yield its abundance. Great Britain has doubled her population in the last fifty years, notwithstanding its amount in proportion to its territory at the commencement of that period; and Ireland is a much stronger proof of the effect of an increasing product of food in multiplying the consumers.

How far this view of the subject will be affected by the republican laws of descent and distribution, in equalizing the property of the citizens and in reducing to the minimum mutual surpluses for mutual supplies, cannot be inferred from any direct and adequate experiment. One result would seem to be a deficiency of the capital for the expensive establishments which facilitate labour and cheapen its products on one hand; and on the other, of the capacity to purchase the costly and ornamental articles consumed by the wealthy alone, who must cease to be idlers and become labourers. Another, the increased mass of labourers added to the production of necessaries by the withdrawal for this object, of a part of those now employed in producing luxuries, and the addition to the labourers from the class of present consumers of luxuries. To the effect of these changes, intellectual, moral, and social, the institutions and laws of the country must be adapted; and it will require for the task all the wisdom of the wisest patriots.

Supposing the estimate of the growing population of the United States to be nearly correct, and the extent of their territory to be eight or nine hundred millions of acres, and one-fourth of it to consist of arable surface, there will, in a century or a little more, be nearly as crowded a population in the United States as in Great Britain or France; and if the present Constitution, (of Virginia,) with all its flaws, has lasted more than half a century, it is not an unreasonable hope that an amended one will last more than a century.

If these observations be just, every mind will be able to develop and apply them.

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TO SAMUEL S. LEWIS, PRESIDENT, ETC.

FEB<sup>r</sup> 16, 1829.

D<sup>R</sup> SIR,—Your communication of the 3d instant having proceeded, by mistake, to Montpelier in Vermont, was not received till yesterday.

My lengthened observation making me more and more sensi

ble of the essential connexion between a diffusion of knowledge and the success of Republican institutions, I derive pleasure from every example of such associations as that of the "Washington College Parthenon." With my best wishes that its usefulness may equal the laudable views which led to it, I tender my acknowledgements for the honorary membership conferred on me. At my advanced period of life these wishes and acknowledgments are the only proofs I have to give of the value I put on the mark of respect shown me; and the sincerity of them the only value that can entitle them to a favorable acceptance by the Society.

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TO J. Q. ADAMS.

MONTPELLIER, Feby 24, 1829.

DEAR SIR,—I have received, in your kind letter of the 21st instant, the little pamphlet containing the correspondence between yourself and "several citizens of Massachusetts," with "certain additional papers."

The subjects presented to view by the pamphlet will, doubtless, not be overlooked in the history of our country. The documents not previously published are of a very interesting cast. The letter of Governor Plumer, particularly, if nowise impaired by adverse authority, must receive a very marked attention and have a powerful effect.

As what relates to Col. Hamilton, however, is stated on a solitary information only, I cannot but think there may be some material error at the bottom of it. That the leading agency of such a man, and from a State in the position of New York, should, in a project for severing the Union, be anxiously wished for by its authors, is not to be doubted; and an experimental invitation of him to attend a select meeting may, without difficulty, be supposed. But obvious considerations oppose a belief that such an invitation would be accepted; and if accepted, the supposition would remain, that his intention might be to dis-

suade his party and personal friends from a conspiracy as rash as wicked, and as ruinous to the party itself as to the country. The lapse of time must have extinguished lights by which alone the truth, in many cases, could be fully ascertained. It is quite possible that this may be an exception.

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TO BENJAMIN WATERHOUSE.

MONTPELLIER, Mar. 12, 1829.

DEAR SIR,—I received in due time, with your favor of 14th ult., a copy of your Inaugural Discourse, prepared in early life. I was not at leisure, till within a few days, to give it a perusal, and ought not now to hazard a critique on the merits of its Latinity. If I were ever in any degree qualified for such a task, a recollection of my long separation from classical studies would arrest my pen. I am safe, I believe, in the remark that the language has less the aspect of being moulded in a modern idiom than has been generally the case with the performances of modern Latinists.

Another interview, which you despair of, would give me as much pleasure as it could you. The possibility of it must lie with you, as the junior party. We should certainly be at no loss for topics, having lived through a long period filled with events, as novel as various, and as interesting as novel. Our conversation would of course embrace the scenes\* you glance at, from which corners of the veil are already lifted. You probably know much of them that I do not, and both of us less than others whose testimony has passed beyond the summons even of History.† It might have been well if the truth yet in preservation could have instructed posterity without disturbing

\* The conduct of the opponents of the Administration in the E. States during the war.

† Mr. John Adams, Mr. Gerry, Governor Sullivan, and Dr. Eastis, are named in the letter of Dr. Waterhouse, and are probably among the witnesses referred to by Mr. Madison.

the present generation. This seems now to have become impossible; and the sufferers will know on whom to charge the misfortune.

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TO JOHN Q. ADAMS.

MARCH 13, 1829.

DEAR SIR,—I have received your letter of the 1st (post-marked the 7th) instant, inclosing copies of two letters from you to Mr. Bacon in 1808, one bearing date Nov<sup>r</sup> 17, the other Dec<sup>r</sup> 21st.

You ask the favor of me to compare these letters with the narrative in that of Mr. Jefferson [to Mr. Giles] of December 25, 1825, and to let you know whether they were seen by me shortly after they were received; with a further request that I would state whether any other circumstances known to me at the time, and now remembered, may serve to rectify either Mr. Jefferson's memory concerning those occurrences or your own.

Aware, as I am, of the fallibility of memories more tenacious than mine, I cannot venture, after so long an interval, to say positively whether the letters were or were not seen by me; being unable to distinguish sufficiently between impressions which might be derived either from a sight of the letters, or from a verbal communication of their contents.

The substance of my recollections on the subject is, that in conversations at an interview with Mr. Bacon and one of his colleagues, during the session of Congress commencing in November, 1808, the deep discontents and menacing crisis produced by the Embargo in the Eastern quarter were pressed by them with much anxiety, as calling for a substitution of some other measure; and that information and opinions of a likeness to those conveyed in the two letters were referred to as received from you, and dwelt upon as entitled to the greatest weight on the occasion.

It does not seem difficult to account for the anachronisms into which Mr. Jefferson might have fallen. The confidential

interview with you having made the more vivid impression, subsequent informations of a kindred bearing might in the lapse of time lose their distinction of dates, and finally be referred to the same origin. There are few memories which under like circumstances might not in that way be misled.

I return the two copies, as you desire, and pray you to be reassured of my high esteem, and to accept my cordial salutations.

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TO JOSEPH C. CABELL.

MARCH 19, 1829.

DEAR SIR,—I received by the last mail your favor of the 13th, with a copy of the pamphlet containing the two supplemental letters of Mr. Jefferson. They are as much in point as words could make them. But his authority is made to weigh nothing, or outweigh everything, according to the scale in which it is put. It would be well if the two letters, at least, could find their way into the newspapers which circulate most the poison for which they are an antidote.

I have been prevented from sooner thanking you for your communications at the close of the session, and particularly for the several numbers of the Norfolk Herald, by a constant employment, occasioned by successive occurrences. Two of the numbers of Hampden were in Enquirers which came to hand, and one was in an Enquirer which never reached the neighbourhood. They have the merit of ingenuity; but it smacks rather of the Bar than smells of the lamp. I have never been able to look over the number you last sent till within a few days, nor the others with more than a slight attention. I will return them, as you request, unless you have no occasion for the number in the lost Enquirer, and that also, if you wish it. I have been almost tempted, by the gross misstatements, the strange misconstructions, and the sophistical comments applied to my letters to you, to sketch a few explanatory remarks on topics which were left for your development, and on passages the

brevity of which has been urged for such ample abuse of criticism, and such malign inferences. But I foresaw that whatever the explanations might be, they would produce fresh torrents of deceptive and declamatory matter, which, if not answered, might be trumpeted as unanswerable; and if answered, might tend to a polemic series as interminable as the fund of words and the disposition to abuse them is inexhaustible. A silent appeal to a cool and candid judgment of the public may, perhaps, serve the cause of truth.

I am truly sorry for the trouble to which you have been put in the case, notwithstanding your willingness in taking it; and still more for the indisposition which has not yet been subdued.

I hope you will not think it necessary to say anything relative to the course you pursued on the Convention question. I have no doubt of the purity of your views, which your speech shews were very ably supported.

I have not heard for some days from the malady at the University, which has thrown such a cloud on its prospects. I hope the worst is over there, but it is difficult to say what may be the duration of the effect on public opinion, produced by the indiscretion of friends and the workings of foes. The Faculty wish an examination and report on the whole case, by persons properly selected for the purpose. I have given my sanction to the measure; but there is, I fear, some difficulty in bringing it about. I wrote near a month ago to General C on the subject, who, I suspect, was then, and may yet be, in the lower country. I have just received from our Minister in London and from Professor Long, letters on the subject of a successor to the latter. Mr. B. is doing all he can for us, but without any encouraging prospects. Mr. Long is pretty decided that we ought not to rely on any successor from England, and is equally so that Doctor Harrison will answer our purpose better than any one attainable abroad. He appears to be quite sanguine on this point. He intimates, confidentially, I suppose, what I did not before know, that Dr. Harrison is himself desirous of having his temporary appointment made permanent. I have received a letter from Mr. Quincy, now President of Har-

vard University, expressing a wish to procure a full account of the origin, the progress, and arrangement of ours, including particularly what may have any reference to Theological instruction; and requesting that he may be referred to the proper source of all the printed documents, that he may know where to apply for them. Can a set of copies be had in Richmond, and of whom? Mr. Quincy is so anxious on the subject that he was on his way to the University, when the report of the fever stopped him. The answer given to your enquiry concerning the publication of Judge Pendleton, signed the "Danger not over," was very imperfect. The authority of Mr. Pollard should have been disclosed. I still think the statement of a partnership destitute of foundation; my files are perfectly silent, and I learn that Mr. Jefferson's contain no correspondence with Mr. Pendleton on the subject. It is possible that something may have passed indirectly through Col. Taylor bearing on the case; but if so, it was probably not of a nature to make Mr. Jefferson a party in any sense to the particular contents of the paper.

I cannot conclude without expressing my regret at the trouble brought on you by our mutual attempt to vindicate the Constitution of the United States against misinterpretation, and my concern at the unfavorable account of your health. Accept my best wishes that this may be soon and effectually restored, and the reassurance I offer of my affectionate esteem.

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TO WILLIAM MADISON, CHAIRMAN, &C.

MONTPELLIER, March 25, 1829.

DEAR SIR,—I have received the communication of the Delegates from the counties composing this Senatorial District,\* assembled for the purpose of recommending four persons to represent it in the Convention which is to propose amendments to the Constitution of the State, acquainting me that I have been

\* The counties of Spotsylvania, Louisa, Orange, and Madison, in Virginia.



included in the number selected, and expressing a wish to be informed whether the Delegation has my assent to their making it known to the people of the district that, if elected, I will obey the call to the service assigned me.

Although aware of the considerations which, at my age, with the infirmities incident to it, might dissuade me from assuming such a trust, I retain too deep a sense of what I owe for past and repeated marks of confidence and favor, to my native State, and particularly to this portion of it, not to join my efforts, however feeble, in the important work to be performed, should such be the will of the district.

In that event I shall carry into the Convention every disposition not to lose sight of the interest and feelings of the district; whilst availing myself of the lights afforded by the free and calm discussions becoming such a body, and yielding to that spirit of compromise to which the foresight of the Delegation has so appropriately alluded.

I offer to the Delegation the expression of my sincere and great respect.

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TO BENJAMIN ROMAINE.

MONTPELLIER, Ap<sup>l</sup> 14, 1829.

DEAR SIR,—I have received your favor of March 30th, accompanied by two sets of pamphlets, for which I tender my thanks. That which relates to the views of a particular party during the period from 1803 to the close of the last war necessarily invites the recollections of the agents and observers of public affairs, among whom both of us are numbered. On the other subject, that of Constitutional Reforms, the lights of experience, such as you impart, must always merit attention, and it will be well for the States who are latest in performing the task not to lose sight of the advantage which that circumstance gives them. There is a pretty general concurrence here as to the chief defects in the Constitution which is about to be revised. I wish there may be an equal one in the proper reme-

dies. I hope, at least, that everything tending to undermine the general Constitution will be avoided with the same care which guards against encroachments on the reserved authorities of the States.

Mrs. Madison did not need a memento of her former acquaintance with you, though she had forgotten her observation, whether just or not, which is retained by your better recollections. She joins me in friendly respects, and in all the good wishes, which I pray you to accept.

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TO ELLIOTT CRESSON.—FOR HIS ALBUM.

APRIL 23, 1829.

With the examples before me, and as a token of my esteem and good wishes for Elliott Cresson, I take pleasure in complying with his request, by the following sample of my handwriting:

Liberty and Learning; both best supported when leaning each on the other.

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TO JONATHAN LEONARD.

MONTPELLIER, Ap<sup>l</sup> 28, 1829.

DEAR SIR,—I have duly received yours of the 10th instant, with a copy of "the History of Dedham." Though more immediately interesting to those locally and personally related to the subjects of it, the work contains much that is generally attractive. This may be said more especially of the minute care with which the author exhibits the example of a civil society in its primary formation, and spontaneous organization; and the like example of an ecclesiastical society, self-constituted and self-governed. We are here, as you appear to know, about to undertake, not the creation of a political union, but the revision of an existing Constitution.\* Its defects are generally admit-

\* Virginia Convention.

ted, but there will probably be some disagreement as to the best remedies for them.

Be pleased to accept my thanks for the favor done me; and, taking for granted that it comes from an old acquaintance in public life, I offer at the same time my friendly recollections and my good wishes.

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TO BARON DE NEUVILLE.

JUNE 15, 1829.

D<sup>R</sup> SIR,—My friend, Mr. Rives, is about to take his station in Paris as diplomatic representative of the U. States, and not doubting that an acquaintance will be mutually agreeable, I wish to open a direct way to it by this introduction. You will find him equally enlightened and amiable, with liberal views on all subjects, and with dispositions to cherish the friendly feelings and improve the beneficial intercourse between France and the United States, which I venture to assure him are not wanting on your part.

I have seen with sincere regret a late notice that your health was not good. I hope this will find it re-established, and that, with the assurance of my high esteem, you will accept my cordial salutations.

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TO GENERAL LA FAYETTE.

JUNE 15, 1829.

MY DEAR FRIEND,—Your letter of January 28 came duly to hand. The answer to it has been procrastinated to this late day, by circumstances which you will gather from it.

I am glad to learn that the regenerating spirit continues to work well in your public councils, as well as in the popular mind; and elsewhere as well as in France. It is equally strange and shameful that England, with her boasted freedom, instead of taking the lead in the glorious cause, should frown on it as she has done, and should aim as she now does to baffle the more

generous policy of France in behalf of the Greeks. The contrast will increase the lustre reflected on her rival.

On the receipt of your letter, I communicated to Mr. Jefferson Randolph the contents of the paragraph which had reference to him; asking from him, at the same time, such information as would assist my answer to you. His intense occupations of several sorts, and particularly the constant attention required to the edition of his grandfather's writings, may explain the delay in hearing from him. I understand, also, that he has himself written to you on that subject, and with a view to a French edition. I am not able to say what will be the success of the publication here. The prospect is in some respects encouraging, but I fear much short of the desideratum for balancing the Monticello affairs. Much of the landed estate, indeed, is still unsold; but such is the extreme depreciation of that species of property, and the unexampled defect of purchasers, that a very restricted reliance can be placed on that resource. Mrs. Randolph, with her family, will soon remove to the city of Washington; uniting in an establishment there with Mr. Trist, who married one of her daughters, and has a place in the Department of State yielding him about \$1,400 per annum. This, with the interest, \$1,200, from South Carolina and Louisiana donations, will, it is understood, be the sole dependence, scanty as it is.

It has been generally known that Mr. Le Vasseur has prepared an account of your visit to the United States, and that a translation is in the press at Philadelphia. Of its progress I am not informed. I am aware of the delicacy of your situation, and take for granted that the author will himself have guarded it against the danger of indelicate suppositions of any sort.

I shall commit this to my friend, Mr. Rives, for whom it will serve as an introduction, should it not be rendered superfluous by your personal recollections. He goes to France as the diplomatic representative of the United States, after having distinguished himself as a Legislative one at home. He possesses excellent talents, with amiable dispositions, and is worthy of the kindnesses which you love to bestow where they are due.

I refer to him for the full information, which may be acceptable to you, on many subjects public and individual. Being of course in the confidence of the present Administration, he may know more than may be generally known of the Cabinet policy on subjects not under the seal of secrecy.

I have been for some time past in bad health; for a few days quite ill. I am now considerably advanced in a recovery. I hope you continue to enjoy the full advantage of your fine constitution, and that you will live to witness an irreversible triumph everywhere of the cause to which you have ever been devoted.

With my best regards for your estimable son, and best wishes for the domestic circle of which you are the centre, I renew the assurance of my constant and affectionate attachment.

---

TO JOHN FINCH.

MONTPELLIER, June 20, 1829.

DEAR SIR,—I received in due time your letter of May 10th, inclosing a continuation of your observations on the "Natural boundaries of Empires." The views you have taken of the subject give it certainly an attractive interest. But I must retain the impression that they may reasonably be qualified by the progress of human art in controuling the operation of physical causes.

I should have sooner acknowledged your favor but for an indisposition, which proved tedious, and from which I am not yet entirely recovered.

With cordial respects and good wishes.

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TO ALBERT GALLATIN.

MONTPELLIER, July 13, 1829.

DEAR SIR,—Learning from Mr. Rives that he expects to be in New York some days before his embarkation for France, I

take the liberty of giving him a line for you. I need not refer to his high public standing, derived from the able part he has borne in public affairs, that being of course known to you; but as a friend and neighbour, I wish to bear my testimony to his great personal worth; and the rather, as his high respect for your character, and his just idea of your acquaintance with our relations with France, and the temper and views of its Government, will render any conversations thereon with which he may be favored particularly gratifying. Whatever confidence may be implied by the scope of any part of them will be in the safest hands, and turned to the best account.

I pray you to be assured always of my great and affectionate esteem.

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TO PROFESSOR TUCKER.

MONTPELLIER, July 20, 1829.

DEAR SIR,—Inclosed is a copy of the original draft of the present Constitution of Virginia, from a printed copy, now perhaps a solitary relic. It may fill a few pages of the Museum, when not otherwise appropriated. Who the author of the draft was does not appear. Col. Geo. Mason is known to have been the most conspicuous member in discussing the subject and conducting it through the Convention.

Do me the favor to send me the 2<sup>d</sup> N<sup>o</sup> of the Museum, which never came to hand, and to have me credited for the \$5 inclosed. I am sorry that this neighbourhood furnishes as yet no subscriptions for the work.

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TO JOSEPH C. CABELL.

MONTPELLIER, Aug<sup>t</sup> 16, 1829.

DEAR SIR,—Your letter of the 5th found me under a return of indisposition which has not yet left me. To this cause you must ascribe the tardiness of my attention to it.

Your speech, with the accompanying notes and documents, will make a very interesting and opportune publication. I think, with Mr. Johnson, that your view of the Virginia doctrine in '98-'99 is essentially correct, and easily guarded against any honest misconstructions. I have pencilled a very few interlineations and erasures, (easily removed if not approved,) having that object. I wish you to revise them with an eye to the language of Virginia in her proceedings of that epoch, happening to be without a remaining copy of them. I make the same request as to my remarks below, involving a reference to those proceedings. As to the two paragraphs in brackets, disliked by Mr. J., I am at some loss what to say. Though they may certainly be spared without leaving a flaw, the first of them, at least, is so well calculated to rescue the authority of Mr. Jefferson on the constitutionality of the tariff from the perverted and disrespectful use made of it, that I should hesitate in advising a suppression of it.

On the subject of an arbiter or umpire, it might not be amiss, perhaps, to note at some place, that there can be none, external to the United States more than to individual States; nor within either, for those extreme cases of passive obedience and non-resistance which justify and require a resort to the original rights of the parties to the compact. But that in all cases, not of that extreme character, there is an arbiter or umpire as within the Governments of the States, so within that of the U. States in the authority constitutionally provided for deciding controversies concerning boundaries of right and power. The provision in the U. States is particularly stated in the Federalist, N<sup>o</sup> 39, p. 241, Gideon's edition.

The tonnage and other duties for encouraging navigation are, in their immediate operation, as locally partial to Northern ship-owners, as a tariff on particular imports is partial to Northern manufacturers. Yet, South Carolina has uniformly favored the former as ultimately making us independent of foreign navigation, and, therefore, in reality of a national character. Ought she not, in like manner, to concur in encouraging manufactures, though immediately partial to some local inter-

ests, in consideration of their ultimate effect in making the nation independent of foreign supplies; provided the encouragement be not *unnecessarily* unequal in the immediate operation, nor extended to articles not *within the reason* of the policy?

On comparing the doctrine of Virginia in '98-'99 with that of the present day in S. Carolina, will it not be found that Virginia asserted that the States, as parties to the constitutional compact, had a right and were bound, in extreme cases only, and after a failure of all efforts for redress under the forms of the Constitution, to interpose in their sovereign capacity for the purpose of arresting the evil of usurpation and preserving the Constitution and Union? whereas the doctrine of the present day in S. Carolina asserts, that in a case of not greater magnitude than the degree of inequality in the operation of a tariff in favor of manufactures, she may of herself finally decide, by virtue of her sovereignty, that the Constitution has been violated; and that if not yielded to by the Federal Government, though supported by all the other States, she may rightfully resist it and withdraw herself from the Union.

Is not the resolution of the Assembly at their last session against the tariff a departure from the ground taken at the preceding session? If my recollection does not err, the power of Congress to lay imposts was restricted at this session to the sole case of revenue. Their late resolution denies it only in the case of manufactures, tacitly admitting, according to the modifications of South Carolina, tonnage duties and duties counteracting foreign regulations. If the inconsistency be as I suppose, be so good as to favor me with a transcript of the resolutions of the penult session. Your letter returning those borrowed was duly received some time ago.

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TO THOMAS S. HINDE.

MONTPELLIER, Aug. 17, 1829.

DEAR SIR,—Your letter of July 23 was duly received, but at a time when I was under an indisposition, remains of which are



still upon me. I know not whence the error originated that I was engaged in writing the history of our Country. It is true that some of my correspondences during a prolonged public life, with other manuscripts connected with important public transactions, are on my files, and may contribute materials for a historical pen. But a regular history of our Country, even during its Revolutionary and Independent character, would be a task forbidden by the age alone at which I returned to private life, and requiring lights on various subjects, which are gradually to be drawn from sources not yet opened for public use. The friendly tone of your letter has induced me to make these explanatory remarks, which, being meant for yourself only, I must request may be so considered.

The authentic facts which it appears you happen to possess relating to the criminal enterprise in the West during the administration of Mr. Jefferson, must merit preservation as belonging to a history of that period; and if no repository more eligible occurs to you, a statement of them may find a place among my political papers. The result of that enterprise is among the auspicious pledges given by the genius of Republican institutions and the spirit of a free people, for future triumphs over dangers of every sort that may be encountered in our national career.

I cannot be insensible to the motives which prompted the too partial views you have taken of my public services, and which claim from me the good wishes which I tender you.

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TO JOSEPH C. CABELL.


MONTPELLIER, Sept<sup>r</sup> 7, 1829.

DEAR SIR,—I received on the evening of Friday your two letters of Aug<sup>r</sup> 30 and Sep<sup>r</sup> 1, with the copy of the Virginia proceedings in '98-'99, and the letters of "Hampden."

When I looked over your manuscript pamphlet, lately returned to you, my mind did not advert to a discrepancy in your recorded opinions, nor to the popularity of the rival jurisdic-

tion claimed by the Court of Appeals. Your exchange of a hasty opinion for one resulting from fuller information and matured reflection might safely defy animadversion. But it is a more serious question, how far the advice of the two friends you have consulted, founded on the unanimous claim of the Court having Judge Roane at its head, ought to be disregarded; or how far it might be expedient, in the present temper of the country, to mingle that popular claim with the Tariff heresy, which is understood to be tottering in the public opinion, and to which your observations and references are calculated to give a very heavy blow. It were to be wished that the two Judges [Cabell and Coalter] could read your manuscript, and then decide on its aptitude for public use. Would it be impossible so to remould the Essay as to drop what might be offensive to the opponents of the necessary power of the Supreme Court of the U. States, but who are sound as to the Tariff power, retaining only what relates to the Tariff, or, at most, to the disorganizing doctrine which asserts a right in every State to withdraw itself from the Union? Were this a mere league, each of the parties would have an equal right to expound it; and, of course, there would be as much right in one to insist on the bargain, as in another to renounce it. But the Union of the States is, according to the Virginia doctrine in '98-'99, a *Constitutional Union*; and the right to judge *in the last resort*, concerning usurpations of power, affecting the validity of the Union, referred by that doctrine to the parties to the compact. On recurring to original principles, and to extreme cases, a single State might indeed be so oppressed as to be justified in shaking off the yoke; so might a single county of a State be, under an extremity of oppression. But until such justifications can be pleaded, the compact is obligatory in both cases. It may be difficult to do full justice to this branch of the subject, without involving the question between the State and Federal Judiciaries. But I am not sure that the plan of your pamphlet will not admit a separation. On this supposition, it might be well, as soon as the Tariff fever shall have spent itself, to take up both the Judicial and the anti-union heresies; on each of which

you will have a field for instructive investigation, with the advantage of properly connecting them in their bearings.

 A political system that does not provide for a peaceable and effectual decision of all controversies arising among the parties is not a Government, but a mere treaty between independent nations, without any resort for terminating disputes but negotiation, and that failing, the sword. That the system of the U. States is, what it professes to be, a real Government, and not a nominal one only, is proved by the fact that it has all the practical attributes and organs of a real, though limited Government; a Legislative, Executive, and Judicial Department, with the physical means of executing the particular authorities assigned to it, on the individual citizens, in like manner as is done by other Governments. Those who would substitute negotiation for governmental authority, and rely on the former as an adequate resource, forget the essential difference between disputes to be settled by two branches of the same Government, as between the House of Lords and Commons in England, or the Senate and House of Representatives here, and disputes between different Governments. In the former case, as neither party can act without the other, necessity produces an adjustment. In the other case, each party having, in a Legislative, Executive, and Judicial Department of its own, the complete means of giving an independent effect to its will, no such necessity exists; and physical collisions are the natural result of conflicting pretensions.


In the years 1819 and 1821, I had a very cordial correspondence with the author of "Hampden" and "Algernon Sydney," [Judge Roane.] Although we agreed generally in our views of certain doctrines of the Supreme Court of the United States, I was induced in my last letter to touch on the necessity of a definitive power, on questions between the U. States and the individual States, and the necessity of its being lodged in the former, where alone it could preserve the essential uniformity. I received no answer, which, indeed, was not required, my letter being an answer.

I shall return the printed pamphlet as soon as I have read the letters of "Hampden" making a part of it.

I have not the acts of the session in question; and will thank you, when you have the opportunity, to examine the preambles to the polemic resolutions of the Assembly, and let me know whether or not they present an inconsistency. If I mistake not, Governor Tyler's Message emphatically denounced all imposts on commerce not *exclusively* levied for the purposes of *revenue*.

I return the letter of Mr. Morris, inclosed in yours received some time ago. Mr. Pollard ought to have been at no loss for my wish to ascertain the authorship of "The danger not over;" the tendency, if not the object, of the republication, with the suggestion that I had a hand in the paper, being to shew an inconsistency between my opinion then and now on the subject of the Tariff power. It may not be amiss to receive the further explanations of Mr. Pollard. But I learn from Mr. Robert Taylor, who was a student of law at the time with Mr. Pendleton, that he saw a letter to him from Mr. Jefferson expressing a desire that he would take up his pen at the crisis; but without, as Mr. Taylor recollects, furnishing any particular ideas for it, or naming me on the occasion. I believe a copy of the letter is among Mr. Jefferson's papers, and that it corresponds with Mr. Taylor's account of it.

I comply with your request to destroy your two letters; and, as this has been written in haste and with interruption of company, it will be best disposed of in the same way. Some of the passages in it called for more consideration and precision than I could bestow on them.

P. S. Since the above was written, I have received yours of the 3d instant. There could not be a stronger proof of the obscurity of the passage it refers to than its not being intelligible to you. Its meaning is expressed in the slip of paper inclosed. The passage may be well enough dispensed with, as being developed in that marked above by .

Copy of the slip: "Note that there can, of course, be no regu-

lar Arbiter or Umpire, under any governmental system, applicable to those extreme cases, or questions of passive obedience and non-resistance, which justify and require a resort to the original rights of the parties to the system or compact; but that in all cases not of that extreme character, there is and must be an Arbiter or Umpire in the constitutional authority provided for deciding questions concerning the boundaries of right and power. The particular provision in the Constitution of the United States is in the authority of the Supreme Court, as stated in the 'Federalist,' No. 39."



SPEECH IN THE VIRGINIA STATE CONVENTION OF 1829-'30, ON THE  
QUESTION OF THE RATIO OF REPRESENTATION IN THE  
TWO BRANCHES OF THE LEGISLATURE.

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DECEMBER 2, 1829.

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Mr. MADISON rose and addressed the Chair; the members rushed from their seats and crowded around him:

Although the actual posture of the subject before the Committee might admit a full survey of it, it is not my purpose, in rising, to enter into the wide field of discussion, which has called forth a display of intellectual resources and varied powers of eloquence that any country might be proud of, and which I have witnessed with the highest gratification. Having been, for a very long period, withdrawn from any participation in proceedings of deliberative bodies, and under other disqualifications now, of which I am deeply sensible, though, perhaps, less sensible than others may perceive that I ought to be, I shall not attempt more than a few observations, which may suggest the views I have taken of the subject, and which will consume but little of the time of the Committee, now become precious. It is sufficiently obvious, that persons and property are the two great subjects on which Governments are to act; and that the rights of persons, and the rights of property, are the objects, for the protection of which Government was instituted. These rights cannot well be separated. The personal right to acquire property, which is a natural right, gives to property, when acquired, a right to protection, as a social right. The essence of Government is power; and power, lodged as it must be in human hands, will ever be liable to abuse. In Monarchies, the interests and happiness of all may be sacrificed to the caprice and passion of a despot. In Aristocracies, the rights and welfare of the many may be sacrificed to the pride and cupidity of the few. In Republics, the great danger is, that the majority

may not sufficiently respect the rights of the minority. Some gentlemen, consulting the purity and generosity of their own minds, without adverting to the lessons of experience, would find a security against that danger in our social feelings; in a respect for character; in the dictates of the monitor within; in the interests of individuals; in the aggregate interests of the community. But man is known to be a selfish as well as a social being. Respect for character, though often a salutary restraint, is but too often overruled by other motives. When numbers of men act in a body, respect for character is often lost, just in proportion as it is necessary to control what is not right. We all know that conscience is not a sufficient safeguard; and besides, that conscience itself may be deluded; may be misled, by an unconscious bias, into acts which an enlightened conscience would forbid. As to the permanent interest of individuals in the aggregate interests of the community, and in the proverbial maxim, that honesty is the best policy, present temptation is too often found to be an over-match for those considerations. These favourable attributes of the human character are all valuable, as auxiliaries; but they will not serve as a substitute for the coercive provisions belonging to Government and Law. They will always, in proportion as they prevail, be favourable to a mild administration of both; but they can never be relied on as a guaranty of the rights of the minority against a majority disposed to take unjust advantage of its power. The only effectual safeguard to the rights of the minority must be laid in such a basis and structure of the Government itself as may afford, in a certain degree, directly or indirectly, a defensive authority in behalf of a minority having right on its side.

To come more nearly to the subject before the Committee, viz: that peculiar feature in our community which calls for a peculiar division in the basis of our Government, I mean the coloured part of our population. It is apprehended, if the power of the Commonwealth shall be in the hands of a majority, who have no interest in this species of property, that, from the facility with which it may be oppressed by excessive taxation, injustice may be done to its owners. It would seem, therefore,



if we can incorporate that interest into the basis of our system, it will be the most apposite and effectual security that can be devised. Such an arrangement is recommended to me by many very important considerations. It is due to justice; due to humanity; due to truth; to the sympathies of our nature; in fine, to our character as a people, both abroad and at home, that they should be considered, as much as possible, in the light of human beings, and not as mere property. As such, they are acted upon by our laws, and have an interest in our laws. They may be considered as making a part, though a degraded part, of the families to which they belong.

If they had the complexion of the Serfs in the north of Europe, or of the Villeins, formerly in England; in other terms, if they were of our own complexion, much of the difficulty would be removed. But the mere circumstance of complexion cannot deprive them of the character of men. The Federal number, as it is called, is particularly recommended to attention in forming a basis of representation, by its simplicity, its certainty, its stability, and its permanency. Other expedients for securing justice in the case of taxation, while they amount in pecuniary effect to the same thing, have been found liable to great objections; and I do not believe that a majority of this Convention is disposed to adopt them, if they can find a substitute they can approve. Nor is it a small recommendation of the Federal number, in my view, that it is in conformity to the ratio recognised in the Federal Constitution. The cases, it is true, are not precisely the same, but there is more of analogy than might at first be supposed. If the coloured population were equally diffused through the State, the analogy would fail; but existing as it does, in large masses, in particular parts of it, the distinction between the different parts of the State resembles that between the slaveholding and non-slaveholding States; and, if we reject a doctrine in our own State, whilst we claim the benefit of it in our relations to other States, other disagreeable consequences may be added to the charge of inconsistency which will be brought against us. If the example of our sister States is to have weight, we find that in Georgia the Federal number is

made the basis of representation in both branches of their Legislature; and I do not learn that any dissatisfaction or inconvenience has flowed from its adoption. I wish we could know more of the manner in which particular organizations of Government operate in other parts of the United States. There would be less danger of being misled into error, and we should have the advantage of their experience as well as our own. In the case I mention, there can, I believe, be no error.

Whether, therefore, we be fixing a basis of representation for the one branch or the other of our Legislature, or for both, in a combination with other principles, the Federal ratio is a favourite resource with me. It entered into my earliest views of the subject before this Convention was assembled; and though I have kept my mind open, have listened to every proposition which has been advanced, and given to them all a candid consideration, I must say, that, in my judgment, we shall act wisely in preferring it to others which have been brought before us. Should the Federal number be made to enter into the basis in one branch of the Legislature and not into the other, such an arrangement might prove favourable to the slaves themselves. It may be, and I think it has been suggested, that those who have themselves no interest in this species of property, are apt to sympathize with the slaves more than may be the case with their masters; and would, therefore, be disposed, when they had the ascendancy, to protect them from laws of an oppressive character; whilst the masters, who have a common interest with the slaves, against undue taxation, which must be paid out of their labour, will be their protectors when they have the ascendancy.

The Convention is now arrived at a point where we must agree on some common ground, all sides relaxing in their opinions, not changing, but mutually surrendering a part of them. In framing a Constitution, great difficulties are necessarily to be overcome; and nothing can ever overcome them but a spirit of compromise. Other nations are surprised at nothing so much as our having been able to form Constitutions in the manner which has been exemplified in this country. Even the Union

of so many States is, in the eyes of the world, a wonder; the harmonious establishment of a common Government over them all, a miracle. I cannot but flatter myself, that, without a miracle, we shall be able to arrange all difficulties. I never have despaired, notwithstanding all the threatening appearances we have passed through. I have now more than a hope—a consoling confidence that we shall at last find that our labours have not been in vain.



## LETTERS.

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TO C. J. INGERSOLL.

RICHMOND, Jan<sup>y</sup> 8, 1830.

DEAR SIR,—Yours of December 26 was duly received, and I should have yielded less to the causes of delay in acknowledging it, had my recollections furnished any particular information on the subject of it; and my present situation does not permit the searches which might aid them.

It would seem that the exercise of Executive power in the cases referred to, without the intervention of the Judiciary, was regarded as warranted by the law of nations as part of the social law; and that the State Executives became the Federal instruments, by virtue of their authority over the militia. If the term "instructed" was used in the call on them, it is one that would not be relished now by some of them at least.

Will not the debate on the case of Robbins, particularly the speech of the [present?] C. Justice, disclosed the probable grounds on which the Federal Executive proceeded? I have not the means of consulting that source of information, but am under the impression that the cases hinged on analogous principles.

Our Convention is now in the pangs of parturition. Whether the result is to be an abortion, or an offspring worthy of life, will shortly be determined. The radical cause of our difficulties has been the coloured population, which happens to lie in one geographical half of the State, and to have been the great object of taxation. Compromising efforts required by this peculiarity have checked the projects and votes in a very curious and, to strangers, unintelligible manner. The main object with many has been to produce modifications that would be likely to get through the Convention, and not be rejected by the peo-

ple; and, at the same time, be better than the existing Constitution, which has real as well as unpopular deformities that would not long be borne without very exciting attempts for a plenipotentiary revision of them.

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TO N. P. TRIST.

FEBRUARY—, 1830.

DR SIR,—I return the paper enclosed in yours of the 6th. I have found in it the proofs of ability for such discussions which I should have anticipated. As I understand your discriminating view (and it seems to be clearly expressed) of the Virginia documents in '98-'99, it rescues them from the hands which have misconstrued and misapplied them. The meaning collected from the general scope, and from a collation of the several parts, ought not to be affected by a particular word or phrase not irreconcilable with all the rest, and not made more precise, because no danger of their being misunderstood was thought of.

You will pardon me for observing that you seem to have supposed a greater ignorance, at the commencement of the contest with G. Britain, of the doctrines of self-government, than was the fact. The controversial papers of the epoch show it. The date of the Virginia Declaration of Rights would itself be a witness. The merit of the founders of our Republics lies in the more accurate views and the practical application of the doctrines. The rights of man as the foundation of just Government had been long understood; but the superstructures projected had been sadly defective. Hume himself was among these bungling lawgivers.

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TO GENERAL LA FAYETTE.

FEB<sup>r</sup> 1, 1830.

MY DEAR FRIEND,—This late acknowledgment of your letter of Sep<sup>r</sup> 28 is the effect of its reaching me at Richmond, where every moment of my time was, in some way or other, exacted

by my public situation, and of the accumulated arrears of a private nature requiring my attention.

The Convention, which called forth your interesting remarks and generous solitudes, was pregnant with difficulties of various sorts, and, at times, of ominous aspects. Besides the ordinary conflicts of opinions concerning the structure of Government, the peculiarity of local interests, real or supposed, and, above all, the case of our coloured population, which happens to be confined to a geographical half of the State, and to have been a disproportionate object of taxation, were sources of jealousy and collisions which infected the proceedings throughout, and were finally overcome by a small majority only. Every concession of private opinion, not morally inadmissible, became necessary, in order to prevent an abortion discreditable to the body and to the State, and inflicting a stain on the great cause of self-government. With all the compromising expedients employed, and which finally obtained a successful vote within the Convention, it remains to be seen what will be the fate which awaits the recommended plan on its submission to the people. It makes the appeal to them under the disadvantage of being stamped with the dissent of the members of the Convention representing the *ultramontane* part of the State, the part which had called loudest for, and contributed most to, the experiment for amending the Constitution. But, on the other hand, it alleviates greatly where it does not remove the objections which had been urged, and justly urged, by that part; whilst the other part of the State, which was opposed to any change, will regard the result as an obstacle to another Convention which might bring about greater and more obnoxious innovations. On the whole, the probability is, that the Constitution as amended will be sanctioned by the popular votes, and that by a considerable majority. Should this prove to be the case, the *peculiar* difficulties which will have been overcome ought to render the experiment a new evidence of the capacity of men for self-government, instead of an argument in the hands of those who deny and calumniate it. The Convention was composed of the *elite* of the community, and exhibited great talents in the discussions

belonging to the subject. Mr. Monroe, and still more, myself, were too mindful of the years over our heads to take any active part in them. The same consideration was felt by Mr. Marshall. I may add, that each of us was somewhat fettered by the known, and in some important instances by the expressed, will of our *immediate* constituents.

Your anticipations with regard to the slavery among us were the natural offspring of your just principles and laudable sympathies; but I am sorry to say that the occasion which led to them proved to be little fitted for the slightest interposition on that subject. A sensibility, morbid in the highest degree, was never more awakened among those who have the largest stake in that species of interest, and the most violent against any governmental movement in relation to it. The excitability at the moment, happened, also, to be not a little augmented by party questions between the South and the North, and the efforts used to make the circumstance common to the former a sympathetic bond of co-operation. I scarcely express myself too strongly in saying, that any allusion in the Convention to the subject you have so much at heart would have been a spark to a mass of gunpowder. It is certain, nevertheless, that time, the "great Innovator," is not idle in its salutary preparations. The Colonization Society are becoming more and more one of its agents. Outlets for the freed blacks are alone wanted for a rapid erasure of the blot from our Republican character.

I observe in the foreign journals the continued struggle you glance at between the good and evil principles on your side of the Atlantic. The manifestations of the former, on your visit to the south of France, are very encouraging, notwithstanding the little successes of the latter at the Central Theatre. Your friends see, with the greatest pleasure, in such incidents the confidence and affection which bind your fellow-citizens to you, and the deep interest your country has in the continuance of your life and health.

I had wished to say something on other topics; but having been so long without thanking you for your last kind letter, I will now hasten the assurances of my unalterable attachment



and my ardent wishes for your happiness, in which Mrs. M. joins me, as she does in the offer of cordial salutations to your highly valued son and our common friend Col. Le Vasseur.

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TO. N. P. TRIST.

MONTPELLIER, Feb. 15, 1830.

DEAR SIR,—I have received your favours of ———, and have looked over the remarks enclosed in them, meant as an introduction to an explanatory comment on the proceedings of Virginia in 1798-'99, occasioned by the alien and sedition laws.

It was certainly not the object of the member who prepared the documents in question to assert, nor does the fair import of them, as he believes, assert a right in the parties to the Constitution of the United States *individually* to annul within themselves acts of the Federal Government, or to withdraw from the Union; nor was it within the scope of those documents to discuss the extreme cases in which such rights might result from a kind or degree of oppression extinguishing all constitutional compacts and obligations.

It has been too much the case in expounding the Constitution of the United States, that its meaning has been sought, not in its peculiar and unprecedented modifications of power, but by viewing it, some through the medium of a simple Government, others through that of a mere league of Governments. It is neither the one nor the other, but essentially different from both. It must, consequently, be its own interpreter. No other Government can furnish a key to its true character. Other Governments present an individual and indivisible sovereignty. The Constitution of the United States divides the sovereignty; the portions surrendered by the States composing the Federal sovereignty over specified subjects; the portions retained forming the sovereignty of each over the residuary subjects within its sphere. If sovereignty cannot be thus divided, the political system of the United States is a chimera, mocking the vain pretensions of human wisdom. If it can be so divided, the system

ought to have a fair opportunity of fulfilling the wishes and expectations which cling to the experiment.

Nothing can be more clear than that the Constitution of the United States has created a Government, in as strict a sense of the term as the governments of the States created by their respective constitutions. The Federal Government has, like the State governments, its Legislative, its Executive, and its Judiciary departments. It has, like them, acknowledged cases in which the powers of these departments are to operate; and the operation is to be directly on persons and things in the one Government as in the others. If in some cases the jurisdiction is concurrent as it is in others exclusive, this is one of the features constituting the peculiarity of the system.

In forming this compound scheme of Government, it was impossible to lose sight of the question, What was to be done in the event of controversies, which could not fail to occur, concerning the partition line between the powers belonging to the Federal and to the State governments? That some provision ought to be made, was as obvious and as essential as the task itself was difficult and delicate.

That the final decision of such controversies, if left to each of the thirteen, now twenty-four, members of the Union, must produce a different Constitution and different laws in the States, was certain; and that such differences must be destructive of the common Government and of the Union itself, was equally certain. The decision of questions between the common agents of the whole and of the parts could only proceed from the whole—that is, from a collective, not a separate, authority of the parts.

The question then presenting itself could only relate to the least objectionable mode of providing for such occurrences under the collective authority.

The provision immediately and ordinarily relied on is manifestly the Supreme Court of the United States, clothed as it is with a jurisdiction “in controversies to which the United States shall be a party,” the court itself being so constituted as to render it independent and impartial in its decisions [see Federal-

ist, No. xxxix, p. 241;] while other and ulterior resorts would remain, in the elective process, in the hands of the people themselves, the joint constituents of the parties, and in the provision made by the Constitution for amending itself. All other resorts are extra and ultra constitutional, corresponding to the ultima ratio of nations renouncing the ordinary relations of peace.

If the Supreme Court of the United States be found or deemed not sufficiently independent and impartial for the trust committed to it, a better tribunal is a desideratum. But, whatever this may be, it must necessarily derive its authority from the whole, not from the parts; from the States in some collective, not individual capacity. And as some such tribunal is a vital element, a *sine qua non*, in an efficient and permanent Government, the tribunal existing must be acquiesced in until a better or more satisfactory one can be substituted.

Although the old idea of a compact between the Government and the people be justly exploded, the idea of a compact among those who are parties to a Government is a fundamental principle of free Government.

The original compact is the one implied or presumed, but nowhere reduced to writing, by which a people agree to form one society. The next is a compact, here for the first time reduced to writing, by which the people in their social state agree to a Government over them. These two compacts may be considered as blended in the Constitution of the United States, which recognises a union or society of States, and makes it the basis of the Government formed by the parties to it.

It is the nature and essence of a compact, that it is equally obligatory on the parties to it, and, of course, that no one of them can be liberated therefrom without the consent of the others, or such a violation or abuse of it by the others as will amount to a dissolution of the compact.

Applying this view of the subject to a single community, it results, that the compact being between the individuals composing it, no individual or set of individuals can at pleasure break off and set up for themselves, without such a violation of

the compact as absolves them from its obligations. It follows, at the same time, that, in the event of such a violation, the suffering party, rather than longer yield a passive obedience, may justly shake off the yoke, and can only be restrained from the attempt by a want of physical strength for the purpose. The case of individuals expatriating themselves, that is, leaving their country in its *territorial* as well as its social and political sense, may well be deemed a reasonable privilege, or, rather, as a right impliedly reserved. And even in this case, equitable conditions have been annexed to the right, which qualify the exercise of it.\*

Applying a like view of the subject to the case of the United States, it results, that the compact being among individuals as imbodyed into States, no State can at pleasure release itself therefrom and set up for itself. The compact can only be dissolved by the consent of the other parties, or by usurpations or abuses of power justly having that effect. It will hardly be contended that there is anything in the terms or nature of the compact authorizing a party to dissolve it at pleasure.

It is, indeed, inseparable from the nature of a compact, that there is as much right on one side to expound it, and to insist on its fulfilment according to that exposition, as there is on the other so to expound it as to furnish a release from it; and that an attempt to annul it by one of the parties may present to the other an option of acquiescing in the annulment, or of preventing it, as the one or the other course may be deemed the lesser evil. This is a consideration which ought deeply to impress itself on every patriotic mind, as the strongest dissuasion from unnecessary approaches to such a crisis. What would be the condition of the States attached to the Union and its Government, and regarding both as essential to their well-being, if a State placed in the midst of them were to renounce its federal obligations, and erect itself into an independent and alien nation? Could the States north and south of Virginia, Pennsylvania, or New York, or of some other States, however small,

\* See the Virginia statute.

remain associated and enjoy their present happiness, if geographically, politically, and practically thrown apart by such a breach in the chain which unites their interests and binds them together as neighbours and fellow-citizens? It could not be. The innovation would be fatal to the Federal Government, fatal to the Union, and fatal to the hopes of liberty and humanity, and presents a catastrophe at which all ought to shudder.

Without identifying the case of the United States with that of individual States, there is at least an instructive analogy between them. What would be the condition of the State of New York, of Massachusetts, or of Pennsylvania, for example, if portions containing their great commercial cities, invoking original rights as paramount to social and constitutional compacts, should erect themselves into distinct and absolute sovereignties? In so doing they would do no more, unless justified by an intolerable oppression, than would be done by an individual State, as a portion of the Union, in separating itself, without a like cause, from the other portions. Nor would greater evils be inflicted by such a mutilation of a State on some of its parts, than might be felt by some of the States from a separation of its neighbours into absolute and alien sovereignties.

Even in the case of a mere league between nations absolutely independent of each other, neither party has a right to dissolve it at pleasure, each having an equal right to expound its obligations, and neither, consequently, a greater right to pronounce the compact void than the other has to insist on the mutual execution of it. [See, in Mr. Jefferson's volumes, his letters to J. M., Mr. Monroe, and Col. Carrington.]

Having suffered my pen to take this ramble over a subject engaging so much of your attention, I will not withhold the notes made by it from your perusal. But being aware that, without more development and precision, they may in some instances be liable to misapprehension or misconstruction, I will ask the favour of you to return the letter after it has passed under your partial and confidential eye.

I have made no secret of my surprise and sorrow at the proceedings in South Carolina, which are understood to assert a

right to annul the acts of Congress within the State, and even to secede from the Union itself. But I am unwilling to enter the political field with the "*telum imbelles*" which alone I could wield. The task of combating such unhappy aberrations belongs to other hands. A man whose years have but reached the canonical three-score-and-ten (and mine are much beyond the number) should distrust himself, whether distrusted by his friends or not, and should never forget that his arguments, whatever they may be, will be answered by allusions to the date of his birth.

With affectionate respects,

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TO ROBERT LEE.

MONTPELLIER, February 22, 1830.

DEAR SIR,—I have duly received your letter of the 12th. The motive and the matter of it might claim for the request it makes a degree of attention from which my age, now approaching the eightieth year, may not only excuse but properly restrain me. Under any circumstances, I ought not to offer opinions on such subjects without the reasonings on which they rest, and this, under existing circumstances, is a task which I wish not to undertake.

The question of re-eligibility in the case of a President of the United States admits of rival views, and is the more delicate because it cannot be decided with equal lights from actual experiment. In general, it may be observed, that the evils most complained of are less connected with that particular question than with the process of electing the Chief Magistrate, and the powers vested in him. Among these, the appointing power is the most operative in relation to the purity of Government and the tranquillity of republican Government, and it is not easy to find a depository for it more free from the dangers of abuse. The powers and patronage of a Chief Magistrate, whether elected for a shorter term and re-eligible for a second, or for a

longer, without that capacity, might not, in their effect, be very materially different, though the difference might not be unimportant.

It should not be forgotten that many inconveniences are inseparable from the peculiarity of a federal system of Government, while such a Government is essential to the complete success of republicanism in any form.

Were I not aware that there is nothing in these brief and broken ideas that could suggest a public use of them, I should not fail to combine an intimation against it, with the return of my good wishes and friendly salutations, which I pray you to accept.

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TO MR. M<sup>C</sup>DUFFIE.

J. Madison presents his best respects to Mr. M<sup>C</sup>Duffie and returns his thanks for the copy of the "Report on the state of the Public Finances," politely sent him.

A perusal of the Report has left him under a just impression of the marked ability with which it is drawn up. He must be permitted, at the same time, to say, that the theoretic views taken of some branches of the subject discussed, particularly that of a Tariff for the encouragement of domestic manufactures, appear to be too exclusive of the restrictions and exceptions required by more practical views of it. The unqualified theory of "Let us alone," presupposes a perpetual peace, and universal freedom of commerce among nations, making them, in certain economical respects, but one and the same nation. A nation that does not provide in some measure against the effect of wars, and the policy of other nations, on its commerce and manufactures, necessarily exposes these interests to the caprice and casualty of events. The extent and the mode of provision proper to be made are fair questions for examination, and unavoidable sources of conflicting opinions, not to say possible sources of oppressive decisions.

MONTPELLIER, Mar. 30, 1830.

TO JARED SPARKS.

MONTPELLIER, April 8th, 1830.

D<sup>R</sup> SIR,—Your favor of March 8 came duly to hand, and I congratulate you on your success at London and Paris in obtaining materials nowhere else to be found, and so essential to the history of our Revolution.

I have been looking over such of the letters of General Washington to me, as do not appear on his files. They amount to 28, besides some small confidential notes. Most of the letters are of some importance; some of them are peculiarly delicate, and some equally important and delicate. To make extracts from them is a task I should not wish to undertake. To forward to you the whole for that purpose through the hazards of the mail is liable to the objection, that, as no copies exist, a loss of the originals would be fatal. Under these circumstances it occurs that you may be able to spare a few days for a trip from Washington to Montpelier, where you can review the whole, in affording an opportunity for which I shall think myself justified by the confidence reposed in you by those to whom the memory of Washington was most dear, and by the entire confidence felt by myself. If, on examining the papers, you should find more than you can conveniently extract, I will have the copies made of what you may mark for the purpose, and endeavor to procure for them some unexceptionable conveyance.

Until I learn whether I shall have the pleasure of seeing you, I retain the packet received through Col. Storrow; which is ready to be returned, either personally or through the channel you pointed out.

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TO MRS. E. COOLIDGE.

MONTPELLIER, Ap<sup>l</sup> 8th, 1830.

MY DEAR MADAM,—Your acceptable favor of March 20th came duly to hand, and with it the anticipated review of the published correspondence of your grandfather. The author of



the review has given evidence not only of a candid mind rescued from preconceived error, but of a critical judgment and an accomplished pen. The light which pierced the film over his eyes cannot fail to produce a like revolution in other minds equally capable of comprehending the various merits which give lustre to the volumes reviewed, and incapable of withholding the tribute due to them.

The reviewer has, I observe, taken particular notice of a letter to me, which presents a view, at once original and profound, of the relations between one generation and another. It must be admitted, as he remarks, that there would be difficulties in reducing it fully to practice. But it affords a practical lesson well according with the policy of free nations. Having lately found, among other fugitive scraps, one in which the subject was contemplated, I venture to inclose a copy of it. It was printed many years ago, as its date shews; but I am not able to furnish any other than a manuscript copy.

Mrs. Madison, whose affection for you cannot change, bids me say that she will only permit this small expression of it through me. For myself, my dear madam, I pray you to be assured that her feelings are equally mine, and that they will always be enlivened by your relation to a friend whose memory can never cease to be dear to me. We unite in offering our best respects to Mr. Coolidge, and in every wish for the happiness of you both.

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TO EDWARD EVERETT.

MONTPELLIER, Ap<sup>l</sup> 8, 1830.

DEAR SIR,—I consult the wishes of Mr. Sparks in making you a channel of communication with him. Should he not have arrived at Washington, be so good as to retain the inclosed letter till you can deliver it in person, or till otherwise advised by him or by me.

I take this occasion, sir, to thank you for the copies of Mr. Webster's and Mr. Sprague's late speeches. They do honor,

both of them, to the national councils. Mr. Webster's is such as was to be expected. To Mr. Sprague's I cannot apply the same remark, not having had the same previous knowledge of his Parliamentary powers.

If the able debates on Mr. Foot's resolution have thrown lights on some constitutional questions, they shew errors which have their sources in an oblivion of explanatory circumstances, and in the silent innovations of time on the meaning of words and phrases.

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TO PROFESSOR TUCKER.

MONTPELLIER, Ap<sup>l</sup> 30, 1830.

D<sup>R</sup> SIR,—I have received yours of March 29, in which you intimate your purpose of undertaking a biography of Mr. Jefferson. It will be a good subject in good hands; and I wish you may succeed in procuring the means of doing full justice to both. I know not that I shall be able to make any important contributions. I was a stranger to Mr. Jefferson till he took his seat, in 1776, in the first Legislature under the Constitution of Virginia, formed in that year. The acquaintance with him then made was very slight. During a part of the time he was Governor I was a member of the Council. Our acquaintance then became intimate, and a friendship took place which was one for life.

From this sketch you will perceive that I can know nothing of the first half of his career; and during the other half the materials for a biographer are to be found chiefly in the public archives, and among his voluminous manuscripts, partly in print, partly in the hands of his legatee. All these, with the connecting links and appropriate reflections, cannot fail to supply what will make a work highly interesting in itself, and be a rich offering to a future historian.

I hope you will also find a due portion of the anecdotic spices and gems with which you will well know how to sprinkle such a work. Should any occur to me or be recalled by particular

enquiries, it will give me great pleasure to comply with your wishes. Mr. Jefferson's letters to me amount to hundreds; but they have not been looked into for a long time, with the exception of a few of latter dates. As he kept copies of all his letters throughout the period, the originals of those to me exist, of course, elsewhere.

My eye fell lately on the enclosed paper. It is already in obscurity, and may soon be in oblivion. The Ceracchi named was an artist celebrated by his genius, and who was thought a rival, in embryo, to Canova, and doomed to the guillotine as the author or patron, guilty or suspected, of the infernal machine for destroying Bonaparte. I knew him well, having been a lodger in the same house with him, and much teased by his eager hopes, on which I constantly threw cold water, of obtaining the aid of Congress for his grand project. Having failed in this chance, he was advised by me and others to make the experiment of subscriptions, with the most auspicious names heading the list; and considering the general influence of Washington and the particular influence of Hamilton on the corps of speculators then suddenly enriched by the funding system, the prospect was encouraging; but just as the circular address was about to be despatched, it was put into his head that the scheme was merely to get rid of his importunities, and being of the *genus irritabile*, he suddenly went off in anger and disgust, leaving behind him heavy drafts on General Washington, Mr. Jefferson, &c., &c., for the busts, &c., he had presented to them. His drafts were not the effect of avarice, but of his wants, all his resources having been exhausted in the tedious pursuit of his object. He was an enthusiastic worshipper of Liberty and Fame; and his whole soul was bent on securing the latter by rearing a monument to the former, which he considered as personified in the American Republic. Attempts were made to engage him for a statue of General W., but he would not stoop to that.

TO E. EVERETT.

MONTPELLIER, April , 1830.

DEAR SIR,—Your favour of the 11th was duly received. I had noticed the stress laid in a late debate on the proceedings of the Virginia Legislature in '98-'99 as supporting the nullifying doctrine, so called, and of a frequent reference also to my participation in those proceedings. But although regretting the erroneous views taken of them, and not making a secret of my opinions, I was unwilling to obtrude any public explanations for reasons which may occur; for two, more particularly: 1. That other errors were occasionally observed in other cases in which I was referred to as a party or witness, and an interposition in one case might be thought to require it equally in others. 2. That I could not be unaware that my voluntary appearance before the public on such occasions would produce adversary comments, obliging me either to surrender a good cause or entangle myself in controversies against which my age was a warning. Before I received your letter I had been drawn, by a request from a distinguished advocate\* of the nullifying doctrine and some others associated with it, into a sketch of my views of them, and feeling a like obligation to respect your wish, I take the liberty of fulfilling it in the way most convenient to myself, by inclosing a copy, by a borrowed pen, of as much of that communication as will answer the purpose. I am sensible, at the same time, that there may be some awkwardness in this course, especially as I know not, as yet, the reception given to the communication, nor the degree in which the correspondence may be regarded as confidential. I will ask the favour of you, therefore, to let the present be so understood. I thank you, sir, for the copy of Mr. Clayton's speech. It certainly places—  
 \_\_\_\_\_with others which have justly attracted the flattering notice of the public.

No notice has been taken in the inclosed paper of the fact that the present charge of usurpations and abuses of power is.

\* Gen. R. Y. Hayne.

not that they are measures of the Government violating the will of the constituents, as was the case with the alien and seditions acts, but that they are measures of a majority of the constituents themselves, oppressing the minority through the forms of the Government. This distinction would lead to very different views of the topics under discussion. It is connected with the fundamental principles of Republican Government, and with the question of comparative danger of oppressive majorities from the sphere and structure of the General Government and from those of the particular Governments.

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TO M. L. HURLBERT.

MONTPELLIER, May, 1830.

I received, sir, though not exactly in due time, your letter of April 25, with a copy of your pamphlet, on the subject of which you request my opinions.

With a request opening so wide a field, I could not undertake a full compliance without forgetting the age at which it finds me, and that I have other engagements precluding such a task. I must hope, therefore, you will accept, in place of it, a few remarks, which, though not adapted to the use you had contemplated, may manifest my respect for your wishes and for the subject which prompted them.

The pamphlet certainly evinces a very strong pen, and talents adequate to the discussion of constitutional topics of the most interesting class. But in doing it this justice, and adding with pleasure that it contains much matter with which my views of the Constitution of the United States accord, I must add, also, that it contains views of the Constitution from which mine widely differ.

I refer particularly to the construction you seem to put on the introductory clause, "we the people," &c., and on the phrases "common defence and general welfare." Either of these, if taken as a measure of the powers of the General Government, would supersede the elaborate specifications which compose the

body of the instrument, in contravention to the fairest rules of interpretation. And if I am to answer your appeal to me as a witness, I must say that the real measure of the powers meant to be granted to Congress by the Convention, as I understood and believe, is to be sought in the specifications, to be expounded, indeed, not with the strictness applied to an ordinary statute by a court of law, nor, on the other hand, with a latitude that, under the name of means for carrying into execution a limited Government, would transform it into a Government without limits.

But whatever respect may be thought due to the intention of the Convention which prepared and proposed the Constitution, as presumptive evidence of the general understanding at the time of the language used, it must be kept in mind that the only authoritative intentions were those of the people of the States, as expressed through the Conventions which ratified the Constitution.

That in a Constitution so new and so complicated, there should be occasional difficulties and differences in the practical expositions of it, can surprise no one; and this must continue to be the case, as happens to new laws on complex subjects, until a course of practice of sufficient uniformity and duration to carry with it the public sanction shall settle doubtful or contested meanings.

As there are legal rules for interpreting laws, there must be analogous rules for interpreting constitutions; and among the obvious and just guides applicable to the Constitution of the United States may be mentioned—

1. The evils and defects for curing which the Constitution was called for and introduced.

2. The comments prevailing at the time it was adopted.

3. The early, deliberate, and continued practice under the Constitution, as preferable to constructions adapted on the spur of occasions, and subject to the vicissitudes of party or personal ascendencies.

On recurring to the origin of the Constitution and examining the structure of the Government, we perceive that it is neither

a Federal Government, created by the State governments, like the revolutionary Congress, nor a consolidated Government (as that term is now applied,) created by the people of the United States as one community, and, as such, acting by a numerical majority of the whole.

The facts of the case which must decide its true character, a character without a prototype, are, that the Constitution was created by the people, but by the people as composing distinct States, and acting by a majority in each; that, being derived from the same source as the constitutions of the States, it has within each State the same authority as the constitution of the State, and is as much a constitution, in the strict sense of the term, as the constitution of the State; that, being a compact among the States in their highest sovereign capacity, and constituting the people thereof one people for certain purposes, it is not revocable or alterable at the will of the States individually, as the constitution of a State is revocable and alterable at its individual will:

That the sovereign or supreme powers of government are divided into the separate depositories of the Government of the United States and the governments of the individual States:

That the Government of the United States is a government, in as strict a sense of the term, as the governments of the States; being, like them, organized into a Legislative, Executive, and Judiciary department, operating, like them, directly on persons and things, and having, like them, the command of a physical force for executing the powers committed to it:

That the supreme powers of government being divided between different governments, and controversies as to the landmarks of jurisdiction being unavoidable, provision for a peaceable and authoritative decision of them was obviously essential:

That, to leave this decision to the States, numerous as they were, and with a prospective increase, would evidently result in conflicting decisions subversive of the common Government and of the Union itself:

That, according to the actual provision against such calamities, the Constitution and laws of the United States are de-

clared to be paramount to those of the individual States, and an appellate supremacy is vested in the judicial power of the United States :

That, as safeguards against usurpations and abuses of power by the Government of the United States, the members of its Legislative and the head of its Executive department are eligible by, and responsible to, the people of the States or the Legislatures of the States; and as well the Judicial as the Executive functionaries, including the head, are impeachable by the Representatives of the people in one branch of the Legislature of the United States, and triable by the Representatives of the States in the other branch :

States can, through forms of the constitutional elective provisions, control the General Government. This has no agency in electing State governments, and can only control them through the functionaries, particularly the Judiciary, of the General Government :

That in case of an experienced inadequacy of these provisions, an ulterior resort is provided in amendments attainable by an intervention of the States, which may better adapt the Constitution for the purposes of its creation.

Should all these provisions fail, and a degree of oppression ensue, rendering resistance and revolution a lesser evil than a longer passive obedience, there can remain but the *ultima ratio*, applicable to extreme cases, whether between nations or the component parts of them.

Such, sir, I take to be an outline view, though an imperfect one, of the political system presented in the Constitution of the United States. Whether it be the best system that might have been devised, or what the improvements that might be made in it, are questions equally beyond the scope of your letter and that of the answer, with which I pray you to accept my respects and good wishes.



TO JAMES HILLHOUSE.

MONTPELLIER, May—, 1830.

DEAR SIR,—I have received your letter of the 10th instant, with the pamphlet containing the proposed amendments of the Constitution of the United States, on which you request my opinion and remarks.

Whatever pleasure might be felt in a fuller compliance with your request, I must avail myself of the pleas of the age I have reached, and of the control of other engagements, for not venturing on more than the few observations suggested by a perusal of what you have submitted to the public.

I readily acknowledge the ingenuity which devised the plan you recommend, and the strength of reasoning with which you support it. I cannot, however, but regard it as liable to the following remarks:

1. The first that occurs is, that the large States would not exchange the proportional agency they now have in the appointment of the Chief Magistrate, for a mode placing the largest and smallest States on a perfect equality in that cardinal transaction. New York has in it, even now, more than thirteen times the weight of several of the States, and other States according to their magnitudes would decide on the change with correspondent calculations and feelings.

The difficulty of reconciling the larger States to the equality in the Senate, is known to have been the most threatening that was encountered in framing the Constitution. It is known, also, that the powers committed to that body, comprehending, as they do, Legislative, Executive, and Judicial functions, was among the most serious objections, with many, to the adoption of the Constitution.

2. As the President elect would generally be without any previous evidence of national confidence, and have been in responsible relations only to a particular State, there might be danger of State partialities, and a certainty of injurious suspicions of them.

3. Considering the ordinary composition of the Senate, and

the number (in a little time nearly fifty) out of which a single one was to be taken by pure chance, it must often happen that the winner of the prize would want some of the qualities necessary to command the respect of the nation, and possibly be marked with some of an opposite tendency. On a review of the composition of that body, through the successive periods of its existence (antecedent to the present, which may be an exception,) how often will names present themselves which would be seen with mortified feelings at the head of the nation! It might happen, it is true, that, in the choice of Senators, an eventual elevation to that important trust might produce more circumspection in the State Legislatures. But so remote a contingency could not be expected to have any great influence; besides that, there might be States not furnishing at the time characters which would satisfy the pride and inspire the confidence of the States and of the People.

4. A President not appointed by the nation, and without the weight derived from its selection and confidence, could not afford the advantage expected from the qualified negative on the acts of the Legislative branch of the Government. He might either shrink from the delicacy of such an interposition, or it might be overruled with too little hesitation by the body checked in its career.

5. In the vicissitudes of party, adverse views and feelings will exist between the Senate and President. Under the amendments proposed, a spirit of opposition in the former to the latter would probably be more frequent than heretofore. In such a state of things, how apt might the Senate be to embarrass the President, by refusing to concur in the removal of an obnoxious officer! how prone would be a refractory officer, having powerful friends in the Senate, to take shelter under that authority, and bid defiance to the President! and, with such discord and anarchy in the Executive department, how impaired would be the security for a due execution of the laws!

6. On the supposition that the above objection would be overbalanced by the advantage of reducing the power and the patronage now attached to the Presidential office, it has generally

been admitted, that the heads of departments at least, who are at once the associates and the organs of the Chief Magistrate, ought to be well disposed towards him, and not independent of him. What would be the situation of the President, and what might be the effect on the Executive business, if those immediately around him, and in daily consultation with him, could, however adverse to him in their feelings and their views, be fastened upon him by a Senate disposed to take side with them? The harmony so expedient between the President and heads of departments, and among the latter themselves, has been too liable to interruption under an organization apparently so well providing against it.

I am aware that some of these objections might be mitigated, if not removed; but not, I suspect, in a degree to render the proposed modification of the Executive department an eligible substitute for the one existing: at the same time, I am duly sensible of the evils incident to the existing one, and that a solid improvement of it is a desideratum that ought to be welcomed by all enlightened patriots.

In the mean time, I cannot feel all the alarm you express at the prospect for the future as reflected from the mirror of the past. It will be a rare case that the Presidential contest will not issue in a choice that will not discredit the station, and not be acquiesced in by the unsuccessful party, foreseeing, as it must do, the appeal to be again made at no very distant day to the will of the nation. As long as the country shall be exempt from a military force, powerful in itself and combined with a powerful faction, liberty and peace will find safeguards in the elective resource and the spirit of the people. The dangers which threaten our political system, least remote, are perhaps of other sorts and from other sources.

I will only add to these remarks what is, indeed, sufficiently evident, that they are too hasty and too crude for any other than a private, and that an indulgent eye.

Mrs. Madison is highly gratified by your kind expressions towards her, and begs you to be assured that she still feels for you that affectionate friendship with which you impressed her

many years ago. Permit me to join her in best wishes for your health and every other happiness.

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TO EDWARD LIVINGSTON.

MAY 8, 1830.

DEAR SIR,—Your letter of April 29, with a copy of your speech, was duly received.

You have succeeded better in your interpretation of the proceedings of the Virginia Legislature in 1798 and 1799 than those who have seen in them a coincidence with the nullifying doctrine, so called. This doctrine, as new to me as it was to you, derives no support from the best contemporary elucidations of those proceedings, the debates on the resolutions, the address of the Legislature to its constituents, and the scope of the objections made by the Legislatures of the other States, whose concurrence in the resolutions was invited and refused.

The error in the comments on the Virginia proceedings has arisen from a failure to distinguish between what is declaratory of opinion and what is *ipso facto* executory; between the right of *the parties* to the Constitution and of a *single party*; and between resorts within the purview of the Constitution and the *ultima ratio* which appeals from a Constitution, cancelled by its abuses, to original rights paramount to all constitutions.

I thank you, sir, for a communication which I owe to your politeness and your friendly recollections. It presents very able views of several very interesting subjects, and merits the attention and perusal which, I doubt not, it will generally receive.

Mrs. Madison, though a stranger, as I am, to Mrs. Livingston and your daughter, joins in the offer to them and yourself of the cordial respects and good wishes which we pray may be accepted.

TO GEORGE M'DUFFIE.

MAY 8, 1830.

DEAR SIR,—I have received a copy of the late report on the Bank of the United States, and finding, by the name on the envelope, that I am indebted for the communication to your politeness, I tender you my thanks for it. The document contains very interesting and instructive views of the subject, particularly of the objectionable features in the substitute proposed for the existing bank.

I am glad to find that the report sanctions the sufficiency of the course and character of the precedents which I had regarded as overruling individual judgments in expounding the Constitution. You are not aware, perhaps, of a circumstance weighing against the plea, that the chain of precedents was broken by the negative on a bank bill, by the casting vote of the President of the Senate, given expressly on the ground that the bill was not authorized by the Constitution. The circumstance alluded to is, that the equality of votes, which threw the casting one on the Chair, was the result of a union of a number of members who objected to the *expediency* only of the bill, with those who opposed it on constitutional grounds. On a naked question of constitutionality, it is understood that there would have been a majority who made no objection on that score; [the journals of the Senate may yet test the fact.]

Will you permit me, sir, to suggest for consideration, whether the report, [p. 9, 10,] in the position and reasoning applied to the effect of a change in the quantity, on the value of a currency, sufficiently distinguishes between a specie currency and a currency not convertible into specie? The latter being of local circulation only, must, unless the local use for it increase or diminish with the increase or decrease of its quantity, be changeable in its value as the quantity of the currency changes. The metals, on the other hand, having a universal currency, would not be equally affected by local changes in their circulating amount. A surplus, instead of producing a proportional de-

preciation at home, might bear the expense of transportation, and avail itself of its current value abroad.

If I have misconstrued the meaning of the report, you will be good enough to pardon the error, and to accept, with a repetition of my thanks, assurances of my great and cordial respect.

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TO PRESIDENT MONROE.

MONTPELLIER, May 18, 1830.

DEAR SIR,—I have just received yours of the 13th. We had been led to hope that your health was better re-established than you represent it. As it is progressive, and your constitution, though, like mine, the worse for wear, has remains of good stamina, I will not despair of the pleasure of seeing you in July, and of making our visit together to the University. Should prudence forbid such a journey, I think you ought not to resign the trust. It is probable there will be a quorum without you, and I would prefer the risk of a failure to a loss of your name and your future aid. I should myself resign, but for considerations belonging to you as well as myself. I do not think your weakness, unless positively disabling you for the journey, should deter you from it. The moderate exercise in a carriage and a change of air, with a cheerful meeting with your friends, may stimulate your convalescence. You have heretofore found the experiment beneficial.

I feel the value of the interest you take in my health. It was in an improved state when I reached home, notwithstanding the fatiguing session of the Convention and the exposure on the route. But I found the neighborhood under a visitation of the influenza, and I had a relapse from which I suffered considerably. I have for some time, however, been regaining what I lost, and look forward to the discharge, in July, of my duty as a Visitor, and, let me repeat, not without the hope of your being able to do the same.

You will recollect that the Law Chair is to be filled, and I

am very sorry to say that no candidates have been yet brought into view. I have not received a line from any of our colleagues in Orange as to my circular on the subject.

The Constitution seems sure of a very considerable majority, but has encountered a very angry and active opposition in the trans-Alleghany district. Unless the census should prove that the share of representation allotted to it is a fair one, there will be a strenuous effort for another Convention.

Mr. Sparks, who is editing the Diplomatic Correspondence during the Confederation, and is charged with the Washington papers, was lately with me, and is, I find, possessed of a great and valuable mass of official information relating to the Cabinet policy of G. Britain and France during our Revolutionary period, having been allowed access to the secret archives of both, and even to take copies from them. He says he has ascertained from British as well as French evidence, that Mr. Jay was entirely misled in the views he had taken of the course pursued by the French Government in the negotiations for peace. On my alluding to the coincidence of Rayneval's statements to you, with the lights he had procured, he appeared particularly anxious to see the statement, and as I presumed it would be useful to truth and justice in a historical work he meditates, I ventured even to let him take a copy from mine, but with an understanding that he was to make no public use of it without your consent. If I have taken too great a liberty the copy will be returned. He says, that the more he traced the conduct of Franklin the more he found it worthy of his high character for wisdom and patriotism.

We offer our joint regards to Mrs. M. and yourself, with our hopes that you will have received favorable accounts from all the absentees of the family.

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TO THOMAS RITCHIE.

J. Madison, with his respects to Mr. Ritchie, remarks that a marginal note in the Enquirer of the 18th infers, from the pages

of Helvidius, that J. Madison solemnly protested against the "Proclamation of Neutrality," as it has been called. The Protest was not against the Proclamation, but against the Executive Prerogative, attempted to be engrafted on it in the publication of *Pacificus*, to which that of Helvidius was an answer. The latter justified the proclamation in its true construction. There was nothing, therefore, in the Protest adverse to the act of General Washington or the participation of Mr. Jefferson in it. If Mr. Ritchie, on recurring to Helvidius, particularly the introductory and last letter, should be satisfied that an error has been committed, he will of course correct it; which may be done without reference to the suggestion of J. Madison, who does not wish to obtrude, unnecessarily, public explanations, leaving room for erroneous inferences from silence in other cases.

MONTPELIER, May 24, 1830.

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TO DANIEL WEBSTER.

MONTPELLIER, May 27, 1830.

DEAR SIR,—I received by the mail of yesterday your favor of the 24th, accompanied by a copy of your late speech, for which I return my thanks. I had before received more than one copy from other sources, and had read the speech with a full sense of its powerful bearing on the subjects discussed, and particularly its overwhelming effect on the nullifying doctrine of South Carolina. Although I have not concealed my opinions of that doctrine, and of the use made of the proceedings of Virginia,\* in 1798-99, I have been unwilling to make a public exhibition of them, as well from the consideration that it might appear obtrusive, as that it might enlist me as a newspaper polemic, and

\* Neither the term nullifying nor nullification is in the Resolutions of Virginia; nor is either of them in the Resolutions of Kentucky in 1798, drawn by Mr. Jefferson. The Resolutions of that State in 1799, in which the word nullification appears, were not drawn by him, as is shewn by the last paragraph of his letter to W. C. Nicholas. See vol. 3 of his Correspondence, p. 429.



lay me under an obligation to correct errors in other cases in which I was concerned, or by my silence admit that they were not errors. I had, however, been led by a letter from a distinguished champion of the new doctrine, to explain my views of the subject somewhat at large, and in an answer afterwards to a letter from Mr. Everett, to enclose a copy of them. For a particular reason assigned to Mr. E., I asked the favor of him not to regard it as for public use. Taking for granted that you are in friendship with him, I beg leave to refer you to that communication, as an economy for my pen. The reference will remove the scruple he might otherwise feel in submitting it to your perusal.

The actual system of Government for the United States is so unexampled in its origin, so complex in its structure, and so peculiar in some of its features, that in describing it the political vocabulary does not furnish terms sufficiently distinctive and appropriate, without a detailed resort to the facts of the case. With that aid I have endeavored to sketch the system which I understand to constitute the people of the several States one people for certain purposes, with a Government competent to the effectuation of them.

Mrs. M. joins me in the acknowledgment and sincere return of your friendly recollections, with the addition of the respects and good wishes which we pray may be tendered to Mrs. Webster.

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TO JOSEPH C. CABELL.

MAY 31, 1830.

DEAR SIR,—I received yesterday yours of the 26th. Having never concealed my opinion of the nullifying doctrine of South Carolina, I did not regard the allusion to it in the Whig, especially as the manner of the allusion showed that I did not obtrude it. I should have regretted a publication of my letters, because they did not combine with the opinion the views of the

subject which support it. I have latterly been drawn into a correspondence with an advocate of the doctrine, which led me to a review of it in some extent, and particularly to a vindication of the proceedings of Virginia in 1798-99, against the misuse made of them. You will see in vol. iii, page 429, of Mr. Jefferson's Correspondence, a letter to W. C. Nicholas, proving that he had nothing to do with the Kentucky resolutions of 1799, in which the word "nullification" is found. The resolutions of that State in 1798, which were drawn by him, and have been republished with the proceedings of Virginia, do not contain that or any equivalent word.\*

That you may see the views I have taken of the aberrations of South Carolina, I enclose an extract from the correspondence above referred to. Should you undertake an investigation of the subject, it may point your attention to particular sources of information that might escape you. But I must apprise you that an *insuperable* bar to any public use of the extract is opposed by the peculiar footing on which the correspondence in question rests.

I observe that the President, in his late veto, has seen in mine of 1817, against internal improvements by Congress, a concurrence in the power to appropriate money for the purpose. Not finding the message which he cites, I can only say that my meaning must have been unfortunately expressed or is very strangely misinterpreted. The veto on my part certainly contemplated the appropriation of money as well as the operative and jurisdictional branches of the power. And, as far as I have references to the message, it has never been otherwise understood.

Your letter contains the only name yet brought into view for the chair vacated by Mr. Lomax. All our colleagues have been silent on that point. I hope there will be a full meeting of the Board in July, though I fear Mr. Monroe's feeble health will detain him from it. Until I have the pleasure of seeing you, accept my cordial salutations.

\* See Post, 109, 110.

TO N. P. TRIST.

MONTPELLIER, June 3d, 1830.

DEAR SIR,—Your favor of May 29 was duly received. The construction put, in the President's Message, on the veto in 1817 against the power of Congress as to internal improvements, could not fail to surprise me. To my consciousness that the veto was meant to deny as well the appropriating as the executing and jurisdictional branches of the power, was added the fact that, as far as has ever fallen under my notice, the references to the veto have, without a single previous exception, so understood it. It happens, odd as it may seem, that I cannot find among my papers, printed or manuscript, a copy of the Message. The edition of State Papers by Waite, which I have, is not brought down to that date. I cannot, therefore, ascertain from the entire text whether the fault in any degree lies there. I feel much confidence that the misconstruction is the effect of a too slight and hasty examination of the document. I am sorry on every account for the error, and am aware of what I owe to the kind sensibility which prompted your wish to correct it. As this will probably be done from some quarter or other through the gazettes, and justice, as far as I am concerned, will be involved in the correction, I hope you will consult in this, and in all cases, rather the delicacy of your position than the friendly impulses which ought to be under its control.

Since my letter to you on the nullifying doctrine, I have been led into correspondences in which some additional views of the subject were introduced. The two facts I am induced to mention are: 1. That the printed address of the Virginia Assembly in '98 to the people, gives no countenance to the doctrine any more than the printed debates on the resolutions. 2. That the term "nullification" in the Kentucky resolutions belongs to those of '99, with which Mr. Jefferson had nothing to do, as is proved by his letter to Mr. W. C. Nicholas, in vol. 3, p. 429, of his Correspondence. The resolutions of '98 drawn by him contain neither that nor any equivalent term.\*

\* See Post, 109, 110.

TO M. VAN BUREN.

MONTPELLIER, June 3, 1830.

J. Madison has duly received the copy of the President's Message forwarded by Mr. Van Buren. In returning his thanks for this polite attention, he regrets the necessity of observing that the Message has not rightly conceived the intention of J. M. in his veto in 1817, on the bill relating to internal improvements. It was an object of the veto to deny to Congress as well the appropriating power as the executing and jurisdictional branches of it. And it is believed that this was the general understanding at the time, and has continued to be so, according to the references occasionally made to the document. Whether the language employed duly conveyed the meaning of which J. M. retains the consciousness, is a question on which he does not presume to judge for others.

Relying on the candour to which these remarks are addressed, he tenders to Mr. Van Buren renewed assurances of his high esteem and good wishes.

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TO GENERAL W. H. HARRISON.

MONTPELLIER, June 5, 1830.

D<sup>R</sup> SIR,—I received in due time the copy of your "Remarks on charges made against you during your diplomatic residence in Colombia," but have been prevented by ill health and other causes from an earlier acknowledgment of your politeness. I now tender you my thanks for the communication. The remarks are not only acceptable to your friends as they relate to yourself, but valuable as illustrating the state of things in a quarter where everything is made interesting by its relation to the cause of self-government. It is a happy reflection, that whilst the final success of the experiment there, will be among the strongest supports of the cause, a failure can be fairly explained by the unfortunate peculiarity of circumstances under which the experiment is made. Whatever may have been the different views

taken of the letter to Bolivar, none can contest the intellectual and literary merit stamped upon it, or be insensible to the Republican feelings which prompted it.

With a repetition of my thanks, I pray you to accept my high esteem and cordial respects.

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TO M. VAN BUREN.

MONTPELLIER, July 5, 1830.

DEAR SIR,—Your letter of June 9 came duly to hand. On the subject of the discrepancy between the construction put by the Message of the President on the veto of 1817 and the intention of its author, the President will of course consult his own view of the case. For myself, I am aware that the document must speak for itself, and that that intention cannot be substituted for the established rules of interpretation.

The several points on which you desire my ideas are necessarily vague, and the observations on them cannot well be otherwise. They are suggested by a respect for your request rather than by a hope that they can assist the object of it.

“Point 1. The establishment of some rule which shall give the greatest practicable precision to the power of appropriating money to objects of general concern.”

The rule must refer, it is presumed, either to the objects of appropriation or to the apportionment of the money.

A specification of the objects of general concern, in terms as definite as may be, seems to be the rule most applicable; thus roads simply, if for all the uses of roads; or roads, post and military, if limited to those uses; or post roads only, if so limited; thus canals, either generally or for specified uses; so again education, as limited to a university, or extended to seminaries of other denominations.

As to the apportionment of the money, no rule can exclude legislative discretion but that of distribution among the States according to their presumed contributions; that is, to their ratio of representation in Congress. The advantages of this rule are

its certainty and its apparent equity. The objections to it may be, that, on one hand, it would increase the comparative agency of the Federal Government, and, on the other, that the money might not be expended on objects of general concern; the interest of particular States not happening to coincide with the general interest in relation to improvements within such States.

“2. A rule for the government of grants for light-houses, and the improvement of harbours and rivers, which will avoid the objects which it is desirable to exclude from the present action of the Government, and, at the same time, do what is imperiously required by a regard to the general commerce of the country.”

National grants in these cases seem to admit no possible rule of discrimination, but as the objects may be of national or local character. The difficulty lies here, as in all cases where the *degree* and not the *nature* of the case is to govern the decision. In the extremes, the judgment is easily formed; as between removing obstructions in the Mississippi, the highway of commerce for half the nation, and a like operation giving but little extension to the navigable use of a river, itself of confined use. In the intermediate cases, legislative discretion, and, consequently, legislative errors and partialities, are unavoidable. Some control is attainable in doubtful cases from preliminary investigations and reports by disinterested and responsible agents.

In defraying the expense of internal improvements, strict justice would require that a part only, and not the whole, should be borne by the nation. Take, for examples, the harbors of New York and New Orleans. However important, in a commercial view, they may be to the other portions of the Union, the States to which they belong must derive a *peculiar* as well as a common advantage from improvements made in them, and could afford, therefore, to combine with grants from the common treasury, proportional contributions from their own. On this principle it is that the practice has prevailed in the States (as it has done with Congress) of dividing the expense of certain improvements between the funds of the State and the contributions of those locally interested in them.

Extravagant and disproportionate expenditures on harbors, light-houses, and other arrangements on the seaboard, ought certainly to be controlled as much as possible. But it seems not to be sufficiently recollected, that in relation to our foreign commerce, the burden and benefit of accommodating and protecting it necessarily go together, and must do so as long and as far as the public revenue continues to be drawn through the custom-house. Whatever gives facility and security to navigation, cheapens imports; and all who consume them, wherever residing, are alike interested in what has that effect. If they consume, they ought, as they now do, to pay. If they do not consume, they do not pay. The consumer in the most inland State derives the same advantage from the necessary and prudent expenditures for the security of our foreign navigation as the consumer in a maritime State. Other local expenditures have not, of themselves, a correspondent operation.

“3. The expediency of refusing all appropriations for internal improvements (other than those of the character last referred to, if they can be so called) until the national debt is paid, as well on account of the sufficiency of that motive, as to give time for the adoption of some constitutional or other arrangement by which the whole subject may be placed on better grounds; an arrangement which will never be seriously attempted as long as scattering appropriations are made, and the scramble for them thereby encouraged.”

The expediency of refusing appropriations, with a view to the previous discharge of the public debt, involves considerations which can be best weighed and compared at the focus of lights on the subject. A distant view like mine can only suggest the remark, too vague to be of value, that a material delay ought not to be incurred for objects not both important and urgent; nor such objects to be neglected in order to avoid an immaterial delay. This is, indeed, but the amount of the exception glanced at in your parenthesis.

The mortifying scenes connected with a surplus revenue are the natural offspring of a surplus, and cannot, perhaps, be entirely prevented by any plan of appropriation which allows a

scop) to legislative discretion. The evil will have a powerful control in the pervading dislike to taxes even the most indirect. The taxes lately repealed are an index of it. Were the whole revenue expended on internal improvements drawn from direct taxation, there would be danger of too much parsimony rather than too much profusion at the treasury.

“4. The strong objections which exist against subscriptions to the stock of private companies by the United States.”

The objections are, doubtless, in many respects strong. Yet cases might present themselves which might not be favoured by the State, while the concurring agency of an undertaking company would be desirable in a national view. There was a time, it is said, when the State of Delaware, influenced by the profits of a *portage* between the Delaware and Chesapeake, was unfriendly to the canal, now forming so important a link of internal communication between the North and the South. Undertakings by private companies carry with them a presumptive evidence of utility, and the private stakes in them some security for economy in the execution, the want of which is the bane of public undertakings. Still the importunities of private companies cannot be listened to with more caution than prudence requires.

I have, as you know, never considered the powers claimed for Congress over roads and canals as within the grants of the Constitution. But such improvements being justly ranked among the greatest advantages and best evidences of good Government; and having, moreover, with us the peculiar recommendation of binding the several parts of the Union more firmly together, I have always thought the power ought to be possessed by the common Government; which commands the least unpopular and most productive sources of revenue, and can alone select improvements with an eye to the national good. The States are restricted in their pecuniary resources; and roads and canals most important in a national view might not be important to the State or States possessing the domain and the soil, or might even be deemed disadvantageous; and, on the most favourable supposition, might require a concert of means



and regulations among several States not easily effected, nor unlikely to be altogether omitted.

These considerations have pleaded with me in favour of the policy of vesting in Congress an authority over internal improvements. I am sensible, at the same time, of the magnitude of the trust, as well as of the difficulty of executing it properly, and the greater difficulty of executing it satisfactorily.

On the supposition of a due establishment of the power in Congress, one of the modes of using it might be to apportion a reasonable share of the disposable revenue of the United States among the States, to be applied by them to cases of State concern; with a reserved discretion in Congress to effectuate improvements of general concern, which the States might not be able or not disposed to provide for.

If Congress do not mean to throw away the rich fund inherent in the public lands, would not the sales of them, after their liberation from the original pledge, be aptly appropriated to objects of internal improvement? And why not, also, with a supply of competent authority, to the removal to better situations of the free black as well as red population, objects confessedly of national importance and desirable to all parties? But I am travelling out of the subject before me.

The date of your letter reminds me of the delay of the answer. The delay has been occasioned by interruptions of my health; and the answer, such as it is, is offered in the same confidence in which it was asked.

With great esteem and cordial salutations.

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TO BARON HYDE DE NEUVILLE.

MONTPELLIER, July 26th, 1830.

DEAR SIR,—I have received, through Monsieur Chersant, for which I am indebted to your politeness, the two pamphlets: one, "Discours d'ouverture, prononcé à la séance générale," &c., &c.; the other, "De la question Portugaise." I cannot return my

thanks for them without remarking, that the first is equally distinguished by its instructive and by its philanthropic views; and that the second is a proof that the young claimant of the throne of Portugal could not have been favored with a better informed or more eloquent advocate.

I am induced by the interest you take in whatever concerns our country, to inclose a copy of the new Constitution adopted by Virginia. It has just received the popular sanction by votes of about 25,000 against 15,000, and will be carried into execution within the present year. As must happen in such cases, it is the offspring of mutual concessions of opinions and interests, and the parent of some dissatisfactions. But the American people are too well schooled in the duty and practice of submitting to the will of the majority to permit any serious uncasiness on that account.

Mrs. Madison writes a few lines to the Baroness. In the cordial regards they express I beg leave to join, as she does, in the sentiments of esteem and good wishes of which I pray you to accept the sincere assurance.

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TO EDWARD EVERETT.

J. Madison, with his best respects to Mr. Everett, thanks him for the copy of his "Address on the Centennial Anniversary of the arrival of Governor Winthrop at Charlestown."

The theme, interesting as it is in itself, derives new attraction from the touching details and appropriate reflections woven into the address.

J. M. takes this occasion of thanking Mr. Everett for the copy, also, of his very able speech on the Indian subject in the House of Representatives.

MONTPELLIER, Aug. 5, 1830.

TO EDWARD EVERETT.

MONTPELLIER, August, 1830.

DEAR SIR,—I have duly received your letter, in which you refer to the “nullifying doctrine,” advocated as a constitutional right by some of our distinguished fellow-citizens; and to the proceedings of the Virginia Legislature in 1798 and 1799, as appealed to in behalf of that doctrine; and you express a wish for my ideas on those subjects.

I am aware of the delicacy of the task in some respects, and the difficulty in every respect of doing full justice to it. But having, in more than one instance, complied with a like request from other friendly quarters, I do not decline a sketch of the views which I have been led to take of the doctrine in question, as well as some others connected with them, and of the grounds from which it appears that the proceedings of Virginia have been misconceived by those who have appealed to them. In order to understand the true character of the Constitution of the United States, the error, not uncommon, must be avoided, of viewing it through the medium either of a consolidated Government or of a confederated Government, while it is neither the one nor the other, but a mixture of both. And having in no model the similitudes and analogies applicable to other systems of government, it must, more than any other, be its own interpreter, according to its text and the facts of the case.

From these it will be seen that the characteristic peculiarities of the Constitution are: 1. The mode of its formation; 2. The division of the supreme powers of Government between the States in their united capacity and the States in their individual capacities.

1. It was formed, not by the governments of the component States, as the Federal Government for which it was substituted was formed; nor was it formed by a majority of the people of the United States, as a single community, in the manner of a consolidated Government.

It was formed by the States—that is, by the people in each of the States, acting in their highest sovereign capacity; and

formed, consequently, by the same authority which formed the State Constitutions.

Being thus derived from the same source as the Constitutions of the States, it has within each State the same authority as the Constitution of the State; and is as much a Constitution, in the strict sense of the term, within its prescribed sphere, as the Constitutions of the States are within their respective spheres; but with this obvious and essential difference, that, being a compact among the States in their highest sovereign capacity, and constituting the people thereof one people for certain purposes, it cannot be altered or annulled at the will of the States individually, as the Constitution of a State may be at its individual will.

2. And that it divides the supreme powers of Government between the Government of the United States and the governments of the individual States, is stamped on the face of the instrument; the powers of war and of taxation, of commerce and of treaties, and other enumerated powers vested in the Government of the United States, being of as high and sovereign a character as any of the powers reserved to the State governments.

Nor is the Government of the United States, created by the Constitution, less a Government, in the strict sense of the term, within the sphere of its powers, than the governments created by the constitutions of the States are within their several spheres. It is, like them, organized into Legislative, Executive, and Judiciary departments. It operates, like them, directly on persons and things. And, like them, it has at command a physical force for executing the powers committed to it. The concurrent operation, in certain cases, is one of the features marking the peculiarity of the system.

Between these different constitutional governments—the one operating in all the States; the others operating separately in each, with the aggregate powers of government divided between them—it could not escape attention that controversies would arise concerning the boundaries of jurisdiction, and that some provision ought to be made for such occurrences. A political

system that does not provide for a peaceable and authoritative termination of occurring controversies, would not be more than the shadow of a Government; the object and end of a real Government being the substitution of law and order for uncertainty, confusion, and violence.

That to have left a final decision in such cases to each of the States, then thirteen and already twenty-four, could not fail to make the Constitution and laws of the United States different in different States, was obvious; and not less obvious that this diversity of independent decisions must altogether distract the Government of the Union, and speedily put an end to the Union itself. A uniform authority of the laws is in itself a vital principle. Some of the most important laws could not be partially executed. They must be executed in all the States, or they could be duly executed in none. An impost or an excise, for example, if not in force in some States, would be defeated in others. It is well known that this was among the lessons of experience which had a primary influence in bringing about the existing Constitution. A loss of its general authority would, moreover, revive the exasperating questions between the States holding ports for foreign commerce and the adjoining States without them, to which are now added all the inland States necessarily carrying on their foreign commerce through other States.

To have made the decisions under the authority of the individual States co-ordinate in all cases with decisions under the authority of the United States, would unavoidably produce collisions incompatible with the peace of society, and with that regular and efficient administration which is the essence of free Governments. Scenes could not be avoided in which a ministerial officer of the United States, and the correspondent officer of an individual State, would have rencounters in executing conflicting decrees, the result of which would depend on the comparative force of the local *posse* attending them, and that a casualty depending on the political opinions and party feelings in different States.

To have referred every clashing decision under the two authorities for a final decision to the States as parties to the Con-

stitution, would be attended with delays, with inconveniences, and with expenses amounting to a prohibition of the expedient, not to mention its tendency to impair the salutary veneration for a system requiring such frequent interpositions, nor the delicate questions which might present themselves as to the form of stating the appeal, and as to the quorum for deciding it.

To have trusted to negotiation for adjusting disputes between the Government of the United States and the State governments, as between independent and separate sovereignties, would have lost sight altogether of a Constitution and Government for the Union, and opened a direct road, from a failure of that resort, to the *ultima ratio* between nations wholly independent of, and alien to, each other. If the idea had its origin in the process of adjustment between separate branches of the same Government, the analogy entirely fails. In the case of disputes between independent parts of the same Government, neither part being able to consummate its will, nor the Government to proceed without a concurrence of the parts, necessity brings about an accommodation. In disputes between a State government and the Government of the United States, the case is, practically as well as theoretically, different; each party possessing all the departments of an organized Government, Legislative, Executive, and Judiciary, and having each a physical force to support its pretensions. Although the issue of negotiation might sometimes avoid this extremity, how often would it happen among so many States that an unaccommodating spirit in some would render that resource unavailing? A contrary supposition would not accord with a knowledge of human nature or the evidence of our own political history.

The Constitution, not relying on any of the preceding modifications for its safe and successful operation, has expressly declared, on the one hand, 1. "That the Constitution, and the laws made in pursuance thereof, and all treaties made under the authority of the United States, shall be the supreme law of the land. 2. That the judges of every State shall be bound thereby, anything in the constitution and laws of any State to the contrary notwithstanding. 3. That the judicial power of the Uni-

ted States shall extend to all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made under their authority," &c.

On the other hand, as a security of the rights and powers of the States in their individual capacities, against an undue preponderance of the powers granted to the Government over them in their united capacity, the Constitution has relied on, 1. The responsibility of the Senators and Representatives in the Legislature of the United States to the Legislatures and people of the States. 2. The responsibility of the President to the people of the United States; and, 3. The liability of the Executive and Judicial functionaries of the United States to impeachment by the Representatives of the people of the States in one branch of the Legislature of the United States, and trial by the Representatives of the States in the other branch; the State functionaries, legislative, executive, and judiciary, being, at the same time, in their appointment and responsibility, altogether independent of the agency or authority of the United States.

How far this structure of the Government of the United States be adequate and safe for its objects, time alone can absolutely determine. Experience seems to have shown, that whatever may grow out of future stages of our national career, there is as yet a sufficient control in the popular will over the Executive and Legislative departments of the Government. When the alien and sedition laws were passed in contravention to the opinions and feelings of the community, the first elections that ensued put an end to them. And whatever may have been the character of other acts in the judgment of many of us, it is but true that they have generally accorded with the views of a majority of the States and of the people. At the present day it seems well understood, that the laws which have created most dissatisfaction have had a like sanction without doors; and that, whether continued, varied, or repealed, a like proof will be given of the sympathy and responsibility of the representative body to the constituent body. Indeed, the great complaint now is, not against the want of this sympathy and responsibility,

but against the results of them in the legislative policy of the nation.

With respect to the judicial power of the United States, and the authority of the Supreme Court, in relation to the boundary of jurisdiction between the Federal and the State governments, I may be permitted to refer to the thirty-ninth number of the "Federalist"\* for the light in which the subject was regarded by its writer at the period when the Constitution was depending, and it is believed that the same was the prevailing view then taken of it; that the same view has continued to prevail; and that it does so at this time, notwithstanding the eminent exceptions to it.

But it is perfectly consistent with the concession of this power to the Supreme Court, in cases falling within the course of its functions, to maintain that the power has not always been rightly exercised. To say nothing of the period, happily a short one, when judges in their seats did not abstain from intemperate and party harangues, equally at variance with their duty and their dignity, there have been occasional decisions from the bench which have incurred serious and extensive disapprobation. Still it would seem that, with but few exceptions, the course of the judiciary has been hitherto sustained by the predominant sense of the nation.

Those who have denied or doubted the supremacy of the judicial power of the United States, and denounce at the same time nullifying power in a State, seem not to have sufficiently adverted to the utter inefficiency of a supremacy in a law of the land,

\* No. 39. It is true that, in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide is to be established under the General Government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution; and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword and a dissolution of the compact; and that it ought to be established under the general, rather than under the local governments, or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated.



without a supremacy in the exposition and execution of the law; nor to the destruction of all equipoise between the Federal Government and the State governments, if, while the functionaries of the Federal Government are directly or indirectly elected by and responsible to the States, and the functionaries of the States are in their appointments and responsibility wholly independent of the United States, no constitutional control of any sort belonged to the United States over the States. Under such an organization, it is evident that it would be in the power of the States individually to pass unauthorized laws, and to carry them into complete effect, anything in the Constitution and laws of the United States to the contrary notwithstanding. This would be a nullifying power in its plenary character; and whether it had its final effect through the Legislative, Executive, or Judiciary organ of the State, would be equally fatal to the constituted relation between the two Governments.

Should the provisions of the Constitution, as here reviewed, be found not to secure the Government and rights of the States against usurpations and abuses on the part of the United States, the final resort within the purview of the Constitution lies in an amendment of the Constitution, according to a process applicable by the States.

And in the event of a failure of every constitutional resort, and an accumulation of usurpations and abuses rendering passive obedience and non-resistance a greater evil than resistance and revolution, there can remain but one resort, the last of all, an appeal from the cancelled obligations of the constitutional compact to original rights and the law of self-preservation. This is the "ultima ratio" under all Governments, whether consolidated, confederated, or a compound of both; and it cannot be doubted that a single member of the Union, in the extremity supposed, but in that only, would have a right, as an extra and ultra constitutional right, to make the appeal.

This brings us to the expedient lately advanced, which claims for a single State a right to appeal against an exercise of power by the Government of the United States decided by the State to be unconstitutional, to the parties of the constitutional com-

pact; the decision of the State to have the effect of nullifying the act of the Government of the United States, unless the decision of the State be reversed by three-fourths of the parties.

The distinguished names and high authorities which appear to have asserted and given a practical scope to this doctrine, entitle it to a respect which it might be difficult otherwise to feel for it.

If the doctrine were to be understood as requiring the three-fourths of the States to sustain, instead of that proportion to reverse, the decision of the appealing State, the decision to be without effect during the appeal, it would be sufficient to remark, that this extra constitutional course might well give way to that marked out by the Constitution, which authorizes two-thirds of the States to institute, and three-fourths to effectuate, an amendment of the Constitution, establishing a permanent rule of the highest authority, in place of an irregular precedent of construction only.

But it is understood that the nullifying doctrine imports that the decision of the State is to be presumed valid, and that it overrules the law of the United States unless overruled by three-fourths of the States.

Can more be necessary to demonstrate the inadmissibility of such a doctrine, than that it puts it in the power of the smallest fraction over one-fourth of the United States—that is, of seven States out of twenty-four—to give the law and even the Constitution to seventeen States, each of the seventeen having, as parties to the Constitution, an equal right with each of the seven to expound it and to insist on the exposition? That the seven might, in particular instances, be right, and the seventeen wrong, is more than possible. But to establish a position and permanent rule giving such a power to such a minority over such a majority, would overturn the first principle of free Government, and in practice necessarily overturn the Government itself.

It is to be recollected that the Constitution was proposed to the people of the States as a *whole*, and unanimously adopted by the States as a *whole*, it being a part of the Constitution that

not less than three-fourths of the States should be competent to make any alteration in what had been unanimously agreed to. So great is the caution on this point, that in two cases when peculiar interests were at stake, a proportion even of three-fourths is distrusted, and unanimity required to make an alteration.

When the Constitution was adopted as a whole, it is certain that there were many parts which, if separately proposed, would have been promptly rejected. It is far from impossible that every part of the Constitution might be rejected by a majority, and yet, taken together as a whole, be unanimously accepted. Free constitutions will rarely, if ever, be formed without reciprocal concessions; without articles conditioned on and balancing each other. Is there a constitution of a single State out of the twenty-four that would bear the experiment of having its component parts submitted to the people and separately decided on?

What the fate of the Constitution of the United States would be, if a small proportion of States could expunge parts of it particularly valued by a large majority, can have but one answer.

The difficulty is not removed by limiting the doctrine to cases of construction. How many cases of that sort, involving cardinal provisions of the Constitution, have occurred? How many now exist? How many may hereafter spring up? How many might be ingeniously created, if entitled to the privilege of a decision in the mode proposed?

Is it certain that the principle of that mode would not reach farther than is contemplated? If a single State can of right require three-fourths of its co-States to overrule its exposition of the Constitution, because that proportion is authorized to amend it, would the plea be less plausible that, as the Constitution was unanimously established, it ought to be unanimously expounded?

The reply to all such suggestions seems to be unavoidable and irresistible: that the Constitution is a compact; that its text is to be expounded according to the provision for expound-

ing it, making a part of the compact; and that none of the parties can rightfully renounce the expounding provision more than any other part. When such a right accrues, as it may accrue, it must grow out of abuses of the compact releasing the sufferers from their fealty to it.

In favour of the nullifying claim for the States individually, it appears, as you observe, that the proceedings of the Legislature of Virginia in 1798 and 1799 against the alien and sedition acts are much dwelt upon.

It may often happen, as experience proves, that erroneous constructions, not anticipated, may not be sufficiently guarded against in the language used; and it is due to the distinguished individuals who have misconceived the intention of those proceedings to suppose that the meaning of the Legislature, though well comprehended at the time, may not now be obvious to those unacquainted with the contemporary indications and impressions.

But it is believed that by keeping in view the distinction between the governments of the States, and the States in the sense in which they were parties to the Constitution; between the rights of the parties, in their concurrent and in their individual capacities; between the several modes and objects of interposition against the abuses of power, and especially between interpositions within the purview of the Constitution, and interpositions appealing from the Constitution to the rights of nature, paramount to all constitutions,—with these distinctions kept in view, and an attention, always of explanatory use, to the views and arguments which were combated, a confidence is felt that the resolutions of Virginia, as vindicated in the report on them, will be found entitled to an exposition, showing a consistency in their parts and an inconsistency of the whole with the doctrine under consideration.

That the Legislature could not have intended to sanction such a doctrine, is to be inferred from the debates in the House of Delegates, and from the address of the two Houses to their constituents on the subject of the resolutions. The tenor of the debates, which were ably conducted, and are understood to

have been revised for the press by most, if not all, of the speakers, discloses no reference whatever to a constitutional right in an individual State to arrest by force the operation of a law of the United States. Concert among the States for redress against the alien and sedition laws, as acts of usurped power, was a leading sentiment; and the attainment of a concert the immediate object of the course adopted by the Legislature; which was that of inviting the other States "to *concur* in declaring the acts to be unconstitutional, and to *co-operate* by the necessary and proper measures in maintaining unimpaired the authorities, rights, and liberties reserved to the States respectively and to the people."\* That by the necessary and proper measures to be *concurrently* and *co-operatively* taken, were meant measures known to the Constitution, particularly the ordinary control of the people and Legislatures of the States over the Government of the United States, cannot be doubted; and the interposition of this control, as the event showed, was equal to the occasion.

It is worthy of remark, and explanatory of the intentions of the Legislature, that the words "not law, but utterly null, void, and of no force or effect," which had followed, in one of the resolutions, the word "unconstitutional," were struck out by common consent. Though the words were, in fact, but synonymous with "unconstitutional," yet, to guard against a misunderstanding of this phrase as more than declaratory of opinion, the word "unconstitutional" alone was retained, as not liable to that danger.

The published address of the Legislature to the people, their constituents, affords another conclusive evidence of its views. The address warns them against the encroaching spirit of the General Government; argues the unconstitutionality of the alien and sedition acts; points to other instances in which the constitutional limits had been overleaped; dwells upon the dangerous mode of deriving power by implications; and, in general, presses the necessity of watching over the consolidating tendency of

\* See the concluding resolution of 1798.

the federal policy. But nothing is said that can be understood to look to means of maintaining the rights of the States beyond the regular ones within the forms of the Constitution.

If any farther lights on the subject could be needed, a very strong one is reflected in the answers to the resolutions by the States which protested against them. The main objection to these, beyond a few general complaints of the inflammatory tendency of the resolutions, was directed against the assumed authority of a State Legislature to declare a law of the United States unconstitutional, which they pronounced an unwarrantable interference with the exclusive jurisdiction of the Supreme Court of the United States. Had the resolutions been regarded as avowing and maintaining a right in an individual State to arrest by force the execution of a law of the United States, it must be presumed that it would have been a conspicuous object of their denunciation.

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TO EDWARD EVERETT.

MONTPELLIER, Aug<sup>t</sup> 20, 1830.

DEAR SIR,—I have received yours of the 11th instant, and wish I could give the information it asks with the desired particularity and certainty.

I believe, though I may possibly be wrong, that no answers to the Virginia Resolutions of '98 were given by the States, other than those enumerated in the pamphlet you have. I have not the means of ascertaining the fact. If any instructions were given by the Legislature to the Senators in Congress beyond the transmission of the Resolutions, they must be found in the Journals of the proper year, which I do not possess. I have only a broken set which does not contain them. A complete set has latterly been collected and published, but no copy, as far as I know, is at present within my reach.

There is not, I am persuaded, the slightest ground for supposing that Mr. Jefferson departed from his purpose not to furnish Kentucky with a set of Resolutions for the year '99. It is

certain that he penned the Resolutions of '98, and, probably, in the terms in which they passed. It was in those of '99 that the word "nullification" appears.\*

Finding among my pamphlets a copy of the debates in the Virginia House of Delegates on the Resolutions of '98, and one of an address of the two Houses to their constituents on the occasion, I enclose them for your perusal; and I add another, though it is less likely to be new to you, the "Report of a Committee of the S. Carolina House of Representatives, Dec<sup>r</sup> 9, 1828," in which the nullifying doctrine is stated in the precise form in which it is now asserted. There was a protest by the minority in the Virginia Legislature of '98 against the Resolutions, but I have no copy. The matter of it may be inferred from the speeches in the Debates. I was not a member in that year, though the penman of the Resolutions, as now supposed.

Previous to the receipt of your letter above acknowledged, that of the 7th had come safe to hand. The use you wish to make of the copy of the letter to which it refers, has become particularly liable to an objection which lately supervened. A letter from my correspondent says that he is not satisfied with my views of the subject, and that he means to give me a fuller explanation of his own; intimating, at the same time, that I have not seized, in one instance, what was intended by him. These circumstances alone would render a public use of the copy in question indelicate at least. I must, therefore, undertake a letter to yourself, with such variations as will make it a letter *per se*; although the unsettled state in which my health has been left by a bilious attack during a late visit to our University unfits me not a little for executing the task in the manner that might be wished.

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TO THOMAS W. GILMER.

SEPT<sup>r</sup> 6, 1830.

D<sup>R</sup> SIR,—I received by the last mail yours of August 31. I concur with you entirely in the expediency of promoting, as

\* See Post, 109, 110.

much as possible, a sympathy between the incipient and the finishing establishments provided for public education; and in the particular expedient you suggest, of providing for a complete education at the public expense. Such a provision made a part of a bill for the "diffusion of knowledge" in the code prepared by Mr. Jefferson, Mr. Wythe, and Mr. Pendleton, between the years 1776 and 1779. The bill proposed to carry the selected youths through the several gradations of schools, from the lowest to the highest; and it deserves consideration, whether, instead of an immediate transition from the primary schools to the University, it would not be better to substitute a preparatory course at some intermediate seminary, chosen with the approbation of the parents or guardians. One of the recommendations of this benevolent provision in behalf of native genius is, as you observe, the nursery it would form for competent teachers in the primary schools. But it may be questionable whether a *compulsive* destination of them to that service would, in practice, answer expectation. The other prospects opened to their presumed talents and acquirements might make them reluctant, and therefore the less eligible agents.

As it is probable that the case of the primary schools will be among the objects taken up at the next session of the Legislature, I am glad to find you are turning your attention so particularly to it, and that the aid of the Faculty is so attainable. A satisfactory plan for primary schools is certainly a vital desideratum in our Republics, and is at the same time found to be a difficult one everywhere. It might be useful to consult, as far as there may be opportunities, the different modifications presented in the laws of different States. The New England, New York, and Pennsylvania examples may possibly afford useful hints. There has lately, I believe, been a plan discussed, if not adopted by the Legislature of Maryland, where the situation is more analogous than that of the more Northern States to the situation of Virginia. The most serious difficulty in all the Southern States results from the character of their population and the want of density in the free part of it. This I take to be the main cause of the little success of the experiment now on



foot with us. I hope that some improvements may be devised that will render it less inadequate to its object; and I should be proud of sharing in the merit; but my age, the unsettled state of my health, my limited acquaintance with the local circumstances to be accommodated, and my inexperience of the principles, dispositions, and views which prevail in the Legislative Body, unfit me for the flattering co-operation you would assign me. The task, I am persuaded, will be left in hands much better in all those respects.

I think, with you, also, that it will be useful as well as honorable for the University that it should be understood to take a warm interest in the primary schools, and that the judgment of those most immediately connected with it, and presumably most cognizant of the subject of education, accords with any particular plan for improving them. But, I submit for consideration, whether a direct proposition, volunteered from that quarter, would not be less eligible than such explanations and assurances on the subject as would be appropriate from the representatives of the district in the Legislative Councils. But on this point your knowledge of the temper and sensibilities prevailing in them make you a better judge than I am.

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TO EDWARD EVERETT.

SEPTEMBER 10, 1830.

D<sup>R</sup> SIR,—Since my letter, in which I expressed a belief that there was no ground for supposing that the Kentucky Resolutions of 1799, in which the term “nullification” appears, were drawn by Mr. Jefferson, I infer from a manuscript paper containing the term just noticed, that although he probably had no agency in the draft, nor even any knowledge of it at the time, yet that the term was borrowed from that source. It may not be safe, therefore, to rely on his to Mr. W. C. Nicholas, printed in his *Memoir and Correspondence*, as a proof that he had no connexion with, or responsibility for, the use of such a term on such an occasion. Still, I believe that he did not attach to it

the idea of a constitutional right in the sense of South Carolina, but that of a natural one in cases justly appealing to it.

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TO N. P. TRIST.

MONTPELLIER, Sept<sup>r</sup> 23d, 1830.

D<sup>R</sup> SIR,—Yours of the 21st was received yesterday. On the question of recalling your communication for the National Intelligencer I submit the following statement:

In a letter, lately noticed, from Mr. Jefferson, dated November 17, 1799, he "*incloses me a copy of the draught of the Kentucky Resolves,*" (a press copy of his own manuscript.) Not a word of explanation is mentioned. It was probably sent, and possibly at my request, in consequence of my being a member elect of the Virginia Legislature of 1799, which would have to vindicate its cotemporary Resolutions of '98. It is remarkable that the paper differs both from the Kentucky Resolutions of '98 and from those of '99. It agrees with the former, in the main, and must have been the pattern of the Resolutions of that year, but contains passages omitted in them, which employ the terms nullification and nullifying; and it differs in the quantity of matter from the Resolutions of '99, but agrees with them in a passage which employs that language, and would seem to have been the origin of it. I conjecture that the correspondent in Kentucky, Col. George Nicholas, probably might think it better to leave out particular parts of the draught than risk a misconstruction or misapplication of them; and that the paper might, notwithstanding, be within the reach and use of the Legislature of '99, and furnish the phraseology containing the term "nullification." Whether Mr. Jefferson had noted the difference between his draught and the Resolutions of '98 (he could not have seen those of '99, which passed Nov<sup>r</sup> 14,) does not appear. His files, particularly his correspondence with Kentucky, must throw light on the whole subject. This aspect of the case seems to favor a recall of the communication if practicable. Though it be true that Mr. Jefferson did not draught

the Resolutions of '99, yet a denial of it, simply, might imply more than would be consistent with a knowledge of what is here stated.

I find by a receipt from Donoho, the collector of G. & S., that \$12 will be due them on October 19 next, and inclose \$10, leaving the addition to be supplied by the little balance from Nicholls. But I am really ashamed to trouble you with such trifles.

I thank you for the essay on "Distress for rent in Virginia." I have not yet read it, and cannot say when I shall be able to do so, though I anticipate an analytic and accurate view of the subject, instructive to better lawyers than I am.

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TO MRS. MARGARET H. SMITH.

SEPTEMBER—, 1830.

I have received, my dear madam, the very friendly, and, I must add, very flattering letter, in which you wish from my own hand some reminiscence marking the early relations between Mr. Jefferson and myself, and involving some anecdote concerning him that may have a place in a manuscript volume you are preparing as a legacy for your son.

I was a stranger to Mr. Jefferson [till] the year 1776, when he took his seat in the first Legislature under the Constitution of Virginia, then newly formed; being at the time myself a member of that Body, and for the first time a member of any public Body. The acquaintance made with him on that occasion was very slight; the distance between our ages being considerable, and other distances much more so. During part of the time whilst he was Governor of the State, a service to which he was called not long after, I had a seat in the Council, associated with him. Our acquaintance then became intimate, and a friendship was formed which was for life, and which was never interrupted in the slightest degree for a single moment.

Among the occasions which made us immediate companions was the trip in 1791 to the borders of Canada, to which you refer. According to an understanding between us, the obser-

vations in our way through the northern parts of New York and the newly settled vicinity of Vermont, to be noted by him, were of a miscellaneous cast, and part at least noted on the birch bark of which you speak. The few observations devolving on me related chiefly to agricultural and economic objects. On recurring to them, I find the only interest they contain is in the comparison they may afford of the infant State with the present growth of the settlements through which we passed; and I am sorry that my memory does not suggest any particular anecdote, to which yours must have alluded.

The scenes and subjects which had occurred during the session of Congress which had just terminated at our departure from New York, entered of course into our itinerary conversations. In one of those scenes, a dinner party, at which both of us were present, I recollect now, though not perhaps adverted to then, an incident, which, as it is characteristic of Mr. Jefferson, I will substitute for a more exact compliance with your request.

The new Constitution of the U. States having been just put into operation, forms of Government were the uppermost topics everywhere, more especially at a convivial board; and the question being started as to the best mode of providing the Executive chief, it was, among other opinions, boldly advanced that a hereditary designation was preferable to any elective process that could be devised. At the close of an eloquent effusion against the agitations and animosities of a popular choice, and in behalf of birth, as, on the whole, affording even a better chance for a suitable head of the Government, Mr. Jefferson, with a smile, remarked that he had heard of a University somewhere in which the Professorship of Mathematics was hereditary. The reply, received with acclamations, was a *coup de grace* to the anti-republican heretic.

Whilst your affection is preparing from other sources an instructive bequest for your son, I must be allowed to congratulate him on the precious inheritance he will enjoy in the examples on which his filial feelings will most delight to dwell.

Mrs. Madison failed to obtain the two prints she intended

for you, but will renew her efforts to fulfil her promise. The only drawing of our house is that by D<sup>r</sup> Thornton, and is without the wings now making part of it.

Be pleased, my dear madam, to express to Mr. Smith the particular esteem I have ever felt for the lights of his mind and the purity of his principles, and to accept for him and yourself my cordial salutations. Mrs. M., who has lately been seriously ill, but is now recovering, desires me to assure you of her affectionate friendship, and joins me in wishing for the entire circle of your family every happiness.

Fearing that the delay may do me injustice, I must in explanation remark that your letter found me in a bad state of health, and that before I could avail myself of its improvement to dispose of accumulated arrears of pressing sorts, the illness of Mrs. M. drew off my attention from every other consideration. I ought, perhaps, to have another fear, that of being charged with affectation in the microscopic hand in which I write. But the explanation is easy: the fingers, stiffened by age, make smaller strokes, as the feet from the same cause take shorter steps. I hope you will live to verify my sincerity.

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TO WILLIAM WIRT.

MONTPELLIER, Oct<sup>r</sup> 1, 1830.

DEAR SIR,—I have received the copy of your “address” to the two societies of Rutgers College, and that of your “opinion” on the case of the Cherokees, for both of which I return my thanks.

The address chose, certainly, a good subject, and made good use of it. And the views you have presented of the question between Georgia and the Cherokees are a sufficient pledge, if there were no others, to those sons of the forest, now the pupils of civilization, that justice will be done to their cause, whether the forum for its final hearing be a Federal court, the American public, or the civilized world.

I cannot but regret some of the argumentative appeals which

have been made to the minds of the Indians. What, they may say, have we to do with the Federal Constitution or the relations formed by it between the Union and its members? We were no parties to the compact, and cannot be affected by it. And as to the charter of the King of England, is it not as much a mockery to them as the Bull of a Pope, dividing the world of discovery between the Spaniards and the Portuguese, was held to be by the nations who disowned and disdained his authority?

The plea, with the best aspect, for dispossessing Indians of the lands on which they have lived, is, that by not incorporating their labour, and associating fixed improvements with the soil, they have not appropriated it to themselves, nor made the destined use of its capacity for increasing the number and the enjoyments of the human race. But this plea, whatever original force be allowed to it, is here repelled by the fact that the Indians are making the very use of that capacity which the plea requires, enforced by the other fact, that the claimants themselves, by their counsels, their authorized and their effective aids, have promoted that happy change in the condition of the Indians which is now turned against them.

The most difficult problem is, that of reconciling their interests with their rights. It is so evident that they can never be tranquil or happy within the bounds of a State, either in a separate or subject character, that a removal to another home, if a good one can be found, may well be the wish of their best friends. But the removal ought to be made voluntary by adequate inducements, present and prospective; and no means ought to be grudged which such a measure may require.

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TO JARED SPARKS.

OCTOBER 5th, 1830.

DEAR SIR,—Your letter of July 16 was duly received. The acknowledgment of it has awaited your return from your tour to Quebec, which, I presume, has by this time taken place.

Inclosed is the exact copy you wish of the draught of an address prepared for President Washington, at his request, in the year 1792, when he meditated a retirement at the expiration of his first term. You will observe that (with a few verbal exceptions) it differs from the extract enclosed in your letter only in the *provisional* paragraphs, which had become inapplicable to the period and plan of his communication to Col. Hamilton.

The N<sup>o</sup> of the North American Review for January last being, I find, a duplicate, I return it. The pages to which you refer throw a valuable light on a transaction which was taking historical root, in a shape unjust as well as erroneous. Did you ever notice the "Life of Mr. Jay" in Delaplaine's biographical works? The materials of it were evidently derived from the papers, if not from the pen of Mr. Jay, and are marked by the misconceptions into which he had fallen. It may be incidentally noted as one of the confirmations of the fallibility of Hamilton's memory in allotting the N<sup>os</sup> in the "Federalist" to the respective writers, that one of them, N<sup>o</sup> 64, which appears, by Delaplaine, to have been written by Mr. Jay, as it certainly was, is put on the list of Mr. Hamilton, as was not less certainly the case with a number of others written by another hand.

Previous to the receipt of your letter I had received one from Mr. Monroe, to whom I had mentioned the liberty I had taken with Rayneval's memoir. I inclose the part of his letter answering that part of mine.

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TO EDWARD EVERETT.

MONTPELLIER, Oct 7, 1830.

DEAR SIR,—I have received your favor of the 28th ult., with a copy of the chapter from the North American Review for this month. I have read the review of the Debates with great pleasure. It must diffuse light on the subject of them everywhere; and would make an overwhelming impression where it is most needed if the delirious excitement were not, it would seem, an overmatch for reason and truth.

The only inaccuracies observable in my printed letter are a few slight ones, chargeable, probably, on the transcript from the original draught. The principal one is an omission in the last paragraph of page 84, of the words "with these distinctions in view and" before the words "with an attention always." The meaning is not altered by the omission, but without such a break in the sentence a bungling, if not obscure, aspect is given to it.

You will excuse me for suggesting that you have erred in stating that I wrote the greatest part of the "Federalist;" a greater number of the papers were written by Col. Hamilton, as will be seen by the correct distribution of them in the Washington edition, by Gideon. A very few of the numbers were from the third hand.

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TO M. VAN BUREN.

OCTOBER 9, 1830.

DEAR SIR,—I received your letter of July 30 in due time, but have taken advantage of the permitted delay in answering it. Although I have again turned in my thoughts the subjects of your preceding letter, on which "any farther remarks from me would be acceptable," I do not find that I can add anything material to what is said in my letter of July 5, or in former ones. Particular cases of local improvements or establishments having immediate relation to external commerce and navigation will continue to produce questions of difficulty, either constitutional or as to utility or impartiality, which can only be decided according to their respective merits. No general rule, founded on precise definitions, is, perhaps, possible; certainly none that relates to such cases as those of light-houses, which must depend on the evidence before the competent authority. In procuring that evidence, it will, of course, be incumbent on that authority to employ means and precautions most appropriate.

With regard to the veto of 1817, I wish it to be understood that I have no particular solicitude; nor can the President be



under any obligation to notice the subject, if his construction of the language of the document be unchanged. My notice of it to you, when acknowledging the receipt of the message you politely enclosed to me, was necessary to guard my consistency against an inference from my silence.

With regret that I cannot make you a more important communication, I renew the assurances of my great esteem and my cordial salutations.

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TO HENRY CLAY.

MONTPELLIER, October 9, 1830.

DEAR SIR,—I have just been favoured with yours of the 22d ult., inclosing a copy of your address delivered at Cincinnati.

Without concurring in everything that is said, I feel what is due to the ability and eloquence which distinguish the whole. The rescue of the Resolutions of Kentucky in '98-'99, from the misconstructions of them, was very *apropos*; that authority being particularly relied on as an *agis* to the nullifying doctrine which, notwithstanding its hideous aspect and fatal tendency, has captivated so many honest minds. In a late letter to one of my correspondents, I was led to the like task of vindicating the proceedings of Virginia in those years. I would gladly send you a copy if I had a suitable one. But as the letter is appended to the North American Review for this month, you will probably have an early opportunity of seeing it.

With my thanks, sir, for your obliging communication, I beg you to accept assurances of my great and cordial esteem, in which Mrs. Madison joins me, as I do her, in the best regards which she offers to Mrs. Clay.

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TO WILLIAM WIRT.

OCTOBER 12, 1830.

D<sup>R</sup> SIR,—I have received yours of the 5th. The explanation of your motives in not declining the cause of the Cherokees was

not needed. Of their purity it was impossible for me to entertain a doubt. From the aspect of the public proceedings towards the Indians within the bounds of the States, there is much danger that the character of our country will suffer, and I do not know that any formal discussion of the case can make it worse, whilst, by bringing into full view the difficulties and alternatives which beset it, those proceedings may possibly be mitigated in the eyes of the world.

The circumstance seeming most to impair the national character of the Indians, is the admitted restriction on the sale of their lands. May not the restriction be regarded as taking effect against and through the purchasers? It is plainly rightful against such as are subject to the Government imposing the restriction, and made so against the subjects of all the powers connected with this Continent, by the common understanding among them, that the subjects of each should in that respect be under the control of the others. With respect to individuals, if such there be, who belong to powers not parties to that sanction, or who are in a state of expatriation, the restriction must be resolved into an interposition, *benevolent* as well as *provident*, against frauds on the ignorance or other infirmities characterizing the savage modes of life.

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TO C. J. INGERSOLL, CLEM. C. BIDDLE, RICH. PETERS, COMMITTEE  
OF THE PENN SOCIETY.

J. Madison has received the polite invitation of the "Penn Society" to their anniversary dinner on the 25th instant. Being under the necessity of denying himself the pleasure of accepting it, he complies with the requested alternative by offering a toast: "The immortal memory of Penn, who subdued the ferocity of savages by his virtues, and enlightened the civilized world by his institutions."

MONTPELLIER, Oct. 13, 1830.

TO ———.

MONTPELLIER, November 8, 1830.

I received, my dear sir, by the last mail, yours of the 4th instant.

I cannot but think that you have not fully understood Mr. Stevenson, or, perhaps, that he has not fully explained himself, on the subject of the judicial power of the United States. Limited as this may be in criminal cases, he would himself, I presume, not deny it in some of those you mention, and for some of your reasons in favour of it. The most delicate part of the Federal Constitution, and that on which candid commentators are least unanimous, is the relation between the Federal and State courts, and the line dividing the cases within their respective jurisdictions. It was not my purpose to discuss and discriminate these cases, but to show the necessity of a power to decide on conflicting claims; and that this must belong to a forum under the general authority, it being presumed that this would refuse a cognizance of cases not within its sphere; and that a usurpation of it, like other usurpations by that or by other departments of the Government, would be open for whatever remedies, regular or extreme, the occasions might call for. I was not unaware of the sensitiveness of very many and the errors of not a few in this quarter, on this particular subject, but supposed that my view of it was guarded against necessary offence to either class. It would seem, from several notices of it in the newspapers, that it has not been so fortunate. The writers, as yet, are more disposed to charge it with a departure from the report of 1799 than to investigate its unconstitutionality, and, in some instances, without a correct exposition of either the report or the letter.

TO ANDREW STEVENSON.

MONTPELLIER, NOV. 27, 1830.

MY DEAR SIR,—I have received your letter of the 20th, with a just sensibility of the kind feelings it expresses, and, I hope you will not doubt, with an unfeigned reciprocity of them. The more of frankness you put into observations on the subjects which entered into our late conversations, the more acceptable as well as valuable they will be, that being a quality without which no interchange of thoughts can be profitable to either party, and with which it may be so to one or the other, and possibly to both.

I enclose the letter which particularly complies with the object of yours. The view it takes of the origin and innocence of the phrase “common defence and general welfare” is what was taken in the *Federalist* and in the report of 1799, and, I believe, wherever else I may have had occasion to speak of the clause containing the terms.

I have omitted a vindication of the true punctuation of the clause,\* because I now take for certain that the original document, signed by the members of the Convention, is in the Department of State, and that it testifies for itself against the erroneous editions of the text in that particular. Should it appear that the document is not there, or that the error had slipped into it, the materials in my hands to which you refer will amount, I think, to a proof outweighing even that authority. It would seem a little strange, if the original Constitution be in the Department of State, that it has hitherto escaped notice. But it is to be explained, I presume, by the fact that it was not among the papers relating to the Constitution left with General Washington, and there deposited by him; but, having been sent from the Convention to the old Congress, lay among the mass of papers handed over on the expiration of the latter to that Department. On your arrival at Washington, you will be

\* This is also inserted with the letter. The letter and the paper referred to are those which immediately follow—both addressed to Mr. Stevenson.—*Ed.*

able personally, or by a friend having more leisure, to satisfy yourself on these points.

It appears, as you foretold, that my letter in the Northern Review has encountered newspaper criticism; but as yet, little, if at all, I believe, on the ground looked for. In some instances both the letter and the report of 1799 are misunderstood, and in none that I have seen has the distinction been properly kept in view between the authority of a higher tribunal to decide on the extent of its own jurisdiction, compared with that of other tribunals, and its claim of jurisdiction in any particular case or description of cases as within that extent; it being presumed that, if not within the extent of its jurisdiction, it will be pronounced *coram non judice*; and it being understood that, if not so, it will be a case of usurpation, and to be treated as such.

Mrs. Madison charges me with her most affectionate regards to Mrs. Stevenson, in which I beg leave to unite with her, as she does with me, in cordial salutations and all good wishes for yourself.

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TO ANDREW STEVENSON.

MONTPELLIER, Nov. 27, 1830.

DEAR SIR,—I have received your very friendly favor of the 20th instant, referring to a conversation when I had lately the pleasure of a visit from you, in which you mentioned your belief that the terms “common defence and general welfare,” in the eighth section of the first article of the Constitution of the United States, were still regarded by some as conveying to Congress a substantive and indefinite power, and in which I communicated my views of the introduction and occasion of the terms, as precluding that comment on them; and you express a wish that I would repeat those views in the answer to your letter.

However disinclined to the discussion of such topics, at a time when it is so difficult to separate, in the minds of many, questions purely constitutional from the party polemics of the day,

I yield to the precedents which you think I have imposed on myself, and to the consideration that, without relying on my personal recollections, which your partiality over-values, I shall derive my construction of the passage in question from sources of information and evidence known or accessible to all who feel the importance of the subject, and are disposed to give it a patient examination.

In tracing the history and determining the import of the terms "common defence and general welfare," as found in the text of the Constitution, the following lights are furnished by the printed journal of the Convention which formed it:

The terms appear in the general propositions offered May 29, as a basis for the incipient deliberations, the first of which "Resolved, that the articles of the Confederation ought to be so corrected and enlarged as to accomplish the objects proposed by their institution, namely, common defence, security of liberty, and general welfare." On the day following, the proposition was exchanged for, "Resolved, that a Union of the States merely Federal will not accomplish the objects proposed by the Articles of the Confederation, namely, common defence, security of liberty, and general welfare."

The inference from the use here made of the terms, and from the proceedings on the subsequent propositions, is, that although common defence and general welfare were objects of the Confederation, they were limited objects, which ought to be enlarged by an enlargement of the particular powers to which they were limited, and to be accomplished by a change in the structure of the Union from a form merely Federal to one partly national; and as these general terms are prefixed in the like relation to the several legislative powers in the new charter as they were in the old, they must be understood to be under like limitations in the new as in the old.

In the course of the proceedings between the 30th of May and the 6th of August, the terms common defence and general welfare, as well as other equivalent terms, must have been dropped; for they do not appear in the draught of a Constitution reported on that day by a committee appointed to prepare one in detail,

the clause in which those terms were afterward inserted being in the draught simply, "The Legislature of the United States shall have power to lay and collect taxes, duties, imposts, and excises."

The manner in which the terms became transplanted from the old into the new system of Government, is explained by a course somewhat adventitiously given to the proceedings of the Convention.

On the 18th of August, among other propositions referred to the committee which had reported the draught, was one "to secure the payment of the public debt;" and

On the same day was appointed a committee of eleven members, (one from each State,) "to consider the necessity and expediency of the debts of the several States being assumed by the United States."

On the 21st of August, this last committee reported a clause in the words following: "The Legislature of the United States shall have power to fulfil the engagements which have been entered into by Congress, and to discharge as well the debts of the United States as the debts incurred by the several States during the late war, for the common defence and general welfare;" conforming herein to the eighth of the Articles of Confederation, the language of which is, that "all charges of war, and all other expenses that shall be incurred for the common defence and general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common Treasury," &c.

On the 22d of August, the committee of five reported, among other additions to the clause, "giving power to lay and collect taxes, imposts, and excises," a clause in the words following, "for payment of the debts and necessary expenses," with a proviso qualifying the duration of revenue laws.

This report being taken up, it was moved, as an amendment, that the clause should read, "The Legislature shall fulfil the engagements and discharge the debts of the United States."

It was then moved to strike out "discharge the debts," and insert, "liquidate the claims;" which being rejected, the amend-

ment was agreed to as proposed, viz: "The Legislature *shall* fulfil the engagements and discharge the debts of the United States."

On the 23d of August the clause was made to read, "The Legislature shall fulfil the engagements and discharge the debts of the United States, and shall have the power to lay and collect taxes, duties, imposts, and excises," the two powers relating to taxes and debts being merely transposed.

On the 25th of August the clause was again altered so as to read, "All debts contracted and engagements entered into by, or under the authority of Congress, [the Revolutionary Congress,] shall be as valid under this Constitution as under the Confederation."

This amendment was followed by a proposition, referring to the powers to lay and collect taxes, &c., and to discharge the debts, [*old debts,*] to add, "for payment of *said* debts, and for defraying the *expenses that shall be incurred for the common defence and general welfare.*" The proposition was disagreed to, one State only voting for it.

September 4, the committee of eleven reported the following modification: "The Legislature shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare;" thus retaining the terms of the Articles of Confederation, and covering, by the general term "debts," those of the old Congress.

A special provision in this mode could not have been necessary for the debts of the new Congress; for a power to provide money, and a power to perform certain acts, of which money is the ordinary and appropriate means, must of course carry with them a power to pay the expense of performing the acts. Nor was any special provision for debts proposed till the case of the revolutionary debts was brought into view; and it is a fair presumption, from the course of the varied propositions which have been noticed, that but for the old debts, and their association with the terms "common defence and general welfare," the clause would have remained as reported in the first draught of a Constitution, expressing generally, "a power in



Congress to lay and collect taxes, duties, imposts, and excises," without any addition of the phrase, "to provide for the common defence and general welfare." With this addition, indeed, the language of the clause being in conformity with that of the clause in the Articles of Confederation, it would be qualified, as in those articles, by the specification of powers subjoined to it. But there is sufficient reason to suppose that the terms in question would not have been introduced but for the introduction of the old debts, with which they happened to stand in a familiar though inoperative relation. Thus introduced, however, they passed undisturbed through the subsequent stages of the Constitution.

If it be asked why the terms "common defence and general welfare," if not meant to convey the comprehensive power which, taken literally, they express, were not qualified and explained by some reference to the particular powers subjoined, the answer is at hand, that although it might easily have been done, and experience shows it might be well if it had been done, yet the omission is accounted for by an inattention to the phraseology, occasioned doubtless by its identity with the harmless character attached to it in the instrument from which it was borrowed.

But may it not be asked with infinitely more propriety, and without the possibility of a satisfactory answer, why, if the terms were meant to embrace not only all the powers particularly expressed, but the indefinite power which has been claimed under them, the intention was not so declared? why, on that supposition, so much critical labour was employed in enumerating the particular powers, and in defining and limiting their extent?

The variations and vicissitudes in the modification of the clause in which the terms "common defence and general welfare" appear, are remarkable, and to be no otherwise explained than by differences of opinion concerning the necessity or the form of a constitutional provision for the debts of the Revolution; some of the members apprehending improper claims for losses by depreciated emissions of bills of credit; others an eva-

sion of proper claims, if not positively brought within the authorized functions of the new Government; and others again considering the past debts of the United States as sufficiently secured by the principle that no change in the Government could change the obligations of the nation. Besides the indications in the journal, the history of the period sanctions this explanation.

But it is to be emphatically remarked, that in the multitude of motions, propositions, and amendments, there is not a single one having reference to the terms "common defence and general welfare," unless we were so to understand the proposition containing them made on August 25, which was disagreed to by all the States except one.

The obvious conclusion to which we are brought is, that these terms, copied from the Articles of Confederation, were regarded in the new as in the old instrument, merely as general terms, explained and limited by the subjoined specifications, and therefore requiring no critical attention or studied precaution.

If the *practice* of the revolutionary Congress be pleaded in opposition to this view of the case, the plea is met by the notoriety that on several accounts the practice of that body is not the expositor of the "Articles of Confederation." These articles were not in force till they were finally ratified by Maryland in 1781. Prior to that event, the power of Congress was measured by the exigencies of the war, and derived its sanction from the acquiescence of the States. After that event, habit and a continued expediency, amounting often to a real or apparent necessity, prolonged the exercise of an undefined authority; which was the more readily overlooked, as the members of the body held their seats during pleasure; as its acts, particularly after the failure of the bills of credit, depended for their efficacy on the will of the States, and as its general impotency became manifest. Examples of departure from the prescribed rule are too well known to require proof. The case of the old Bank of North America might be cited as a memorable one. The incorporating ordinance grew out of the inferred necessity of such an institution to carry on the war, by aiding the finances,

which were starving under the neglect or inability of the States to furnish their assessed quotas. Congress was at the time so much aware of the deficient authority, that they recommended it to the State Legislatures to pass laws giving due effect to the ordinance, which was done by Pennsylvania and several other States. In a little time, however, so much dissatisfaction arose in Pennsylvania, where the bank was located, that it was proposed to repeal the law of the State in support of it. This brought on attempts to vindicate the adequacy of the power of Congress to incorporate such an institution. Mr. Wilson, justly distinguished for his intellectual powers, being deeply impressed with the importance of a bank at such a crisis, published a small pamphlet, entitled "Considerations on the Bank of North America," in which he endeavoured to derive the power from the *nature* of the *union* in which the colonies were declared and became independent States; and also from the tenor of the "Articles of Confederation" themselves. But what is particularly worthy of notice is, that with all his anxious search in those articles for such a power, he never glanced at the terms "common defence and general welfare" as a source of it. He rather chose to rest the claim on a recital in the text, "that, for the more convenient management of the *general* interests of the *United* States, delegates shall be annually appointed to meet in Congress, which, he said, implied that the *United* States had *general* rights, *general* powers, and *general* obligations, not derived from *any* particular State, nor from *all* the particular States taken separately, but *resulting* from the *union* of the whole," these general powers not being controlled by the article declaring that each State retained *all* powers not granted by the articles, because "the *individual* States *never* possessed and could not retain a *general* power over the others."

The authority and argument here resorted to, if proving the ingenuity and patriotic anxiety of the author on one hand, show sufficiently on the other that the terms common defence and general welfare could not, according to the known acceptation of them, avail his object.

That the terms in question were not suspected in the Convention which formed the Constitution of any such meaning as has been constructively applied to them, may be pronounced with entire confidence; for it exceeds the possibility of belief, that the known advocates in the Convention for a jealous grant and cautious definition of Federal powers should have silently permitted the introduction of words or phrases in a sense rendering fruitless the restrictions and definitions elaborated by them.

Consider for a moment the immeasurable difference between the Constitution limited in its powers to the enumerated objects, and expounded as it would be by the import claimed for the phraseology in question. The difference is equivalent to two Constitutions, of characters essentially contrasted with each other—the one possessing powers confined to certain specified cases, the other extended to all cases whatsoever; for what is the case that would not be embraced by a general power to raise money, a power to provide for the general welfare, and a power to pass all laws necessary and proper to carry these powers into execution; all such provisions and laws superseding, at the same time, all local laws and constitutions at variance with them? Can less be said, with the evidence before us furnished by the journal of the Convention itself, than that it is impossible that such a Constitution as the latter would have been recommended to the States by all the members of that body whose names were subscribed to the instrument?

Passing from this view of the sense in which the terms common defence and general welfare were used by the framers of the Constitution, let us look for that in which they must have been understood by the Conventions, or, rather, by the people, who, through their Conventions, accepted and ratified it. And here the evidence is, if possible, still more irresistible, that the terms could not have been regarded as giving a scope to Federal legislation infinitely more objectionable than any of the specified powers which produced such strenuous opposition, and calls for amendments which might be safeguards against the dangers apprehended from them.

Without recurring to the published debates of those Conventions, which, as far as they can be relied on for accuracy, would, it is believed, not impair the evidence furnished by their recorded proceedings, it will suffice to consult the list of amendments proposed by such of the Conventions as considered the powers granted to the new Government too extensive or not safely defined.

Besides the restrictive and explanatory amendments to the text of the Constitution, it may be observed, that a long list was premised, under the name and in the nature of "declarations of rights;" all of them indicating a jealousy of the Federal powers, and an anxiety to multiply securities against a constructive enlargement of them. But the appeal is more particularly made to the number and nature of the amendments proposed to be made specific and integral parts of the constitutional text.

No less than seven States, it appears, concurred in adding to their ratifications a series of amendments which they deemed requisite. Of these amendments, *nine* were proposed by the Convention of Massachusetts, *five* by that of South Carolina, *twelve* by that of New Hampshire, *twenty* by that of Virginia, *thirty-three* by that of New York, *twenty-six* by that of North Carolina, *twenty-one* by that of Rhode Island.

Here are a majority of the States proposing amendments, in one instance thirty-three by a single State; all of them intended to circumscribe the powers granted to the General Government, by explanations, restrictions, or prohibitions, without including a single proposition from a single State referring to the terms common defence and general welfare; which, if understood to convey the asserted power, could not have failed to be the power most strenuously aimed at, because evidently more alarming in its range than all the powers objected to put together; and that the terms should have passed altogether unnoticed by the many eyes which saw danger in terms and phrases employed in some of the most minute and limited of the enumerated powers, must be regarded as a demonstration that it was taken for granted that the terms were harmless, because explained and limited, as

in the "Articles of Confederation," by the enumerated powers which followed them.

A like demonstration that these terms were not understood in any sense that could invest Congress with powers not otherwise bestowed by the constitutional charter, may be found in what passed in the first session of the first Congress, when the subject of amendments was taken up, with the conciliatory view of freeing the Constitution from objections which had been made to the extent of its powers, or to the unguarded terms employed in describing them. Not only were the terms "common defence and general welfare" unnoticed in the long list of amendments brought forward in the outset, but the journals of Congress show that, in the progress of the discussions, not a single proposition was made in either branch of the Legislature which referred to the phrase as admitting a constructive enlargement of the granted powers, and requiring an amendment guarding against it. Such a forbearance and silence on such an occasion, and among so many members who belonged to the part of the nation which called for explanatory and restrictive amendments, and who had been elected as known advocates for them, cannot be accounted for without supposing that the terms "common defence and general welfare" were not at that time deemed susceptible of any such construction as has since been applied to them.

It may be thought, perhaps, due to the subject, to advert to a letter of October 5, 1787, to Samuel Adams, and another of October 16, of the same year, to the Governor of Virginia, from R. H. Lee, in both of which it is seen that the terms had attracted his notice, and were apprehended by him "to submit to Congress every object of human legislation." But it is particularly worthy of remark, that, although a member of the Senate of the United States when amendments of the Constitution were before that house, and sundry additions and alterations were there made to the list sent from the other, no notice was taken of those terms as pregnant with danger. It must be inferred, that the opinion formed by the distinguished member at the first view of the Constitution, and before it had been fully discussed

and elucidated, had been changed into a conviction that the terms did not fairly admit the construction he had originally put on them, and therefore needed no explanatory precaution against it.

Allow me, my dear sir, to express on this occasion, what I always feel, an anxious hope that, as our Constitution rests on a middle ground between a form wholly national and one merely federal, and on a division of the powers of Government between the States in their united character and in their individual characters, this peculiarity of the system will be kept in view, as a key to the sound interpretation of the instrument, and a warning against any doctrine that would either enable the States to invalidate the powers of the United States, or confer all power on them.

I close these remarks, which I fear may be found tedious, with assurances of my great esteem and best regards.

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*Memorandum not used in letter to Mr. Stevenson.*

These observations will be concluded with a notice of the argument in favour of the grant of a full power to provide for common defence and general welfare, drawn from the punctuation in some editions of the Constitution.

According to one mode of presenting the text, it reads as follows: "Congress shall have power—To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform." To another mode, the same with commas *vice* semicolons.

According to the other mode, the text stands thus: "Congress shall have power; To lay and collect taxes, duties, imposts, and excises: To pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

And from this view of the text, it is inferred that the latter

sentence conveys a distinct substantive power to provide for the common defence and general welfare.

Without inquiring how far the text in this form would convey the power in question; or admitting that any mode of presenting or distributing the terms could invalidate the evidence which has been exhibited, that it was not the intention of the general or of the State Conventions to express, by the use of the terms common defence and general welfare, a substantive and indefinite power; or to imply that the general terms were not to be explained and limited by the specified powers succeeding them, in like manner as they were explained and limited in the former Articles of Confederation from which the terms were taken; it happens that the authenticity of the punctuation which preserves the unity of the clause can be as satisfactorily shown, as the true intention of the parties to the Constitution has been shown in the language used by them.

The only instance of a division of the clause afforded by the journal of the Convention is in the draught of a Constitution reported by a committee of five members, and entered on the 12th of September.

But that this must have been an erratum of the pen or of the press, may be inferred from the circumstance, that, in a copy of that report, printed at the time for the use of the members, and now in my possession, the text is so printed as to unite the parts in one substantive clause; an inference favoured also by a previous report of September 4, by a committee of eleven, in which the parts of the clause are united, not separated.

And that the true reading of the Constitution, as it passed, is that which unites the parts, is abundantly attested by the following facts:

1. Such is the form of the text in the Constitution printed at the close of the Convention, after being signed by the members, of which a copy is also now in my possession.

2. The case is the same in the Constitution from the Convention to the old Congress, as printed on their journal of September 28, 1787, and transmitted by that body to the Legislatures of the several States.



3. The case is the same in the copies of the transmitted Constitution, as printed by the ratifying States, several of which have been examined; and it is a presumption that there is no variation in the others.

The text is in the same form in an edition of the Constitution published in 1814, by order of the Senate; as also in the Constitution as prefixed to the edition of the laws of the United States; in fact, the proviso for uniformity is itself a proof of identity of them.

It might, indeed, be added, that in the journal of September 14, the clause to which the proviso was annexed, now a part of the Constitution, viz: "but all duties, imposts, and excises, shall be uniform throughout the United States," is called the "first," of course a "single" clause. And it is obvious that the uniformity required by the proviso implies that what it referred to was a part of the same clause with the proviso, not an antecedent clause altogether separated from it.

Should it be not contested that the original Constitution, in its engrossed or enrolled state, with the names of the subscribing members affixed thereto, presents the text in the same form, that alone must extinguish the argument in question.

If, contrary to every ground of confidence, the text, in its original enrolled document, should not coincide with these multiplied examples, the first question would be of comparative probability of error, even in the enrolled document, and in the number and variety of the concurring examples in opposition to it.

And a second question, whether the construction put on the text, in any of its forms or punctuations, ought to have the weight of a feather against the solid and diversified proofs which have been pointed out, of the meaning of the parties to the Constitution.

*Supplement to the letter of November 27, 1830, to A. Stevenson, on the phrase "common defence and general welfare."—On the power of indefinite appropriation of money by Congress.*

It is not to be forgotten, that a distinction has been introduced between a power merely to appropriate money to the common defence and general welfare, and a power to employ all the means of giving full effect to objects embraced by the terms.

1. The first observation to be here made is, that an *express* power to appropriate money authorized to be raised, to objects authorized to be provided for, could not, as seems to have been supposed, be at all necessary; and that the insertion of the power "to pay the debts," &c., is not to be referred to that cause. It has been seen, that the particular expression of the power originated in a cautious regard to debts of the United States antecedent to the radical change in the Federal Government; and that, but for that consideration, no particular expression of an appropriating power would probably have been thought of. An express power to raise money, and an express power (for example) to raise an army, would surely imply a power to use the money for that purpose. And if a doubt could possibly arise as to the implication, it would be completely removed by the express power to pass all laws necessary and proper in such cases.

2. But admitting the distinction as alleged, the appropriating power to *all* objects of "common defence and general welfare" is itself of sufficient magnitude to render the preceding views of the subject applicable to it. Is it credible that such a power would have been unnoticed and unopposed in the Federal Convention? in the State Conventions, which contended for, and proposed restrictive and explanatory amendments? and in the Congress of 1789, which recommended so many of these amendments? A power to impose *unlimited taxes* for *unlimited purposes* could never have escaped the sagacity and jealousy which were awakened to the many inferior and minute powers which were criticised and combated in those public bodies.

3. A power to appropriate money, without a power to apply

it in execution of the object of appropriation, could have no effect but to lock it up from public use altogether; and if the appropriating power carries with it the power of application and execution, the distinction vanishes. The power, therefore, means nothing, or what is worse than nothing, or it is the same thing with the sweeping power "to provide for the common defence and general welfare."

4. To avoid this dilemma, the consent of the States is introduced as justifying the exercise of the power in the full extent within their respective limits. But it would be a new doctrine, that an extra-constitutional consent of the parties to a Constitution could amplify the jurisdiction of the constituted Government. And if this could not be done by the concurring consents of all the States, what is to be said of the doctrine that the consent of an individual State could authorize the application of money belonging to all the States to its individual purposes? Whatever be the presumption that the Government of the whole would not abuse such an authority by a partiality in expending the public treasure, it is not the less necessary to prove the existence of the power. The Constitution is a limited one, possessing no power not actually given, and carrying on the face of it a distrust of power beyond the distrust indicated by the ordinary forms of free Government.

The peculiar structure of the Government, which combines an equal representation of unequal numbers in one branch of the Legislature, with an equal representation of equal numbers in the other, and the peculiarity which invests the Government with selected powers only, not intrusting it even with every power withdrawn from the local governments, prove not only an apprehension of abuse from ambition or corruption in those administering the Government, but of oppression or injustice from the separate interests or views of the constituent bodies themselves, taking effect through the administration of the Government. These peculiarities were thought to be safeguards due to minorities having peculiar interests or institutions at stake, against majorities who might be tempted by interest or other motives to invade them; and all such minorities, however

composed, act with consistency in opposing a latitude of construction, particularly that which has been applied to the terms "common defence and general welfare," which would impair the security intended for minor parties. Whether the distrustful precaution interwoven in the Constitution was or was not in every instance necessary; or how far, with certain modifications, any farther powers might be safely and usefully granted, are questions which were open for those who framed the great Federal Charter, and are still open to those who aim at improving it. But while it remains as it is, its true import ought to be faithfully observed; and those who have most to fear from constructive innovations ought to be most vigilant in making head against them.

But it would seem that a resort to the consent of the State Legislatures, as a sanction to the appropriating power, is so far from being admissible in this case, that it is precluded by the fact that the Constitution has expressly provided for the cases where that consent was to sanction and extend the power of the national Legislature. How can it be imagined that the Constitution, when pointing out the cases where such an effect was to be produced, should have deemed it necessary to be positive and precise with respect to such minute spots as forts, &c., and have left the general effect ascribed to such consent to an argumentative, or, rather, to an arbitrary construction? And here again an appeal may be made to the incredibility that such a mode of enlarging the sphere of federal legislation should have been unnoticed in the ordeals through which the Constitution passed, by those who were alarmed at many of its powers bearing no comparison with that source of power in point of importance.

5. Put the case that money is appropriated to a canal\* to be

\* On more occasions than one, it has been noticed in Congressional debates that propositions appear to have been made in the Convention of 1787 to give to Congress the power of opening canals, and to have been rejected; and that Mr. Hamilton, when contending in his report in favour of a bank for a liberal construction of the powers of Congress, admitted that a canal might be beyond the reach of those powers.

cut within a particular State; how and by whom, it may be asked, is the money to be applied and the work to be executed? By agents under the authority of the General Government? then the power is no longer a mere appropriating power. By agents under the authority of the States? then the State becomes either a branch or a functionary of the Executive authority of the United States; an incongruity that speaks for itself.

6. The distinction between a pecuniary power only, and a plenary power "to provide for the common defence and general welfare," is frustrated by another reply to which it is liable. For if the clause be not a mere introduction to the enumerated powers, and restricted to them, the power to provide for the common defence and general welfare stands as a distinct substantive power, the first on the list of legislative powers; and not only involving all the powers incident to its execution, but coming within the purview of the clause concluding the list, which expressly declares that Congress may make all laws necessary and proper to carry into execution the *foregoing* powers vested in Congress.

The result of this investigation is, that the terms "common defence and general welfare" owed their induction into the text of the Constitution to their connexion in the "Articles of Confederation," from which they were copied, with the debts contracted by the old Congress, and to be provided for by the new Congress; and are used in the one instrument as in the other, as general terms, limited and explained by the particular clauses subjoined to the clause containing them; that in this light they were viewed throughout the recorded proceedings of the Convention which framed the Constitution; that the same was the light in which they were viewed by the State Conventions which ratified the Constitution, as is shown by the records of their proceedings; and that such was the case also in the first Congress under the Constitution, according to the evidence of their journals, when digesting the amendments afterward made to the Constitution. It equally appears that the alleged power to appropriate money to the "common defence and general welfare" is either a dead letter, or swells into an unlimited power

to provide for unlimited purposes, by all the means necessary and proper for those purposes. And it results finally, that if the Constitution does not give to Congress the unqualified power to provide for the common defence and general welfare, the defect cannot be supplied by the consent of the States, unless given in the form prescribed by the Constitution itself for its own amendment.

As the people of the United States enjoy the great merit of having established a system of Government on the basis of human rights, and of giving to it a form without example, which, as they believe, unites the greatest national strength with the best security for public order and individual liberty, they owe to themselves, to their posterity, and to the world, a preservation of the system in its purity, its symmetry, and its authenticity. This can only be done by a steady attention and sacred regard to the chartered boundaries between the portion of power vested in the Government over the whole, and the portion undivested from the several Governments over the parts composing the whole; and by a like attention and regard to the boundaries between the several departments, Legislative, Executive, and Judiciary, into which the aggregate power is divided. Without a steady eye to the landmarks between these departments, the danger is always to be apprehended, either of mutual encroachments and alternate ascendencies incompatible with the tranquil enjoyment of private rights, or of a concentration of all the departments of power into a single one, universally acknowledged to be fatal to public liberty.

And without an equal watchfulness over the great landmarks between the General Government and the particular Governments, the danger is certainly not less, of either a gradual relaxation of the band which holds the latter together, leading to an entire separation, or of a gradual assumption of their powers by the former, leading to a consolidation of all the Governments into a single one.

The two vital characteristics of the political system of the United States are, first, that the Government holds its powers by a charter granted to it by the people; second, that the pow-

ers of Government are formed into two grand divisions—one vested in a Government over the whole community, the other in a number of independent Governments over its component parts. Hitherto charters have been written grants of privileges by Governments to the people. Here they are written grants of power by the people to their Governments.

Hitherto, again, all the powers of Government have been, in effect, consolidated into one Government, tending to faction and a foreign yoke among a people within narrow limits, and to arbitrary rule among a people spread over an extensive region. Here the established system aspires to such a division and organization of power as will provide at once for its harmonious exercise on the true principles of liberty over the parts and over the whole, notwithstanding the great extent of the whole; the system forming an innovation and an epoch in the science of Government not less honorable to the people to whom it owed its birth, than auspicious to the political welfare of all others who may imitate or adopt it.

As the most arduous and delicate task in this great work lay in the untried demarkation of the line which divides the general and the particular Governments by an enumeration and definition of the powers of the former, more especially the legislative powers; and as the success of this new scheme of polity essentially depends on the faithful observance of this partition of powers, the friends of the scheme, or rather the friends of liberty and of man, cannot be too often earnestly exhorted to be watchful in marking and controlling encroachments by either of the Governments on the domain of the other.

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TO J. K. TEFFT.

DECEMBER 3d, 1830.

SIR,—In the year 1828 I received from J. V. Bevan sundry numbers of the "Savannah Georgian," containing continuations of the notes of Major Pierce in the Federal Convention of 1787. They were probably sent on account of a marginal suggestion

of inconsistency between language held by me in the Convention with regard to the Executive veto, and the use made of the power by myself, when in the Executive Administration. The inconsistency is done away by the distinction, not adverted to, between an *absolute* veto, to which the language was applied, and the *qualified* veto which was exercised.

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TO JAMES MAURY.

MONTPELLIER, Dec<sup>r</sup> 10, 1830.

MY DEAR SIR,—Your intelligent and interesting——whom I had the pleasure of seeing in Richmond during the Convention, and should have seen with greater pleasure at Montpelier, has probably given you some account of the proceedings of that body, which had occasional aspects a little ominous, but which terminated in a Constitution, which few deny to be a great improvement of the old one, though not a few beyond the mountains murmur at, as short of a just reform. In the northwestern counties on the Ohio, there has been so much excitement, that a project was formed to annex themselves to the State of Maryland; but there is little danger that it will be pursued into serious consequences. The most disagreeable feature in our general affairs is the discontent in the Southern States, Virginia included, with the Tariff and the expenditures on Roads and Canals. In South Carolina the spirit has been so violent, as to engender doctrines of the most menacing tendency. Happily she is not supported in them, even by the States most sympathizing with her complaints, and I trust all our difficulties will gradually yield to the patriotic considerations which have been so remedial in former instances.



TO GENERAL LA FAYETTE.

MONTPELLIER, Dec<sup>r</sup> 12, 1830.

MY DEAR SIR,—Your letter of July 10th, by Ruggi, was lately forwarded to me. He is now at Charlottesville, hoping that he will not suffer from a credulity, jusqu'a bonhomie, and calling on me "eveiller l'apathie nationale." I have reminded him of the error, apparently without remedy, of his precipitancy in the outset, and of his perseverance for so many years without seeking the information on which it ought to have depended. I have communicated the case, including your letter, to Mr. Jefferson Randolph, and my readiness to aid in any thing that may be deemed proper. But I am sure that, in the existing circumstances of the country, nothing can be done or prudently attempted in pursuance of the original object.

I have hitherto forborne, my dear friend, to add to the epistolary mass with which you could not fail to be overwhelmed; well assured that you need not be told how much I have felt with you, and for you, in the crisis produced by the three glorious days of July. The reception given to the event here is shown by the celebrations in the towns which have spoken for the nation. Your friends were aware of your delicate relation to the choice of a substitute for the dethroned Government. I believe I may say, that with few, if any, exceptions, they had more confidence in your patriotic discretion than in their own pretensions to judge on the question. And now that your view of it is known, they take for granted that what was best to be done is what was done. For myself, Republican as I am, I easily conceive that the Constitutional Monarchy adopted may be as necessary to the actual condition of France, internal and external, as Mr. Jefferson thought the system which left Louis XVI on the throne was an eligible accommodation to the then state of things. It may, also, be more easy, if expedient, to descend to a more popular form than to control the tendency of a premature experiment to confusion, and its usual result, in arbitrary Government. If all hereditary ingredients were to be dispensed with, a federal mixture would present itself as worthy of favorable

consideration. I have been confirmed in my original opinion, that it will improve any Republic, and that it is essential to one in a country like France. If, on one hand, more of central authority would be required by the powerful nations bearing on her, on the other the same peculiarity would operate in controlling the self-sufficiency and centrifugal tendency of the component parts, and permit a greater share of local authority to be safely left with them. Our system is occasionally producing questions concerning the boundary between the General and the local governments. A late one, little anticipated, has sprung up in South Carolina, where a right in a single State to annul an act of Congress is maintained with a warmth proportioned to its want of strength. Strange as the doctrine is, it has led to a serious discussion, embracing other constitutional topics. I have been drawn into it by appeals to the proceedings of Virginia on a former occasion, in which I bore a noted part; and would send you a pamphlet, to which is appended what I had to say, but that you ought not to be abstracted for a moment from the great task on hand. In the contingency of a practical question of a Government involving the element of Federalism, every light reflected from our experiment may have a degree of interest. Mrs. Madison values too much your kind remembrances not to offer the sincerest returns of them. Heaven bless you, my dear friend, and the cause to which you are yourself a blessing.

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TO RICHARD RUSH.

1831.

I thank you, my dear sir, for the———, kindly put under a cover to me. It derives particular interest from the columns subscribed "Temple." I had seen the preceding, bearing that felicitous name, with a ready inference of the real one.

The general character of the Whig party in England is as eloquently painted as the position and perplexity of its leaders now in power are accurately delineated. There is certainly too

much of nobility, though it be Whig nobility, in the Administration, to flatter the popular hopes; and too much of the spirit of the last in the head of it to meet that of the nation on any ground on which reform can be stationary. Much, however, will depend, for a time, at least, on external experiments and examples. The Government in its actual form of King, Lords, and Commons, is stronger in the opinions and feelings of the people than that of any of the absolute Monarchies; and though not so strong as these in military establishments, (as long as the materials of such establishments can be relied on,) it is more so in the moral and political apparatus which upholds it. Little time will substitute certainty for conjectures as to the course which the pilot will steer; whether little or much will be required to determine the port that will finally be entered is less certain.

We were disappointed, as well as sorry, to hear of your migration in a Northern direction, before, with Mrs. Rush, you had made the promised trip in the opposite one. The distance, however, is not such as to make us despond of that gratification. In the mean time, Mrs. Madison unites in renewed assurances to you both of our affectionate remembrances and of all our best wishes.

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TO REYNOLDS CHAPMAN.

JANUARY 6, 1831.

DEAR SIR,—I have received yours, enclosing the manuscript of J. M. Patton, on the subject of which it is intimated that my opinion would be acceptable.

The paper affords sufficient indication of the talents ascribed to the author. Of his honourable principles I believe no one doubts. And with these qualifications for serving his country, it may be well for it that he is making its institutions and interests objects of systematic attention. It is with pleasure, therefore, that I comply, however imperfectly, with the request in your letter, regretting only that the compliance is so imperfect, and

that it may less accord in some respects with the ideas of Mr. Patton than might be agreeable to both of us. I am persuaded, nevertheless, that his candour will be equal to my frankness.

For my opinion on a tariff for the encouragement of domestic manufactures I may refer to my letters to Mr. Cabell in 1828, which will show the ground on which I maintained its constitutionality. It avoids the question *quo animo?* in using an impost for another purpose than revenue; a question which, though not in such a case within a judicial purview, would be asked and pressed in discussions appealing to public opinion.

If a duty can be constitutionally laid on imports, not for the purpose of revenue, which may be reduced or destroyed by the duty, but as a means of retaliating the commercial regulations of foreign countries, which regulations have for their object, sometimes their sole object, the encouragement of their manufactures, it would seem strange to infer that an impost for the encouragement of domestic manufactures was unconstitutional because it was not for the purpose of revenue; and the more strange, as an impost for the protection and encouragement of national manufactures is of much more general and familiar practice than as a retaliation of the injustice of foreign regulations of commerce. It deserves consideration whether there be not other cases in which an impost, not for revenue, must be admitted, or necessary interests be provided for by a more strained construction of the specified powers of Congress.

With respect to the existing tariff, however justly it may be complained of in several respects, I cannot but view the evils charged on it as greatly exaggerated. One cause of the excitement is an impression with many, that the whole amount paid by the consumers goes into the pockets of the manufacturers; while that is the case so far only as the articles are actually manufactured in the country, which in some instances is in a very inconsiderable proportion, the residue of the amount passing, like other taxes, into the public treasury, and to be replaced, if withdrawn, by other taxes. The other cause is the unequal operation of the tax, resulting from an unequal consumption of the article paying it in different sections; and in

some instances, this is doubtless a striking effect of the existing tariff. But, to make a fair estimate of the evil, it must be inquired how far the sections, overburdened in some instances, may not be underburdened in others, so as to diminish, if not remove, the inequality. Unless a tariff be a compound one, it cannot, in such a country as this, be made equal either between different sections or among different classes of citizens; and as far as a compound tariff can be made to approach equality, it must be by such modifications as will balance inequalities against each other. The consumption of coarse woollens used by the negroes in the South may be greater than in the North, and the tariff on them be disproportionately felt in that section. Before the change in the duties on tea, coffee, and molasses, the greater consumption elsewhere of these articles, and of the article of sugar, from habit, and a population without slaves, might have gone far towards equalizing the burden; possibly have exceeded that effect.

Be this as it may, I cannot but believe, whatever well-founded complaints may be against the tariff, that, as a cause of the general sufferings of the country, it has been vastly overrated; that, if wholly repealed, the limited relief would be a matter of surprise; and that, if the portion only having not revenue, but manufactures, for its object, were struck off, the general relief would be little felt.

In looking for the great and radical causes of the pervading embarrassments, they present themselves at once: 1. In the fall almost to prostration in the price of land, evidently the effect of the quantity of cheap Western land in the market. 2. In the depreciating effect in the products of land, from the increased products resulting from the rapid increase of population, and the transfer of labour from a less productive to a more productive soil, not in effect more distant from the common markets.

It is not wonderful that the price of tobacco should fall when the export through New Orleans has for the last three years added an annual average of near thirty thousand hogsheads to the export of the old tobacco States, or that the price of cotton

should have felt a like effect from like causes. It has been admitted by the "Southern Review," that the fall of cotton occurred prior even to the tariff of 1824. The prices of both tobacco and flour have had a greater fall than that of cotton.

To this solution of the problem of the depressed condition of the country may be added the fact, not peculiar to Virginia, that the fall in the prices of land and its products found the people much in debt, occasioned by the tempting liberality of the banks and the flattering anticipations of crops and prices.

It may not be out of place to observe, that in deciding the general question of a protective policy, the public opinion is in danger of being unduly influenced by the actual state of things, as it may happen to be a period of war or of peace. In the former case, the departure from the "let alone" theory may be pressed too far. In the latter, the fair exceptions to it may be too much disregarded. The remark will be verified by comparing the public opinion on the subject, during the late war and at the close of it, with the change produced by the subsequent period of peace. It cannot be doubted, that on the return of a state of war, even should the United States not be a party, the reasonings against the protection of certain domestic manufactures would lose much of the public favour, perhaps too much, considering the increased ability of the United States to protect their foreign commerce, which would greatly *diminish* the risks and expense of transportation, though not the war prices in the manufacturing countries.

For my general opinion on the question of internal improvements I may refer to the veto message against the "Bonus Bill," at the close of the session of Congress in March, 1817. The message denies the constitutionality as well of the appropriating as of the executing and jurisdictional branches of the power. And my opinion remains the same, subject, as heretofore, to the exception of particular cases, where a reading of the Constitution different from mine may have derived from a continued course of practical sanctions an authority sufficient to overrule individual constructions.

It is not to be wondered that doubts and difficulties should occur in expounding the Constitution of the United States. Hitherto the aim, in well-organized Governments, has been to discriminate and distribute the legislative, executive, and judiciary powers; and these sometimes touch so closely, or, rather, run the one so much into the other, as to make the task difficult and leave the lines of division obscure. A settled practice, enlightened by occurring cases, and obviously conformable to the public good, can alone remove the obscurity. The case is parallel in new statutes on complex subjects.

In the Constitution of the United States, where each of these powers is divided, and portions allotted to different governments, and where a language technically appropriate may be deficient, the wonder would be far greater if different rules of exposition were not applied to the text by different commentators.

Thus it is found that, in the case of the legislative department particularly, where a division and definition of the powers according to their specific objects is most difficult, the instrument is read by some as if it were a Constitution for a single Government, with powers coextensive with the general welfare, and by others interpreted as if it were an ordinary statute, and with the strictness almost of a penal one.

Between these adverse constructions an intermediate course must be the true one; and it is hoped that it will finally, if not otherwise settled, be prescribed by an amendment of the Constitution. In no case is a satisfactory one more desirable than in that of internal improvements, embracing roads, canals, light-houses, harbours, rivers, and other lesser objects.

With respect to post roads, the general view taken of them in the manuscript shows a way of thinking on the subject with which mine substantially accords. Roads, when plainly necessary for the march of troops and for military transportations, must speak for themselves as occasions arise.

Canals, as an item in the general improvement of the country, have always appeared to me not to be embraced by the au-

thority of Congress. It may be remarked that Mr. Hamilton, in his Report on the Bank, when enlarging the range of construction to the utmost of his ingenuity, admitted that canals were beyond the sphere of Federal legislation.

Light-houses having a close and obvious relation to navigation and external commerce, and to the safety of public as well as private ships, and having received a positive sanction and general acquiescence from the commencement of the Federal Government, the constitutionality of them is, I presume, not now to be shaken, if it were ever much contested. It seems, however, that the power is liable to great abuse, and to call for the most careful and responsible scrutiny into every particular case before an application be complied with.

Harbours, within the above character, seem to have a like claim on the Federal authority. But what an interval between such a harbour as that of New York or New Orleans and the mouth of a creek forming an outlet for the trade of a single State or part of a State into a navigable stream, and the principle of which would authorize the improvement of every road leading out of the State towards a destined market?

What, again, the interval between clearing of its sawyers &c., the Mississippi, the commercial highway for half the nation, and removing obstructions by which the navigation of an inconsiderable stream may be extended a few miles only within a single State?

The navigation of the Mississippi is so important in a national view, so essentially belongs to the foreign commerce of many States, and the task of freeing it from obstructions is so much beyond the means of a single State, and beyond a feasible concert of all who are interested in it, that claims on the authority and resources of the nation will continue to be, as they have been, irresistible. Those who regard it as a case not brought by these features within the legitimate powers of Congress, must, of course, oppose the claim, and with it every inferior claim. Those who admit the power as applicable to a case of that description, but disown it in every case not marked by adequate



peculiarities, must find, as they can, a line separating this admissible class from the others; a necessity but too often to be encountered in a legislative career.

Perhaps I ought not to omit the remark, that although I concur in the defect of powers in Congress on the subject of internal improvements, my abstract opinion has been, that, in the case of canals particularly, the power would have been properly vested in Congress. It was more than once proposed in the Convention of 1787, and rejected from an apprehension, chiefly, that it might prove an obstacle to the adoption of the Constitution. Such an addition to the Federal powers was thought to be strongly recommended by several considerations: 1. As Congress would possess, exclusively, the sources of revenue most productive and least unpopular, that body ought to provide and apply the means for the greatest and most costly works. 2. There would be cases where canals would be highly important in a national view, and not so in a local view. 3. Cases where, though highly important in a national view, they might violate the interest, real or supposed, of the State through which they would pass, of which an example might now be cited in the Chesapeake and Delaware canal, known to have been viewed in an unfavourable light by the State of Delaware. 4. There might be cases where canals, or a chain of canals, would pass through sundry States, and create a channel and outlet for their foreign commerce, forming at the same time a ligament for the Union, and extending the profitable intercourse of its members, and yet be of hopeless attainment if left to the limited faculties and joint exertions of the States possessing the authority.

It cannot be denied, that the abuse to which the exercise of the power in question has appeared to be liable in the hands of Congress is a heavy weight in the scale opposed to it. But may not the evil have grown, in a great degree, out of a casual redundancy of revenue, and a temporary apathy to a burden bearing indirectly on the people, and mingled, moreover, with the discharge of debts of peculiar sanctity? It might not happen, under ordinary circumstances, that taxes even of the most disguised kind would escape a wakeful control on the imposi-

tion and application of them. The late reduction of duties on certain imports, and the calculated approach of an extinguishment of the public debt, have evidently turned the popular attention to the subject of taxes, in a degree quite new; and it is more likely to increase than to relax. In the event of an amendment of the Constitution, guards might be devised against a misuse of the power without defeating an important exercise of it. If I err or am too sanguine in the views I indulge, it must be ascribed to my conviction that canals, railroads, and turnpikes are at once the *criteria* of a wise policy and causes of national prosperity; that the want of them will be a reproach to our republican system, if excluding them; and that the exclusion, to a mortifying extent, will ensue, if the power be not lodged where alone it can have its due effect.

Be assured of my great esteem, and accept my cordial salutations.

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TO STEPHEN BATES.

JANUARY 24th, 1831.

DEAR SIR,—I received, long ago, your interesting favor on the 31st of October, with a pamphlet referred to, and I owe an apology for not sooner acknowledging it. I hope it will be a satisfactory one that the state of my health, crippled by a severe rheumatism, restricted my attention to what seemed to have immediate claims upon it, and in that light I did not view the subject of your communication, ignorant, as I was, of the true character of Masonry, and little informed, as I was, of the grounds on which its extermination was contended for; and incapable as I was, and am, in my situation of investigating the controversy. I never was a Mason, and no one, perhaps, could be more a stranger to the principles, rites, and fruits of the institution. I had never regarded it as dangerous or noxious; nor, on the other hand, as deriving importance from anything publicly known of it. From the number and character of those

who now support the charges against Masonry, I cannot doubt that it is at least susceptible of abuses outweighing any advantages promised by its patrons.

With this apologetic explanation, I tender you my respectful and cordial salutations.

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TO ROBERT WALSH.

JAN<sup>y</sup> 25, 1831.

SIR,—The National Gazette of Jan<sup>y</sup>——contained a publication, edited since in a pamphlet form, from two sons of the late Mr. Bayard, its object being to vindicate the memory of their father against certain passages in the writings of Mr. Jefferson.

The filial anxiety which prompted the publication was natural and highly commendable. But it is to be regretted that, in performing that duty, they have done great injustice to the memory of Mr. Jefferson, by the hasty and limited views taken of the evidence deducible from the sources to which they had appealed.

The first passage on which they found their charges is in the following words:

“February 12, 1801.—Edward Livingston tells me that Bayard applied to-day, or last night, to General Smith, and represented to him the expediency of coming over to the States who vote for Burr; that there was nothing in the way of appointment which he might not command, and particularly mentioned the Secretaryship of the Navy. Smith asked him if he was authorized to make the offer. He said he was authorized. Smith told this to Livingston, and to Wilson Carey Nicholas, who confirms it to me,” &c. [See Jefferson’s Memoirs, vol. 4, p. 515.]

From this statement it appears that Mr. Jefferson was told by Mr. Livingston, that he had it from General Smith, that Mr. Bayard had applied to him [General Smith] with an offer of a high appointment, if he would come over from the Jefferson

party and join that of the rival candidate for the Presidency. It appears that this information of Mr. Livingston was confirmed to Mr. Jefferson by Mr. W. C. Nicholas, who also said he had it from General Smith. It appears that the communication thus made to Mr. Jefferson was reduced by him to writing on the day on which it was made; and that the incident which was the subject of it took place on the morning of the same day, or, at farthest, on the night before. It is found, also, that what was in this case reduced to writing, made no part of what was first reduced to writing on 15th Ap<sup>l</sup>, 1806, (see vol. 4, p. 521,) but that it was then expressly referred to, as having been reduced to writing at the time.

Opposed to this Memorandum of Mr. Jefferson is: 1. The declaration of Mr. Livingston on the floor of the Senate of the U. States, after a lapse of about twenty-nine years, "that as to the *precise question* put to him, [touching the application of Mr. Bayard to General Smith,] he must say, that, having taxed his recollection as far as it could go, on so remote a transaction, he had no remembrance of it;" implying that he might have had a conversation with Mr. Jefferson relating to the remote transaction, not within the scope of the precise question. 2. The declaration of General Smith in the same place, and after the same lapse of time, "that he had not the most distant recollection that Mr. Bayard had ever made such a proposition to him;" adding, "that he never received from any man such a proposition."

On comparing these declarations, made after an interval of so many years, with the statement of Mr. Jefferson reduced to writing, at the time, it is impossible to regard them as proof that communications were not made to him by Mr. Livingston and Mr. W. C. Nicholas, which he [Mr. Jefferson] understood to import that Mr. Bayard had made to General Smith the application as stated. And if Mr. Jefferson was under that impression, however erroneous it might be, his subsequent opinion and language in reference to Mr. Bayard are at once accounted for, without any resort to the imputations in the publication.

That there has been great error somewhere is apparent; that

respect for the several parties requires it to be viewed as involuntary, must be admitted; that, being involuntary, it must have proceeded from misapprehensions or failures of memory; that, there having been no interval for the failure of the memory of Mr. Jefferson, the error, if with him, must be ascribed to misapprehensions. The resulting question, therefore, is between the probability of misapprehensions by Mr. Jefferson of the statements made to him at the same time by Mr. Livingston and Mr. Nicholas, and the probability of misapprehensions or failures of memory in some one or more of the other parties. And the decision of this question must be left to an unbiased and intelligent public.

The other passage is at page 521, vol. 4, of the *Memoirs*, and is as follows, under date of April 15, 1806. Referring to a previous conversation with Col. Burr, he says:

“I did not commit these things to writing at the time, but I do it now, because, in a suit between him [Col. Burr] and Cheetham, he had a deposition of Mr. Bayard taken, which seems to have no relation to the suit, nor to any other object than to calumniate me. Bayard pretends to have addressed to me, during the pending of the Presidential election in Feb<sup>y</sup>, 1801, through General Samuel Smith, certain conditions on which my election might be obtained; and that General Smith, after conversing with me, gave answers for me. This is absolutely false. No proposition of any kind was ever made to me on that occasion by General Smith, nor any answer authorized by me, and this fact General Smith affirms at this moment.”

The reply given to this memorandum by the authors of the publication is a reference to the depositions of Mr. Bayard and General Smith in the cause of Gillespie and Smith.

It appears that Mr. Jefferson, attending merely to the matter of Mr. Bayard's deposition, did not distinguish between the suit of Burr and Cheetham and that of Gillespie and Smith, in the latter of which the deposition of General Smith as well as that of Mr. Bayard was taken.

The part of the deposition of Mr. Bayard referred to by Mr. Jefferson is as follows:

“I [Mr. B.] told him [General Smith] I should not be satisfied, nor agree to yield, till I had the assurance from Mr. Jefferson himself; but if he [General Smith] would consult Mr. Jefferson, and bring the assurance from him, the election should be ended. The General made no difficulty in consulting Mr. Jefferson, and proposed giving me his answer the next morning. The next day, upon our meeting, General Smith informed me that he had seen Mr. Jefferson and stated to him the points mentioned, and was *authorized by him* to say that they corresponded with his *views and intentions*, and that he [Mr. B.] *might confide in him accordingly*. The opposition of Vermont, &c., &c., was immediately withdrawn, and Mr. Jefferson made President by the vote of ten States.”

Here it is explicitly stated, on the authority of General Smith, that an assurance, in the nature of a pledge, was authorized by Mr. Jefferson to be given to Mr. Bayard, that he [Mr. Jefferson] would conform to the conditions on which his election was to be obtained.

The terms used by Mr. Jefferson in denouncing the fact deposed by Mr. Bayard are accounted for by the odious light in which it presented itself; by his consciousness that he had never authorized it; by the impressions, unfavorable to Mr. Bayard, which had been made upon him by the information, *as he understood it*, given him by Mr. Livingston and Mr. Nicholas; and especially by the denial of the fact by General Smith at the moment.

Certain it is, that there is a direct contrariety between the deposition of Mr. Bayard and the memorandum of Mr. Jefferson, involving a question between General Smith and Mr. Bayard on the one hand, and between Mr. Jefferson and General Smith on the other.

That Mr. Bayard *understood* General Smith to have borne an authorized pledge from Mr. Jefferson, is attested by the fact that he proceeded forthwith to execute the purpose of which such a pledge was the condition.

Passing to the deposition of General Smith, given twelve days after that of Mr. Bayard, and on the same day on which

the memorandum of Mr. Jefferson is dated, let it be seen what light is furnished by that document.

The assertion of Mr. Jefferson in the memorandum is, that no proposition of any kind was ever made to him, nor any answer authorized by him, "and this fact General Smith affirms to me *at this moment.*"

In accordance with this assertion of Mr. Jefferson and confirmation of General Smith is the passage in the deposition of General Smith, which declares "that he knew of no bargains or agreements which took place at the time of the balloting," and the other passage, which states "that he [Mr. Jefferson] had told me [General S.] that any opinion he should give at this time might be attributed to improper motives. That to me [General Smith] he had no hesitation in saying that, as to the public debt, &c., &c., he had not changed his opinion," &c. This was so far from authorizing any use of what he said, that might be attributed to improper motives, that it was expressed as between themselves, and consequently with a view to guard against any such use.

The passage in the deposition of General Smith on which particular reliance seems to be placed, as contradicting the statement of Mr. Jefferson, is the following:

"He [Mr. B.] stated that he had it in his power (and was so disposed) to terminate the election, but he wished information as to Mr. Jefferson's opinions on certain subjects, and mentioned (I think) the same three points already alluded to, as asked by Col. Parker and General Dayton, and received from me the same answer in substance (if not in words) that I had given to General Dayton. He added a fourth, to wit: what would be Mr. Jefferson's conduct as to the public officers? He said he did not mean confidential officers; but, by way of elucidating his question, he added, such as Mr. Latimer, of Philadelphia, and Mr. McLane, of Delaware. I answered that I had never heard Mr. Jefferson say any thing on the subject. He requested that I would enquire and inform him the next day. I did so; and the next day (Saturday) told him, that Mr. Jefferson had said that he did not think such officers ought to be dismissed on political grounds

only, except in cases where they had made improper use of their offices to force the officers under them to vote contrary to their judgments. That as to Mr. McLane, he had already been spoken to in his behalf by Major Eccleston; and from the character given him by that gentleman, he considered him a meritorious officer; of course that he would not be displaced, or ought not to be displaced. I further added, that Mr. Bayard might rest assured (or words to that effect) that Mr. Jefferson would conduct, as to those points, agreeably to the opinions I had stated as his. Mr. Bayard then said, we will give the vote on Monday, and we separated."

Here it is to be observed, that General Smith does not say that he had made any proposition to Mr. Jefferson, or that he should communicate to Mr. Bayard the conversation then held with Mr. Jefferson.

The expression having most the aspect of a pledge is, "he [Mr. Jefferson] considered him [Mr. McLane] a meritorious officer; *of course* that he *would not* be displaced, or *ought not* to be displaced," &c.

It cannot be denied that the phrase admits the construction that "of course," &c., was a continuation of what was said by Mr. Jefferson, not the inference of General Smith. But to construe the expression as conveying a pledge from Mr. Jefferson is forbidden: 1. By the declaration of General Smith in the same deposition, that he [General S.] knew of no bargains or agreements which took place at the time of the balloting. 2. By the caution of Mr. Jefferson, as stated by General Smith, in expressing even his opinions at a time when they might be attributed to improper motives. 3. By the confirmation given by General Smith to Mr. Jefferson's denial of the fact that any proposition of any kind was ever made to him on any occasion by General Smith, or any answer authorized by him, [Mr. Jefferson.]

It is true that Mr. Bayard, as already observed, must have understood General Smith in this conversation as meaning that he *was authorized* by Mr. Jefferson to say, "that the points mentioned [the conditions made by Mr. B.] corresponded with his



[Mr. Jefferson's] *views and intentions.*" But whether this discrepancy is to be explained by misapprehensions at the time, or by the lapse of nearly five years, the explanation cannot invalidate the positive denial of Mr. Jefferson that any such authority was given to General Smith, and his affirmance of the denial at the moment when it was put into the memorandum by Mr. Jefferson.

It can never be admitted that the authority of the deliberate statement of Mr. Jefferson is impaired by its being without the sanction of an oath. Apart from its intrinsic sufficiency, no one can doubt that such a sanction would readily have been added on any occasion calling for it; and with the greater confidence, as the fact sworn to would have been reduced to writing at the time, an advantage always duly estimated in cases depending on the accuracy of recollection.

The situation of Mr. Jefferson during the critical period of the Presidential contest in the House of Representatives was equally marked by its peculiarity and its importance. He saw the whole Government in a state of convulsion; he saw the danger of an absolute interregnum in its Executive branch, the consequences of which could not be foreseen; he saw what he regarded the will of the people about to be trampled upon, and the party whose ascendancy he believed to be of vital importance to the cause of Republican Government attempted to be broken down; whilst the escape from all these dangers presented to him was through pledges which might be stigmatized as an ambitious intrigue and a purchase of success at the expense of those principles and feelings which he avowed and held inviolable. Happily, the course of circumstances fulfilled his patriotic wishes without the sacrifice which the accomplishment of them had seemed to require.

The situation of Mr. Bayard was also peculiar and trying. He was justly struck with horror at the prospect of an interregnum in the Government, so full of evils and so fatal in its example; and he was scarcely less alarmed at the danger which threatened, what he held to be, a vital policy of his country. But holding, at the same time, in his hands the event on which

every thing depended, he availed himself of the opportunity of terminating the crisis in a manner which prevented the calamity he most dreaded, and provided, as he believed, an adequate security against the other.

Before dismissing the subject, a word may be proper with respect to the charge in the publication against Mr. Jefferson, of leaving the memorandum referring to Mr. Bayard's deposition for posthumous use, when the means of refuting it might be lost.

The suit of Gillespie and Smith, which led to the deposition of Mr. Bayard, is said to have been a fictitious one, instituted for the purpose of obtaining and perpetuating testimony against the purity of Mr. Jefferson's conduct during the Presidential election in 1801. The cause, it is understood, never was brought to trial; and it is inferred, from a resort to the source which furnished the copies of the depositions of Mr. Bayard and General Smith, that the depositions were never published. Of their existence, however, (and in a custody supposed by Mr. Jefferson to be unfriendly,) and in the passage in that of Mr. Bayard testifying that he (Mr. Jefferson) had authorized General Smith to accede for him to certain conditions on which his election to the Presidency might be obtained, Mr. Jefferson, it seems, was apprized from some friendly quarter. With this knowledge of a shaft that might posthumously inflict a deep wound on his reputation, could he do less than provide a shield against it by recording with his own hand the falsity of the charge, and the affirmance of its falsity at the moment of his doing so, by the individual named as the authority for the charge? What is now before the public proves that a weapon was in reserve by which a posthumous assault on his reputation might be made; and if there be unfairness in the case let candor pronounce on which side it is chargeable—on that of Mr. Jefferson, not of the deponents, (doubtless involuntary,) but of the parties to the suit which rendered the precaution necessary.

TO ROBERT WALSH.

DEAR SIR,—The publication which gave rise to the inclosed observations having first appeared in the National Gazette, I ask the favor of you to allow them the advantage of issuing from the same source and of circulating through the same channel. I have thought it best to leave them without a name, that no feelings of any sort towards the writer may mingle themselves with the impressions made on the reader.

I take the occasion, sir, to renew to you the assurances of my high esteem, with an offer of my cordial salutations.

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TO MR. WALSH.

JAN<sup>y</sup> 31, 1831.

DEAR SIR,—I just discover that in the paper inclosed this morning for the National Gazette, a correction was not made, which, I presume, this will be in time to have supplied. I ask the favor, then, that in the 4th paragraph from the end the words “and he saw, at the same time, no escape from all these dangers, but,” be erased, and “whilst the escape from these dangers, presented to him, was,” be inserted.

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TO WILLIAM H. HARRISON.

MONTPELLIER, Feb<sup>y</sup> 1, 1831.

DEAR SIR,—I have received your letter of the 22d ult<sup>o</sup>, in which you request my opinion of the character and merits of General Pike.

Having had but a very slight personal acquaintance with him, I cannot say more of his private character than that everything I recollect to have heard of it was favorable to it.

Of his enterprising spirit, his distinguished gallantry, and his zealous services in his military career, there must, I presume, be sufficient evidence in public preservation. All the im-

pressions I retain coincide with it; and I may add, that I always understood that he united with his military merits an exemplary devotion to the rights of his country, and to the free principles of its institutions.

The universal sensation known to have been produced by his fall in the final display of his heroic courage, bore a signal testimony to the rank he held in the estimation and the hearts of his fellow-citizens.

An earlier answer to your letter has been prevented by an indisposition, from which my recovery is far from being complete.

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TO C. J. INGERSOLL.

MONTPELLIER, February 2, 1831.

DEAR SIR,—I have received your letter of January 21, asking—

1. Is there any State power to make Banks?
2. Is the Federal power, as it has been exercised, or as proposed to be exercised by President Jackson, preferable?

The evil which produced the prohibitory clause in the Constitution of the United States was the practice of the States in making bills of credit, and in some instances appraised property, "a legal tender." If the notes of the State Banks, therefore, whether chartered or unchartered, be made a legal tender, they are prohibited; if not made a legal tender, they do not fall within the prohibitory clause. The N<sup>o</sup> of the Federalist referred to was written with that view of the subject; and this, with probably other contemporary expositions, and the uninterrupted practice of the States in creating and permitting Banks, without making their notes a legal tender, would seem to be a bar to the question if it were not inexpedient now to agitate it.

A virtual and incidental enforcement of the depreciated notes of the State Banks, by their crowding out a sound medium, though a great evil, was not foreseen; and if it had been apprehended, it is questionable whether the Constitution of the Uni-

ted States, which had so many obstacles to encounter, would have ventured to guard against it by an additional obstacle. A virtual, and, it is hoped, an adequate remedy may hereafter be found in the refusal of State paper, when debased, in any of the Federal transactions, and in the control of the Federal Bank, this being itself controled from suspending its specie payments by the public authority.

On the other question I readily decide against the project recommended by the President. Reasons, more than sufficient, appear to have been presented to the public in the reviews and other comments which it has called forth. How far a hint for it may have been taken from Mr. Jefferson I know not. The kindred ideas of the latter may be seen in his *Memoirs, &c.*, vol. iv, p. 196, 207, 526, and his view of the State Banks, vol. iv, p. 199 and 220.

There are sundry statutes of Virginia prohibiting the circulation of notes payable to bearer, whether issued by individuals or unchartered banks.

These observations, little new or important as they may be, would have been more promptly furnished, but for an indisposition in which your letter found me, and which has not yet entirely left me. I hope this will find you in good health, and you have my best wishes for its continuance and the addition of every other blessing.

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TO THEODORE SEDGWICK, JUN<sup>R</sup>.

MONTPELLIER, Feb<sup>y</sup> 12, 1831.

SIR,—I have received your letter of January 27, which was retarded a few days, by going in the first instance to Richmond.

You ask “whether Mr. Livingston (formerly Governor of N. Jersey) took an active part in the debates, (of the Federal Convention in 1787,) and whether he was considered as having a leaning towards the Federal party and principles?” adding,

“that you will be obliged by any further information it may be in my power to give you.”

Mr. Livingston did not take his seat in the Convention till some progress had been made in the task committed to it; and he did not take an active part in its debates; but he was placed on important committees, where it may be presumed he had an agency and a due influence. He was personally unknown to many, perhaps most of the members; but there was a predisposition in all to manifest the respect due to the celebrity of his name.

I am at a loss for a precise answer to the question whether he had a leaning to the Federal party and principles. Presuming that, by the party alluded to, is meant those in the Convention who favored a more enlarged, in contradistinction to those who favored a more restricted grant of powers to the Federal Government, I can only refer to the recorded votes which are now before the public; and these being by States, not by heads, individual opinions are not disclosed by them. The votes of N. Jersey corresponded generally with the plan offered by Mr. Patterson; but the main object of that being to secure to the smaller States an equality with the larger in the structure of the Government in opposition to the outline previously introduced, which had reversed the object, it is difficult to say what was the degree of power to which there might be an abstract leaning. The two subjects, the structure of the Government and the *quantum* of power entrusted to it, were more or less inseparable in the minds of all, as depending, a good deal, the one on the other. After the compromise, which gave the small States an equality in one branch of the Legislature, and the large States an inequality in the other branch, the abstract leaning of opinions would better appear. With those, however, who did not enter into debate, and whose votes could not be distinguished from those of their State colleagues, their opinions could only be known among themselves or to their particular friends.

I know not, sir, that I can give you any of the further infor-

mation you wish that is not attainable with more authenticity and particularity from other sources. My acquaintance with Governor Livingston was limited to an exchange of the common civilities, and these to the period of the Convention. In my youth I passed several years in the College of N. Jersey, of which he was a trustee, and where his two sons, William and the late member of the Supreme Court of the U. States, were fellow-students. I recollect to have seen him there in his capacity of trustee, and to have heard him always spoken of as among the distinguished lawyers, and as conspicuous among the literary patriots of N. Jersey. I recollect, particularly, that he was understood to be one of the authors of a work entitled "The Independent Reflector," and that some of the papers in it ascribed to him, being admired for the energy and eloquence of their composition, furnished occasionally to the students orations for the rostrum, which were alternately borrowed from books and composed by themselves.

I regret, sir, that I have not been able to make a more important contribution for the biographical memoir you meditate. Wishing you all the success in other researches which the object of them merits, I tender you my respectful and friendly salutations.

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TO ROBERT WALSH.

FEB<sup>r</sup> 15, 1831.

D<sup>r</sup> SIR,—I have duly received yours of the 10th instant. The posture of Mr. Jefferson in 1801 was singularly delicate, and I thought the varied expression better fitted it than the text as it stood. I acquiesce, however, in your view of the case, the rather, as it avoids the awkwardness of a retrospective correction.

I should not certainly, under any circumstances, distrust your observance of the rule of confidence. It will not be strange if conjectures as to the authorship of the vindication of Mr. Jefferson should, among others, light on me; though less for the

reason you mention, than from motives to such an undertaking that might be thought appropriate to me.

In noticing your friendly offer of the *National Gazette* for any use I may have for it, I feel it not improper to express my respect for the distinguished ability and the attractions by which it is characterized. The occasions on which I have yielded to calls on my pen have been rare, perhaps not enough so; and the channels for publication have been determined by the occasions themselves. I ought to hope that these have ceased, recollecting, as I do, that after the canonical age of three-score-and-ten, (and a few weeks will add another decade to mine,) a writer will find his arguments, whatever they be, answered with an "I wonder how old he is?"

I congratulate you, sir, that it will be so long before you can receive such an answer, however convenient the refuge might be to the opponent.

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TO C. E. HAYNES.

MONTPELLIER, Feb. 25, 1831.

DEAR SIR,—I have received the copy of Judge Clayton's Review of the "Report of the Committee of Ways and Means," for which the envelope informs me that I am indebted to your politeness.

A perusal of the review has left an impression highly favourable to the talents of the author and to the accomplishments of his pen. But I cannot concur in his views and reasonings on some of the material points in discussion; and I must be permitted to think he has done injustice in the remark, "that I seem to have surrendered all my early opinions at discretion."

I am far from regarding a change of opinions, under the lights of experience and the results of improved reflection, as exposed to censure; and still farther from the vanity of supposing myself less in need of that privilege than others. But I had indulged the belief that there were few, if any, of my contemporaries, through the long period and varied scenes of my political life,



to whom a mutability of opinion was less applicable, on the great constitutional questions which have agitated the public mind.

The case to which the Judge more especially referred was, doubtless, that of the Bank, which I had originally opposed as unauthorized by the Constitution, and to which I at length gave my official assent. But even here the inconsistency is apparent only, not real; inasmuch as my abstract opinion of the text of the Constitution is not changed, and the assent was given in pursuance of my early and unchanged opinion, that, in the case of a Constitution as of a law, a course of authoritative expositions sufficiently deliberate, uniform, and settled, was an evidence of the public will necessarily overruling individual opinions. It cannot be less necessary that the meaning of a Constitution should be freed from uncertainty, than that the law should be so. That cases may occur which transcend all authority of precedents must be admitted, but they form exceptions which will speak for themselves and must justify themselves.

I do not forget that the chain of sanctions to the bank power has been considered as broken by a veto of Vice President Clinton to a bill establishing a bank. But it is believed to be quite certain, that the equality of votes which referred the question to his casting vote was occasioned by a union of some, who disapproved the plan of the bank only, with those who denied its constitutionality; and that, on a naked question of constitutionality, a majority of the Senate would have added another sanction, as at a later period was done, to the validity of such an institution.

If this explanation should be found obtrusive, I hope you will recollect that you have been accessory to it, and that it will not prevent an acceptance of the respectful salutations which are cordially offered.

TO JAMES ROBERTSON.

MARCH 27, 1831.

DEAR SIR,—I have received your letter of the 8th, but it was not until the 23d instant.

The veil which was originally over the draught of the resolutions offered in 1798 to the Virginia Assembly having been long since removed, I may say, in answer to your inquiries, that it was penned by me; and that, as it went from me, the third resolution contained the word "alone," which was struck out by the House of Delegates. Why the alteration was made, I have no particular knowledge, not being a member at the time. I always viewed it as an error. The term was meant to confine the meaning of "parties to the constitutional compact" to the States in the capacity in which they formed the compact, in exclusion of the State governments which did not form it. And the use of the term "States" throughout in the *plural* number distinguished between the rights belonging to them in their collective, from those belonging to them in their individual capacities.

With respect to the terms following the term "unconstitutional," viz., "not law, but null, void, and of no force or effect," which were stricken out of the seventh resolution, my memory cannot positively decide whether they were or were not in the original draught, and no copy of it appears to have been retained. On the presumption that they were in the draught as it went from me, I am confident that they must have been regarded only as giving accumulated emphasis to the *declaration*, that the alien and sedition acts had, in the opinion of the Assembly, violated the Constitution of the United States, and not that the addition of them could annul the acts or sanction a resistance of them. The resolution was expressly *declaratory*, and, proceeding from the Legislature only, which was not even a party to the Constitution, could be declaratory of opinion only.

It may not be out of place here to remark, that if the insertion of those terms in the draught could have the effect of show-

ing an inconsistency in its author, the striking them out would be a protest against the doctrine which has claimed the authority of Virginia in its support.

If the third resolution be in any degree open to misconstruction on this point, the language and scope of the seventh ought to control it; and if a more explicit guard against misconstruction was not provided, it is explained in this, as in other cases of omission, by the entire absence of apprehension that it could be necessary. Who could, at that day, have foreseen some of the comments on the Constitution advanced at the present?

The task you have in hand is an interesting one, the more so as there is certainly room for a more precise and regular history of the Articles of Confederation and of the Constitution of the United States than has yet appeared. I am not acquainted with Pitkin's work, and it was not within the scope of Marshall's *Life of Washington* to introduce more of constitutional history than was involved in his main subject. The journals of the State Legislatures, with the journal and debates of the State Conventions, and the journal and other printed accounts of the proceedings of the Federal Convention of 1787, are, of course, the primary sources of information. Some sketches of what passed in that Convention have found their way to the public, particularly those of Judge Yates and of Mr. Luther Martin. But the Judge, though a highly respectable man, was a zealous partisan, and has committed gross errors in his desultory notes. He left the Convention also before it had reached the stages of its deliberations in which the character of the body and the views of individuals were sufficiently developed. Mr. Martin, who was also present but a part of the time, betrays, in his communication to the Legislature of Maryland, feelings which had a discolouring effect on his statements. As it has become known that I was at much pains to preserve an account of what passed in the Convention, I ought perhaps to observe, that I have thought it becoming, in several views, that a publication of it should be at least of a posthumous date.

I know not that I could refer you to any other appropriate sources of information which will not have occurred to you, or

not fall within your obvious researches. The period which your plan embraces abounds with materials in pamphlets and in newspaper essays not published in that form. You would, doubtless, find it worth while to turn your attention to the collections of the historical societies now in print in some of the States. The library of Philadelphia is probably rich in pertinent materials. Its catalogue alone might point to such as are otherwise attainable. Although I might, with little risk, leave it to your own inference, I take the liberty of noting that this hasty compliance with your request is not for the public eye; adding only my sincere wishes for the success of the undertaking which led to it, and the offer of my friendly respects and salutations.

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TO JARED SPARKS.

MONTPELLIER, April 8, 1831.

DEAR SIR,—I have duly received your letter of March 30. In answer to your enquiries “respecting the part acted by Gouverneur Morris (whose life, you observe, you are writing) in the Federal Convention of 1787, and the political doctrines maintained by him,” it may be justly said that he was an able, an eloquent, and an active member, and shared largely in the discussions succeeding the 1st of July, previous to which, with the exception of a few of the early days, he was absent.

Whether he accorded precisely “with the political doctrines of Hamilton” I cannot say. He certainly did not “incline to the Democratic side,” and was very frank in avowing his opinions when most at variance with those prevailing in the Convention. He did not propose any outline of a Constitution, as was done by Hamilton; but he contended for certain articles, (a Senate for life, particularly,) which he held essential to the stability and energy of a Government capable of protecting the rights of property against the spirit of Democracy. He wished to make the weight of wealth to balance that of numbers, which

he pronounced to be the only effectual security to each against the encroachments of the other.

The *finish* given to the style and arrangement of the Constitution fairly belongs to the pen of Mr. Morris; the task having been probably handed over to him by the Chairman of the Committee, himself a highly respectable member, with the ready concurrence of the others. A better choice could not have been made, as the performance of the task proved. It is true that the state of the materials, consisting of a reported draught in detail, and subsequent resolutions accurately penned, and falling easily in their proper places, was a good preparation for the symmetry and phraseology of the instrument; but there was sufficient room for the talents and taste stamped by the author on the face of it. The alterations made by the Committee are not recollected. They were not such as to impair the merit of the composition. Those, verbal and others, made in the Convention, may be gathered from the Journal, and will be found also [to leave] that merit altogether unimpaired.

The anecdote you mention may not be without a foundation, but not in the extent supposed. It is certain that the return of Mr. Morris to the Convention was at a critical stage of its proceedings. The knot felt as the Gordian one was the question between the larger and smaller States on the rule of voting in the Senatorial branch of the Legislature; the latter claiming, the former opposing, the rule of equality. Great zeal and pertinacity had been shewn on both sides; and an equal division of the votes on the question had been reiterated and prolonged till it had become not only distressing but seriously alarming. It was during that period of gloom that Dr Franklin made the proposition for a religious service in the Convention, an account of which was so erroneously given, with every semblance of authenticity, through the National Intelligencer, several years ago. The crisis was not over when Mr. Morris is said to have had an interview and conversation with General Washington and Mr. R. Morris, such as may well have occurred; but it appears that on the day of his re-entering the Convention a proposition had been made from another quarter to refer the knotty question to

a committee with a view to some compromise; the indications being manifest that sundry members from the larger States were relaxing in their opposition, and that some ground of compromise was contemplated, such as finally took place, and as may be seen in the printed Journal. Mr. Morris was in the deputation from the large State of Pennsylvania, and combated the compromise throughout. The tradition is, however, correct that on the day of his resuming his seat he entered with anxious feelings into the debate, and in one of his speeches painted the consequences of an abortive result to the Convention in all the deep colours suited to the occasion. But it is not believed that any material influence on the turn which things took could be ascribed to his efforts; for, besides the mingling with them some of his most disrelished ideas, the topics of his eloquent appeals to the members had been exhausted during his absence, and their minds were too much made up to be susceptible of new impressions.

It is but due to Mr. Morris to remark, that to the brilliancy and fertility of his genius he added, what is too rare, a candid surrender of his opinions when the lights of discussion satisfied him that they had been too hastily formed, and a readiness to aid in making the best of measures in which he had been overruled.

In making this hastened communication, I have more confidence in the discretion with which it will be used, than in its fulfilment of your anticipations. I hope it will at least be accepted as a proof of my respect for your object, and of the sincerity with which I tender you a reassurance of the cordial esteem and good wishes in which Mrs. Madison always joins me.

I take for granted you have at command all the printed works of Mr. Morris. I recollect that there can be found among my pamphlets a small one by him, intended to prevent the threatened repeal of the law of Pennsylvania which had been passed as necessary to support the Bank of N. America, and when the repeal was viewed as a formidable blow to the establishment. Should a copy be needed, I will hunt it up and forward it.

TO JAMES ROBERTSON.

MONTPELLIER, April 20, 1831.

DEAR SIR,—Your letter of the 3d instant, post-marked the 5th, was not received till the day before yesterday, the 18th. I know not that I can say anything on the constitutional points stated, which has not been substantially said in publications into which I have been heretofore led. In general, I adhere to the remark, that the proper way to understand our novel and complex system of government is to avoid, as much as may be, the use of technical terms and phrases appropriate to other forms, and to examine the process of its formation, the peculiarity of its structure, and the limitation and distribution of its powers. Much of the constitutional controversy which has prevailed has turned, as often happens, on the different ideas attached to the language employed, and would have been obviated by previous definitions of its terms. That the people of the United States formed the Constitution, will be denied or affirmed according to the sense in which the expression is understood. The main question is, whether they have not given to the charter a sanction in a capacity and a mode that shuts the door against all such disuniting and nullifying doctrines as those lately advanced.

If the authority to admit new States be sufficiently conveyed by the text of the Constitution, there would seem to be not more difficulty in the principle of the case than in that of naturalizing an alien, at least where the territory of the admitted State made a part of the original domain. In the case of an acquired territory, with its inhabitants, as in that of Louisiana, the questions belonging to it are questions of construction, turning on the constitutional authority to acquire, and to admit when acquired. You are no doubt aware that such questions were actually raised on that occasion.

With respect to the words "general welfare," I have always regarded them as qualified by the detail of powers connected with them. To take them in a literal and unlimited sense would be a metamorphosis of the Constitution into a character

which there is a host of proofs was not contemplated by its creators. If the words obtained so readily a place in the "Articles of Confederation," and received so little notice in their admission into the present Constitution, and retained for so long a time a silent place in both, the fairest explanation is, that the words, in the alternative of meaning nothing or meaning everything, had the former meaning taken for granted.

I have availed myself, sir, of your permission to give a brief answer to your letter, and the rather as the interval between its receipt and your intended departure for the West did not well admit of a long one. Nor, indeed, with more time, could I have added much to it that would not have been superfluous to you, as well as inconvenient at the octogenary age of which I am reminded whenever I take up my pen on such subjects.

With friendly salutations,

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FOR MR. PAULDING.

Much curiosity and some comment have been exerted by the marvellous identities in a plan of Government proposed by Charles Pinckney in the Convention of 1787, as published in the Journals with the text of the Constitution, as finally agreed to. I find among my pamphlets a copy of a small one entitled "Observations on the Plan of Government submitted to the Federal Convention, in Philadelphia, on the 28th of May, by Mr. C. Pinckney, a Delegate from S. Carolina, delivered at different times in the Convention."

The copy is so defaced and mutilated that it is impossible to make out enough of the plan, as referred to in the Observations, for a due comparison of it with that printed in the Journal. The pamphlet was printed in N. York by Francis Childs. The year is effaced. It must have been not very long after the close of the Convention, and with the sanction, at least, of Mr. Pinckney himself. It has occurred that a copy may be attainable at the printing office, if still kept up, or examine in some of the



libraries or historical collections in the city. When you can snatch a moment, in your walks with other views, for a call at such places, you will promote an object of some little interest as well as *delicacy*, by ascertaining whether the article in question can be met with. I have among my manuscript papers lights on the subject. The pamphlet of Mr. P. could not fail to add to them.

APRIL, 1831.

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TO J. K. PAULDING.

MONTPELLIER, Ap<sup>l</sup>—, 1831.

DEAR SIR,—I have received your letter of the 6th instant, and feel myself very safe in joining your other friends in their advice on the Biographical undertaking you meditate. The plan you adopt is a valuable improvement on the prevailing examples, which have too much usurped the functions of the historian; and by omitting the private features of character, and anecdotes, which, as condiments, always add flavour and sometimes nutrition to the repast, have forfeited much of the due attraction. The more historical mode has been recommended, probably, by the more ready command of materials, such as abound in the contributions of the press, and in the public archives. In a task properly biographical, the difficulty lies in the evanescent or inaccessible information which it particularly requires. Autographic memorials are rare, and usually deficient on essential points, if not otherwise faulty; and at the late periods of life the most knowing witnesses may have descended to the tomb, or their memories become no longer faithful depositories. Where oral tradition is the resort, all know the uncertainties and inaccuracies which beset it.

I ought certainly to be flattered by finding my name on the list of subjects you have selected; and particularly so, as I can say with perfect sincerity, there is no one to whose justice, judgment, and every other requisite, I could more willingly

confide, whatever of posthumous pretension my career through an eventful period may have to a conservative notice. Yet I feel the awkwardness of attempting "a sketch of the principal incidents of my life," such as the partiality of your friendship has prompted you to request. Towards a compliance with your object I may avail myself of a paper, though too meagre even for the name of a sketch, which was very reluctantly but unavoidably drawn up a few years ago for an abortive biography. Whether I shall be able to give it any amplification, is too uncertain to admit a promise. My life has been so much of a public one, that any review of it must mainly consist of the agency which was my lot in public transactions; and of that agency the portions probably the most acceptable to general curiosity are to be found in my manuscript preservations of some of those transactions, and in the epistolary communications to confidential friends made at the time, and on the spot, whilst I was a member of political bodies, general or local. My judgment has accorded with my inclination that any publicity of which selections from this miscellany may be thought worthy, should await a posthumous date. The printed effusions of my pen are either known or of but little bulk.

For portraits of the several characters you allude to, I know not that I can furnish your canvas with any important materials not equally within your reach, as I am sure that you do not need, if I could supply, any aid to your pencil in the use of them. Everything relating to Washington is already known to the world, or will soon be made known through Mr. Sparks, with the exception of some of those inside views of character and scenes of domestic life which are apart from ordinary opportunities of observation. And it may be presumed that interesting lights will be let in even on those exceptions through the private correspondences in the hands of Mr. Sparks.

Of Franklin I had no personal knowledge till we served together in the Federal Convention of 1787, and the part he took there has found its way to the public, with the exception of a few anecdotes which belong to the unveiled part of the proceed-

ings of that Assembly. He has written his own life, and no man had a finer one to write, or a better title to be himself the writer. There is enough of blank, however, for a succeeding pen.

With Mr. Jefferson I was not acquainted till we met as members of the first Revolutionary Legislature of Virginia, in 1776; I had, of course, no personal knowledge of his early life. Of his public career, the records of his country give ample information; and of the general features of his character, with much of his private habits, and of his peculiar opinions, his writings before the world, to which additions are not improbable, are equally explanatory. The obituary eulogiums, multiplied by the epoch and other coincidences of his death, are a field where some things not unworthy of notice may perhaps be gleaned. It may, on the whole, be truly said of him, that he was greatly eminent for the comprehensiveness and fertility of his genius, for the vast extent and rich variety of his acquirements, and particularly distinguished by the philosophic impress left on every subject which he touched. Nor was he less distinguished for an early and uniform devotion to the cause of liberty, and systematic preference of a form of Government squared in the strictest degree to the rights of man. In the social and domestic spheres, he was a model of the virtues and manners which most adorn them.

In relation to Mr. John Adams, I had no personal knowledge of him till he became V. President of the United States, and then saw no side of his private character which was not visible to all; whilst my chief knowledge of his public character and career was acquired by means now accessible, or becoming so, to all. His private papers are said to be voluminous; and when opened to public view, will doubtless be of much avail to a biographer. His official correspondence during the Revolutionary period, just published, will be found interesting both in a historical and biographical view. That he had a mind rich in ideas of his own, as well as its learned store, with an ardent love of country, and the merit of being a colossal champion of its Independence, must be allowed by those most offended by

the alloy in his Republicanism, and the fervors and flights originating in his moral temperament.

Of Mr. Hamilton I ought, perhaps, to speak with some restraint, though my feelings assure me that no recollection of political collisions could control the justice due to his memory. That he possessed intellectual powers of the first order, and the moral qualifications of integrity and honor in a captivating degree, has been decreed to him by a suffrage now universal. If his theory of Government deviated from the Republican standard, he had the candor to avow it, and the greater merit of cooperating faithfully in maturing and supporting a system which was not his choice. The criticism to which his share in the administration of it was most liable was, that it had the aspect of an effort to give to the instrument a constructive and practical bearing not warranted by its true and intended character. It is said that his private files have been opened to a friend who is charged with the task you contemplate. If he be not a citizen of N. York, it is probable that in collecting private materials from other sources your opportunities may be more than equal to his.

I will, on this occasion, take the liberty to correct a statement of Mr. Hamilton which contradicts mine on the same subject; and which, as mine, if erroneous, could not be ascribed to a lapse of memory, might otherwise be an impeachment of my veracity. I allude to the discrepancy between the memorandum given by Mr. Hamilton to Mr. Benson distributing the numbers of the "Federalist" to the respective writers, and the distribution communicated by me at an early day to a particular friend, and finally to Mr. Gideon, for his edition of the work at Washington a few years ago.

The reality of errors in the statement of Mr. Hamilton appears from an internal evidence in some of the papers. Take, for an example, N<sup>o</sup> 49, which contains a eulogy on Mr. Jefferson, marking more of the warm feelings of personal friendship in the writer than at any time belonged to Mr. Hamilton. But there is proof of another sort in N<sup>o</sup> 64, ascribed in the memoran-

dum to Mr. Hamilton. That it was written by Mr. Jay, is shewn by a passage in his life by Delaplaine, obviously derived directly or indirectly from Mr. Jay himself. There is a like proof that N<sup>o</sup> 54, ascribed to Mr. Jay, was not written by him. Nor is it difficult to account for errors in the memorandum, if recurrence be had to the moment at which a promise of such a one was fulfilled, to the lumping manner in which it was made out, and to the period of time, not less than            years, between the date of the "Federalist" and that of the memorandum; and as a proof of the fallibility to which the memory of Mr. Hamilton was occasionally subject, a case may be referred to so decisive as to dispense with every other. In the year            Mr. Hamilton, in a letter answering an inquiry of Col. Pickering concerning the plan of Government which he had espoused in the Convention of 1787, states, that at the close of the Convention he put into my hands a draught of a Constitution; and in that draught he had proposed a "President for three years."\* Now, the fact is, that in that plan, the original of which I ascertained several years ago to be among his papers, *the tenure of office* for the President is not *three years, but during good behaviour*. The error is the more remarkable, as the letter apologizes, according to my recollection, for its being not a prompt one; and as it is so much at variance with the known cast of Mr. Hamilton's political tenets, that it must have astonished his political, and, most of all, his intimate friends. I should do injustice, nevertheless, to myself as well as to Mr. Hamilton, if I did not express my perfect confidence that the misstatement was involuntary, and that he was incapable of any that was not so.

I am sorry, sir, that I could not make a better contribution to your fund of biographical matter. Accept it as an evidence, at least, of my respect for your wishes, and with it the cordial remembrances and regards in which Mrs. M. joins me, as I do her, in the request to be favorably presented to Mrs. Paulding.

\* See the letter in Niles's Register.

TO JAMES MONROE.

MONTPELLIER, April 21, 1831.

DEAR SIR,—I have duly received yours of———. I considered the advertisement of your estate in Loudon as an omen that your friends in Virginia were to lose you. It is impossible to gainsay the motives to which you yielded in making N. York your residence, though I fear you will find its climate unsuited to your period of life and the state of your health. I just observe, and with much pleasure, that the sum voted by Congress, however short of just calculations, escapes the loppings to which it was exposed from the accounting process at Washington, and that you are so far relieved from the vexations involved in it. The result will, I hope, spare you at least the sacrifice of an untimely sale of your valuable property; and I would fain flatter myself, that with an encouraging improvement of your health, you might be brought to reconsider the arrangement which fixes you elsewhere. The effect of this, in closing the prospect of our ever meeting again, afflicts me deeply; certainly not less so than it can you. The pain I feel at the idea, associated as it is with a recollection of the long, close, and uninterrupted friendship which united us, amounts to a pang which I cannot well express, and which makes me seek for an alleviation in the possibility that you may be brought back to us in the wonted degree of intercourse. This is a happiness my feelings covet, notwithstanding the short period I could expect to enjoy it; being now, though in comfortable health, a decade beyond the canonical three-score-and-ten, an epoch which you have but just passed. As you propose to make a visit to Loudon previous to the notified sale, if the state of your health permits, why not, with the like permission, extend the trip to this quarter? The journey, at a rate of your own choice, might co-operate in the re-establishment of your health, whilst it would be a peculiar gratification to your friends, and, perhaps, enable you to join your colleagues at the University once more at least. It is much to be desired that you should continue, as long as possible, a member of the Board, and I hope you will not send in your resignation

in case you find your cough and weakness giving way to the influence of the season and the innate strength of your constitution. I will not despair of your being able to keep up your connexion with Virginia by retaining Oak Hill and making it not less than an occasional residence. Whatever may be the turn of things, be assured of the unchangeable interest felt by Mrs. M., as well as myself, in your welfare, and in that of all who are dearest to you.

In explanation of my microscopic writing, I must remark that the older I grow the more my stiffening fingers make smaller letters, as my feet take shorter steps; the progress in both cases being, at the same time, more fatiguing as well as more slow.

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TO N. P. TRIST.

MAY 5, 1831.

D<sup>R</sup> SIR,—I received, yesterday, your favor of the 2d, with its accompaniments. I thank you for the little treatise on “Mental Philology,” which I reserve for perusal at the earliest leisure. From the reputed talents and tenets of the author something may be anticipated well written and out of the trodden circle. I thank you, also, for the rectified copy of the “Distress for Rent,” &c., and return the one formerly sent.

The revolution in the Cabinet has produced here, as elsewhere, much agitation in the political world. In what form the public opinion will settle down is unknown to those who know more of its workings than I do. The current has hitherto set a good deal against Mr. Van Buren, to whom I the less doubt that injustice has been done, as that opinion has the sanction of yours. Mr. Livingston is the only one of the four Heads of Departments designated for the new Cabinet whom I personally know. His qualifications, both substantial and ornamental, speak for themselves.

TO CHARLES CARTER LEE.

MAY 17, 1831.

DEAR SIR,—I have received your letter of the 9th, inclosing a long latent one from your father. My acquaintance with him commenced at a very early stage of our lives; and our friendly sympathies never lost their force, though deprived, for long periods, of the nourishing influence of personal intercourse, and exposed occasionally by the disturbing tendency of a discordance in political opinions. I could not fail, therefore, to be in the number of sincerest mourners when it was announced that he was no more; and to be gratified now by the evidence in his letter that his affectionate recollections had undergone no change.

It is not strange that a tempting article, like selected wine, should disappear in such a lapse of time, and its change of place. Had it reached its destination, it would have derived its best flavour from the feelings of which it was a token.

I thank you, sir, for your kind sentiments and good wishes, as Mrs. M. does for her share in them; and I beg you to accept, in her behalf as well as mine, a cordial return of them.

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TO BEN. WATERHOUSE.

MAY 27, 1831.

DEAR SIR,—I have received in due time your letter of the 9th instant, and with it the volume on the authorship of "*Junius*." Although it found me but little at leisure, and in crippled health, I felt too much respect for the writer, not to say curiosity for the subject, also, not to give it an entire reading.

Whether you have untied the knot at which so many ingenious hands have tugged in vain, I will not make myself a judge. I can say, at least, that you have done full justice to your hypothesis; and that you have garnished it, moreover, with historical facts, individual portraits, and vivid anecdotes, that have improved the relish of the subject.



You will infer from these remarks that I could not hesitate a moment in giving the volume the destination which makes the University of Virginia a debtor to the author. Be pleased to accept, at the same time, the acknowledgments due from myself, with the best wishes for a prolonged and happy life, in which Mrs. M. cordially joins me.

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TO JARED SPARKS.

JUNE 1, 1831.

DEAR SIR,—I have duly received yours of 24th ultimo, and inclose the little pamphlet by Gouverneur Morris which it refers to. Unless it is to be printed entire in the volume you are preparing, I should wish to replace it in the collection from which it is taken. Of the other unofficial writings by him, I have but the single recollection that he was a writer for the newspapers in 1780 (being then a member of Congress) on our public affairs, chiefly, I believe, on the currency and resources of the U. States. It was about the time that the scale of 1 for 40 was applied to the 200,000,000 of dollars which had been emitted; and his publications were probably occasioned by the crisis, but of the precise scope of them I cannot speak. I became a member of Congress in March of that year, just after the fate of the old emissions had been decided on, and the subject so far deprived of its interest. In the Philadelphia newspapers of that period the writings in question might probably be found, and verified by the style if not the name of the author. Whether Mr. Morris wrote a pamphlet about Deane is a point on which I can give no answer.

May I ask of you to let me know the result of your correspondence with Charleston on the subject of Mr. Pinckney's draft of a Constitution for the U. States as soon as it is ascertained?

It is quite certain that since the death of Col. Few, I have been the only living signer of the Constitution of the U. States. Of the members who were present and did not sign, and of those

who were present part of the time, but had left the Convention, it is equally certain that not one has remained since the death of Mr. Lansing, who disappeared so mysteriously not very long ago. I happen, also, to be the sole survivor of those who were members of the Revolutionary Congress prior to the close of the war; as I had been, for some years, of the members of the Convention in 1776, which formed the first Constitution for Virginia. Having outlived so many of my cotemporaries, I ought not to forget that I may be thought to have outlived myself.

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TO J. K. PAULDING.

JUNE 6th, 1831.

DEAR SIR,—Since my letter answering yours of April 6th, in which I requested you to make an enquiry concerning a small pamphlet of Charles Pinckney printed at the close of the Federal Convention of 1787, it has occurred to me that the pamphlet might not have been put in circulation, but only presented to his friends, &c. In that way I may have become possessed of the copy to which I referred as in a damaged state. On this supposition the only chance of success must be among the books, &c., of individuals on the list of Mr. Pinckney's political associates and personal friends. Of those who belonged to N. York, I recollect no one so likely to have received a copy as Rufus King. If that was the case, it may remain with his representative, and I would suggest an informal resort to that quarter, with a hope that you will pardon this further tax on your kindness.

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TO J. K. PAULDING.

JUNE 27, 1831.

DEAR SIR,—With your favor of the 20th instant I received the volume of pamphlets containing that of Mr. Charles Pinckney, for which I am indebted to your obliging researches. The

volume shall be duly returned, and in the mean time duly taken care of. I have not sufficiently examined the pamphlet in question, but have no doubt that it throws light on the object to which it has relation.

I had previously received yours of the 13th, and must remark that you have not rightly seized the scope of what was said in mine of April——. I did not mean that I had in view a *History* of any sort, public or personal; but only a preservation of materials, of which I happened to be a recorder, or to be found in my voluminous correspondences with official associates or confidential friends. By the first, I alluded particularly to the proceedings and debates of the latter periods of the Revolutionary Congress and of the Federal Convention in 1787, of which, in both cases, I had, as a member, an opportunity of taking an account.

I do not lose sight of the sketches I promised, which, however, can be but the merest skeleton, with references to my pigeon-holes for whatever of flesh may be found for it.

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TO MR. INGERSOLL.

MONTPELLIER, June 25 1831.

DEAR SIR,—I have received your friendly letter of the 18th instant. The few lines which answered your former one of the 21 January last were written in haste and in bad health; but they expressed, though without the attention, in some respects, due to the occasion, a dissent from the views of the President as to a Bank of the United States, and a substitute for it, to which I cannot but adhere. The objections to the latter have appeared to me to preponderate greatly over the advantages expected from it, and the constitutionality of the power I still regard as sustained by the considerations to which I yielded in giving my assent to the existing Bank.

The charge of inconsistency between my objection to the constitutionality of such a bank in 1791 and my assent in 1817, turns on the question how far legislative precedents, expound-

ing the Constitution, ought to guide succeeding Legislatures and overrule individual opinions.

Some obscurity has been thrown over the question by confounding it with the respect due from one Legislature to laws passed by preceding Legislatures. But the two cases are essentially different. A Constitution being derived from a superior authority, is to be expounded and obeyed, not controlled or varied, by the subordinate authority of a Legislature. A law, on the other hand, resting on no higher authority than that possessed by every successive Legislature, its expediency as well as its meaning is within the scope of the latter.

The case in question has its true analogy in the obligation arising from judicial expositions of the law on succeeding judges; the Constitution being a law to the legislator, as the law is a rule of decision to the judge.

And why are judicial precedents, when formed on due discussion and consideration, and deliberately sanctioned by reviews and repetitions, regarded as of binding influence, or, rather, of authoritative force in settling the meaning of a law? It must be answered, 1st. Because it is a reasonable and established axiom, that the good of society requires that the rules of conduct of its members should be certain and known, which would not be the case if any judge, disregarding the decision of his predecessors, should vary the rule of law according to his individual interpretation of it. *Misera est servitus ubi jus est aut vagum aut incognitum.* 2. Because an exposition of the law publicly made, and repeatedly confirmed by the constituted authority, carries with it, by fair inference, the sanction of those who, having made the law through their legislative organ, appear, under such circumstances, to have determined its meaning through their judiciary organ.

Can it be of less consequence that the meaning of a Constitution should be fixed and known, than that the meaning of a law should be so? Can, indeed, a law be fixed in its meaning and operation unless the Constitution be so? On the contrary, if a particular Legislature, differing in the construction of the Constitution from a series of preceding constructions, proceed to

act on that difference, they not only introduce uncertainty and instability in the Constitution, but in the laws themselves; inasmuch as all laws preceding the new construction and inconsistent with it are not only annulled for the future, but virtually pronounced nullities from the beginning.

But it is said that the legislator having sworn to support the Constitution, must support it in his own construction of it, however different from that put on it by his predecessors, or whatever be the consequences of the construction. And is not the judge under the same oath to support the law? Yet, has it ever been supposed that he was required or at liberty to disregard all precedents, however solemnly repeated and regularly observed, and, by giving effect to his own abstract and individual opinions, to disturb the established course of practice in the business of the community? Has the wisest and most conscientious judge ever scrupled to acquiesce in decisions in which he has been overruled by the matured opinions of the majority of his colleagues, and subsequently to conform himself thereto, as to authoritative expositions of the law? And is it not reasonable that the same view of the official oath should be taken by a legislator, acting under the Constitution, which is his guide, as is taken by a judge, acting under the law, which is his?

There is, in fact and in common understanding, a necessity of regarding a course of practice, as above characterized, in the light of a legal rule of interpreting a law, and there is a like necessity of considering it a constitutional rule of interpreting a Constitution.

That there may be extraordinary and peculiar circumstances controlling the rule in both cases, may be admitted; but with such exceptions the rule will force itself on the practical judgment of the most ardent theorist. He will find it impossible to adhere, and act officially upon, his solitary opinions as to the meaning of the law or Constitution, in opposition to a construction reduced to practice during a reasonable period of time; more especially when no prospect existed of a change of construction by the public or its agents. And if a reasonable period of time, marked with the usual sanctions, would not bar

the individual prerogative, there could be no limitation to its exercise, although the danger of error must increase with the increasing oblivion of explanatory circumstances, and with the continual changes in the import of words and phrases.

Let it, then, be left to the decision of every intelligent and candid judge, which, on the whole, is most to be relied on for the true and safe construction of a constitution; that which has the uniform sanction of successive legislative bodies, through a period of years and under the varied ascendancy of parties; or that which depends upon the opinions of every new Legislature, heated as it may be by the spirit of party, eager in the pursuit of some favourite object, or led astray by the eloquence and address of popular statesmen, themselves, perhaps, under the influence of the same misleading causes.

It was in conformity with the view here taken, of the respect due to deliberate and reiterated precedents, that the Bank of the United States, though on the original question held to be unconstitutional, received the Executive signature in the year 1817. The act originally establishing a bank had undergone ample discussions in its passage through the several branches of the Government. It had been carried into execution throughout a period of twenty years with annual legislative recognitions; in one instance, indeed, with a positive ramification of it into a new State; and with the entire acquiescence of all the local authorities, as well as of the nation at large; to all of which may be added, a decreasing prospect of any change in the public opinion adverse to the constitutionality of such an institution. A veto from the Executive, under these circumstances, with an admission of the expediency and almost necessity of the measure, would have been a defiance of all the obligations derived from a course of precedents amounting to the requisite evidence of the national judgment and intention.

It has been contended that the authority of precedents was in that case invalidated by the consideration that they proved only a respect for the stipulated duration of the bank, with a toleration of it until the law should expire; and by the casting vote given in the Senate by the Vice President, in the year 1811,

against a bill for establishing a National Bank, the vote being expressly given on the ground of unconstitutionality. But if the law itself was unconstitutional, the stipulation was void, and could not be constitutionally fulfilled or tolerated. And as to the negative of the Senate by the casting vote of the Presiding Officer, it is a fact, well understood at the time, that it resulted, not from an equality of opinions in that assembly on the power of Congress to establish a bank, but from a junction of those who admitted the power, but disapproved the plan with those who denied the power. On a simple question of constitutionality there was a decided majority in favour of it.

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TO ———.

JUNE 28, 1831.

DEAR SIR,—I have received your letter of the 12th instant, and am very sensible of the good views with which you request an answer at length to the claim of the new States to the Federal lands within their limits. But you could not have sufficiently adverted to the extent of such a job, nor have recollected the age which I have now reached, itself an infirmity, with others always more or less incident to it; nor have been aware of the calls on me, as the only surviving source of information on certain subjects now under anxious investigation in quarters which I am bound to respect. I feel the less regret at being obliged to shrink from the task you mark out for me, as I am confident there are many equally, if not better, qualified for it, and as it cannot be long before the claim, if not abandoned, must be taken up in Congress, where it can and will be demolished, unless, indeed, the able champions be kept back by a hankering after a Western popularity. In my situation I can only say, and for yourself, *not for the press*, that I have always viewed the claim as so unfair and unjust, so contrary to the certain and notorious intentions of the parties to the case, and so directly in the teeth of the condition on which the lands were ceded to the Union, that if a technical

title could be made out by the claimants, it ought in conscience and honour to be waived. But the title in the people of the United States rests on a foundation too just and solid to be shaken by any technical or metaphysical arguments whatever. The known and acknowledged intentions of the parties at the time, with a prescriptive sanction of so many years consecrated by the intrinsic principles of equity, would overrule even the most explicit declarations and terms, as has been done without the aid of that principle in the slaves, who remain such in spite of the declarations that all men are born equally free.

I wish you success in the election for which you are made a candidate. You do not name, and I do not know, your competitor. He will doubtless derive some advantage from your long absences. But, being now on the ground, you will be able to meet the objection with the best explanation.

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TO DR. JOHN W. FRANCIS.

MONTPELLIER, July 9th, 1831.

D<sup>R</sup> SIR,—Your favor of the 4th, communicating the death of Mr. Monroe, was duly received. I had been prepared for the event, by information of its certain approach. The time of it was so far happy, as it added another to the coincidences before so remarkable and so memorable. You have justly ranked him with the heroes and patriots who have deserved best of their country. No one knew him better than I did, or had a sincerer affection for him, or condoles more deeply with those to whom he was most dear.

With the thanks which I owe you, be pleased to accept, sir, the tender of my esteem and my cordial salutations.

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TO ALEXANDER HAMILTON.

JULY 9th, 1831.

DEAR SIR,—Your letter of June 30 was duly received, and the death of Mr. Monroe, which it anticipated, became, I learn,



a sad reality on the 4th instant, its date associating it with the coincidences before so remarkable and so memorable.

The feelings with which the event was received by me may be inferred from the long and uninterrupted friendship which united us, and the intimate knowledge I had of his great public merits, and his endearing private virtues. I condole in his loss most deeply with those to whom he was most dear. We may cherish the consolation, nevertheless, that his memory, like that of the other heroic worthies of the Revolution gone before him, will be embalmed in the grateful affections of a posterity enjoying the blessings which he contributed to procure for it.

With my thanks for the kind attention manifested by your letter, I pray you to accept assurances of my friendly esteem and my good wishes.

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TO TENCH RINGGOLD.

MONTPELLIER, July 12, 1831.

DR SIR,—I received in the due times your two favors of July 7 and 8, the first giving the earliest, the last the fullest account that reached me of the death of our excellent friend;\* and I cannot acknowledge these communications without adding the thanks which I owe, in common with those to whom he was most dear, for the devoted kindness on your part during the lingering illness which he could not survive.

I need not say to you, who so well know, how highly I rated the comprehensiveness and character of his mind; the purity and nobleness of his principles; the importance of his patriotic services; and the many private virtues of which his whole life was a model; nor how deeply, therefore, I must sympathize, on his loss, with those who feel it most. A close friendship, continued through so long a period and such diversified scenes, had grown into an affection very imperfectly expressed by that term; and I value accordingly the manifestation in his last hours that the reciprocity never abated.

\* Mr. Monroe.

TO GOVERNOR STOKES, OF N. CAROLINA.

JULY 15th, 1831.

D<sup>R</sup> SIR,—I observe in a newspaper paragraph, referring to the late fire in Raleigh, a remark that nothing was saved from the Library of the State, particularly “Lawson’s History of it,” which had not been procured without difficulty. Happening to possess a copy of the work, I inclose it, with a request that it may be permitted to supply the loss; praying you to accept at the same time assurances of my great consideration and respect.

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TO GENERAL BERNARD.

MONTPELLIER, July 16, 1831.

D<sup>R</sup> SIR,—I have just received your letter of the 12th instant. However much you may overrate my title to the sentiments it expresses, it will always be a gratifying recollection that I had my share in obtaining for the United States your invaluable aid in the defensive system now so well matured and so extensively executed. It is with great pleasure, I add, sir, that whilst your distinguished talents and indefatigable application of them justly claim the tribute of grateful acknowledgments from the public, your social and personal qualities, and those of your estimable and amiable family, have won the best feelings of individuals.

With these impressions, I cannot learn without regret the loss we are about to sustain. But it being impossible to disapprove the considerations which lead to it, it only remains to assure you of my sincere wishes that the career before you may be as prosperous as, I am persuaded, it will be guided by a pure patriotism and a comprehensive philanthropy.

TO ANDREW BIGELOW.

REV<sup>d</sup> SIR,—I have received, with your letter of the 15th instant, a copy of your “Election Sermon on the 6th of Jan<sup>y</sup>,” and thank you for the pleasure afforded by the able and instructive lessons which it so impressively adapted to the occasion.

I cannot conceal from myself that your letter has indulged a partiality which greatly overrates my public services. I may say, nevertheless, that I am among those who are most anxious for the preservation of the Union of the States, and for the success of the constitutional experiment of which it is the basis. We owe it to ourselves, and to the world, to watch, to cherish, and, as far as possible, to perfect a new modification of the powers of Government, which aims at the better security against external danger and internal disorder, a better provision for national strength and individual rights, than had been exemplified under any previous form.

I pray you, sir, to be assured of my sensibility for your kind and comprehensive wishes for my welfare, and of the sincerity with which a return of them is offered.

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TO MATHEW CAREY.

MONTPELLIER, July 27, 1831.

DEAR SIR,—I have received your favor of the 21st, with your commencing address to the citizens of South Carolina. The strange doctrines and misconceptions prevailing in that quarter are much to be deplored; and the tendency of them the more to be dreaded, as they are patronized by statesmen of shining talents and patriotic reputations. To trace the great causes of this state of things, out of which these unhappy aberrations have sprung, in the effect of markets glutted with the products of the land and with the land itself; to appeal to the nature of the constitutional compact as precluding a right in any one of the parties to renounce it at will, by giving to all an equal right to judge of its obligations, and, as the obligations are mutual, a

right to enforce correlative with a right to dissolve them; to make manifest the impossibility as well as injustice of executing the laws of the Union, particularly the laws of commerce, if even a single State be exempt from their operation; to lay open the effects of a withdrawal of a single State from the Union on the practical conditions and relations of the others, thrown apart by the intervention of a foreign nation; to expose the obvious, inevitable, and disastrous consequences of a separation of the States, whether into alien Confederacies or individual nations;—these are topics which present a task well worthy the best efforts of the best friends of their country, and I hope you will have all the success which your extensive information and disinterested views merit.

If the States cannot live together in harmony under the auspices of such a Government as exists, and in the midst of blessings such as have been the fruits of it, what is the prospect threatened by the abolition of a common Government, with all the rivalships, collisions, and animosities inseparable from such an event? The entanglements and conflicts of commercial regulations, especially as affecting the inland and other non-importing States, and a protection of fugitive slaves substituted for the obligatory surrender of them, would, of themselves, quickly kindle the passions which are the forerunners of war.

My health has not been good for several years, and is at present much crippled by rheumatism; this, with my great age, warns me to be as little as possible before the public, and to give way to others, who, with the same love of their country, are more able to be useful to it.

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TO GENERAL LA FAYETTE.

MONTPELLIER, Aug<sup>t</sup> 3, 1831.

MY DEAR SIR,—My last letter of December 12th was written with a hope that General Bernard, then about to visit France, would be the bearer; but it did not, I suspect, overtake him. I hope, however, it did not miscarry altogether. I inclose this to

him in confidence that it will reach New York before the packet sails. The General is so fully acquainted with our affairs, great and *small*, that you can learn every thing worth knowing from his lips better than from my pen. I will remark only, the anomalous doctrines of S. Carolina and the gross exaggerations of the effects of the tariff, although apparently in a train for more systematic support, are less and less formidable to the public tranquillity. S. Carolina herself is becoming more divided, and the Southern people generally more and more disposed to calculate the value of the Union by the consequences of disunion. In the mean time, we are mortified and grieved, as you will be, at the aspect which has been given to our political horizon and the effect of it on those who cannot know that the clouds producing it are but local and transient. Our anxieties now are chiefly turned to the aspect of things on your side of the Atlantic; to the fate of Poland; its bearing on the crisis in France; and the connexion of both with the general struggle between liberty and despotism. Imperfectly informed, as we are, on many points, we look to your views as the best guide to our judgments and wishes; regretting that you are not nearer the helm, but persuaded that your counsels are felt by the nation whose impulse the helm must obey.

My health has not been good for several years, and I am at present suffering under an obstinate attack of rheumatism, which you will perceive has not spared even my fingers. I could not, however, forego the opportunity by General Bernard, for whose loss we are consoled, by the services expected by his country, of expressing my unalterable affection and devoted attachment. Mrs. Madison offers, at the same time, her cordial regards; and we unite in extending all our best wishes to the individuals of your family.

TO ROBERT WALSH.

MONTPELLIER, August 22d, 1831.

DEAR SIR,—I inclose the answer of Mr. Scott on the subject of Bishop Madison, as just received, that you may extract the materials suited to your object.

The intellectual power and diversified learning of the Bishop may justly be spoken of in strong terms, and few men have equally deserved the praise due to a model of all the virtues, social, domestic, and personal, which adorn and endear the human character. He was particularly distinguished by a candour, a benevolence, a politeness of mind, and a courtesy of manner, that won the confidence and affection on the shortest acquaintance.

It would be improper to omit, as a feature in his portrait, that he was a devoted friend to our Revolution and to the purest principles of a Government founded on the rights of man. The period of his first visit to G. Britain led to conversations on the subject of the war with persons of high standing. Among them was Doctor Robertson, the historian, to whom he had letters of introduction. The Doctor, abstaining from the question of right, remarked, that nothing astonished him so much as that the Colonies should have conceived it possible to resist such a power as that of the Mother Country. This was about the time of Burgoyne's surrender.

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TO ELISHA SMITH.

SEPTEMBER 11, 1831.

I have received, sir, your letter of the 24th ultimo, in which you request my opinion on several points involved in the question of the Bank of the United States.

It might not be proper at any time, and especially at the present, to advance mere opinions in such a case without discussing the grounds on which they rest; and this is a task which I may be excused from undertaking at the age I have reached, now

the eighty-first year, and under a painful rheumatism which has for some time been my companion.

I may say, in brief, as may be gathered from newspapers, that I consider the opinions adverse to the constitutionality of the Bank of the United States, as overruled by the kind and degree of sanctions given to the establishment; that the restraint on the States from emitting bills of credit was understood to have reference to such as were made a legal tender; and that a Bank of the United States may be of peculiar aid in controlling suspensions of specie payments in State banks, and in securing the advantages of a sound and uniform currency.

As to the precise course to be taken by Congress on the expiration of the existing charter, I am willing to confide in the wisdom of that body, availing itself of the lights of experience, past and in progress.

Well assured of the worthy motives of your letter, I could not withhold this mark of respect for them; adding only, a request that it may not bring me in any way before the public, and that you will accept the offer of my friendly salutations and good wishes.

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TO JOSEPH C. CABELL.

MONTPELLIER, Sept. 16, 1831.

DEAR SIR,—I did not receive your pamphlet till a few days ago, and your letter of the 29th ultimo till yesterday. I thank you for the former, which did not need the apology it contains to me. I am not surprised at the good reception it meets with. The views it presents of its topics, and the documents and extracts enforcing them, form an appeal to intelligent readers that could not be without effect in spite of the prejudices encountered. I thank you also for the circumstantial communications in your letter, and congratulate you on the event which restores you to the public councils, where your services will be valuable on several accounts, particularly in defending the Constitution and Union against the false doctrines which assail them. That

of nullification seems to be generally abandoned in Virginia by those who had most leaning towards it. But it still flourishes in the hot-bed where it sprung up, and will probably not die away while mistaken causes of exaggerated sufferings continue to nourish it; while the tariff, which produced it, is exclusively charged with the inevitable effects of a market equally glutted with the products of the land and with the land itself.

I know not whence the idea could proceed that I concurred in the doctrine, that although a State could not nullify a law of the Union, it had a right to secede from the Union. Both spring from the same poisonous root, unless the right to secede be limited to cases of intolerable oppression, absolving the party from its constitutional obligations.

I hope that all who now see the absurdity of nullification, will see also the necessity of rejecting the claim to effect it through the State judiciaries, which can only be kept in their constitutional career by the control of the federal jurisdiction. Take the linch-pins from a carriage, and how soon would a wheel be off its axle; an emblem of the speedy fate of the federal system, were the parties to it loosened from the authority which confines them to their spheres.

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TO J. Q. ADAMS.

MONTPELLIER, Sept<sup>r</sup> 23, 1831.

J. M., with his best respects to Mr. Adams, thanks him for the copy of his eulogy on the life and character of James Monroe.

Not only must the friends of Mr. Monroe be gratified by the just and happy tribute paid to his memory; the historian, also, will be a debtor for the interesting materials and the eloquent samples of the use to be made of them which will be found in its pages.



TO JOSEPH C. CABELL.

MONTPELLIER, Oct<sup>r</sup> 5, 1831.

DEAR SIR,—Among my letters from Judge Pendleton is one which relates to the Judicial Bill, as then before the Senate of the United States. A copy of it had been sent to him by R. H. Lee, with a request of his observations on it, and a copy of these inclosed by Mr. Pendleton in his letter to me. It is remarkable that, although the observations are numerous, and descend to minute criticisms, none of them touch the section which gives to the Supreme Court of the United States its controlling jurisdiction over the State Judiciaries. In the letter of Mr. Pendleton to me inclosing his observations, it appears that he would have preferred to the plan of the *Bill*, a federal use of the State Courts, with an appeal from the *Supreme Courts* of the States to the Supreme Court of the United [States.] Wishing to learn what he had said in his answer to R. H. Lee, inclosing his observations, I requested a friend, intimate with Mr. Ludwell Lee, to make the enquiry. From the answer to this request, I find that the letters from Mr. Pendleton to R. H. Lee had all passed into the hands of his grandson, R. H. Lee, who had finally deposited them in the University of Virginia. Should you have an early occasion to visit Charlottesville I will ask the favor of you to examine that particular letter, and let me know how far it corroborates the view taken of the subject in the letter to me. You are aware of the weight of the opinion of Mr. Pendleton, and its value if opposed to the nullifying power of a State through its Judiciary department. I find that Col. Taylor's authority is in print for the ultimate jurisdiction of the Supreme Court of the United States over the boundary between the United States and the States. Should you not be likely to have an early call towards the University, be so good as to let me know it, and I will transfer the task requested of you to some one on the spot.

Hoping this will find your health restored, I offer my best wishes for its continuance, and for every other happiness. My

own health is still under the invasion of rheumatism. With cordial esteem.

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TO PROFESSOR TUCKER.

Oct<sup>r</sup> 17, 1831.

DEAR SIR,—I understand that the correspondence between Judge Pendleton and Richard H. Lee has been deposited by the grandson of the latter in the University of Virginia, and I find among the letters of the former to me, one in which he incloses a copy of remarks on the original Judicial bill, then depending in Congress, which had been sent to him by R. H. Lee, then a member of the Senate, with a request of his opinion on it. The letter of the Judge to me does not approve of the plan of the bill, but the 25 section is not noticed among the many objectionable passages suggested to his correspondent as needing revision. From the letter to me it appears that the Judge would have preferred a Federal use of the State Courts, with an appeal from the *Supreme* Courts of the States to the *Supreme Court* of the U. States. Do me the favor to examine the letter of Mr. Pendleton, inclosing his remarks to Mr. Lee, and let me know whether there be in it anything, and if any, what, that relates to the appellate supremacy of the Federal Judiciary over the State Judiciary.

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TO ——— TOWNSEND, (S. C.)

MONTPELLIER, Oct. 18, 1831.

DEAR SIR,—I received on the 14th your letter of the 3d instant, and will endeavor to answer the several queries contained in it according to my knowledge and recollections. I shall do it, however, with a wish that you may keep in mind the reserve of my name, which, you are aware, must be most agreeable to me. It is so, not because I am unwilling to be publicly responsible for my statements and sentiments where the occasion ab

solutely demands it, but because where that, as at present, is not the case, my appearance before the public might be construed into an intrusion into questions of a party character, and because I might be exposed to the alternative of giving, by my silence, a sanction to erroneous criticisms or of taking part in the warfare of politics unbecoming my age and my situation.

You ask "whether Mr. Jefferson was really the author of the Kentucky Resolutions of 1799." The inference that he was not is as conclusive as it is obvious, from his letter to Col. Wilson Carey Nicholas of September 5, 1799, which expressly declines, for reasons stated, preparing anything for the Legislature of that year.

Again, "whether the father of the Mr. Nicholas referred to in the letter of December 11, 1821, as having introduced the resolutions of 1798 into the Kentucky Legislature, be not the same individual to whom Mr. Jefferson alludes as the brother of Col. Wilson Carey Nicholas, in a letter addressed to the latter on the 5th September, 1799, vol. iii, p. 420." He was the elder brother, and his name George. He died prior to the Kentucky resolutions of 1799.

What might or would have been the meaning attached to the term "nullify" by Mr. Jefferson, is to be gathered from his language in the resolutions of 1798 and elsewhere, as in his letter to Mr. Giles, December 25, 1825, viz, to extreme cases, as alone justifying a resort to any forcible relief. That he ever asserted a right in a single State to arrest the execution of an act of Congress, the arrest to be valid and permanent unless reversed by three-fourths of the States, is countenanced by nothing known to have been said or done by him. In his letter to Major Cartwright, he refers to a Convention as a peaceable remedy for conflicting claims of power in our compound Government; but whether he alluded to a convention as prescribed by the Constitution, or brought about by any other mode, his respect for the will of majorities, as the vital principle of Republican Government, makes it certain that he could not have meant a convention in which a minority of seven States was to prevail over seventeen, either in amending or expounding the Constitution.

Whether the debates in Kentucky on the resolutions of 1798-99 were preserved, and whether anything similar to the explanatory report in Virginia took place, are points upon which I have no information. If there be any contemporary evidence explanatory of the Virginia resolutions beyond the documents referred to in the letter of August, 1830, to Mr. Everett, it is not within my present recollection. It may doubtless exist in pamphlets or newspapers not yet met with, and still more in private letters not yet brought to light.

I have noticed, in a paper headed "Nullification Theory," published in the Richmond Enquirer of the 20th of September, views of Mr. Jefferson's opinions, which may perhaps throw light on the object of your letter.

I will add nothing to these hasty remarks, (excuse the penmanship of them, of which my rheumatic fingers refuse to give a fairer copy,) but a hope that the fermentation in which the nullifying doctrine had its origin will yield to moderate counsels in the Federal Government; and that the shining talents and patriotic zeal which have espoused the heresy will be turned to objects more worthy of both.

With friendly salutations,

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TO DR. J. W. FRANCIS.

MONTPELLIER, NOV<sup>r</sup> 7, 1831.

DEAR SIR,—I thank you for the pleasure afforded by your interesting address to the Philolexian Society of Columbian College, forwarded with your letter of the 25th ultimo.

The friendly relations in which I stood to both Chancellor Livingston and Mr. Monroe would make me a reluctant witness, if I had happened to possess any knowledge of facts favoring either at the expense of the other in the negotiations which preceded the transfer of Louisiana to the United States. But my recollections throw no light on the subject beyond what may be derived from official papers in print, or on the files of

the Department of State, and especially from the work on Louisiana by Mr. Marbois, the French negotiator. I have no doubt that each of the envoys did everything, according to his opportunities, that could evince official zeal and anxious patriotism; at the same time that the disclosures of Mr. Marbois sufficiently shew that the real cause of success is to be found in the sudden policy suggested to Napoleon by the foreseen rupture of the peace of Amiens, and, as a consequence, the seizure of Louisiana by G. Britain, who would not only deprive France of her acquisition, but turn it, politically or commercially, against her, in relation to the United States or Spanish America.

The present state of my health, crippled by severe and obstinate rheumatism, combined with my great age, oblige me to shrink from the task of revising the political statements in your pamphlet, which, under other circumstances, would be undertaken with pleasure, as a proof of my respect for your wishes. It is of the less importance, as, in the event of your recurring to the subject of your address, you will doubtless be able to consult whatever sources of information may be necessary to correct errors into which a slight examination preparatory to the address may have betrayed you.

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TO JARED SPARKS.

MONTPELLIER, November 25, 1831.

DEAR SIR,—I have received your favor of the 14th instant. The simple question is, whether the draught sent by Mr. Pinckney to Mr. Adams, and printed in the Journal of the Convention, could be the same with that presented by him to the Convention on the 29th day of May, 1787; and I regret to say that the evidence that that was not the case is irresistible. Take, as a sufficient example, the important article constituting the House of Representatives, which, in the draught sent to Mr. Adams, besides being too minute in its details to be a possible anticipation of the result of the discussion, &c., of the Convention on that sub-

ject, makes the House of Representatives *the choice of the people*. Now, the known opinion of Mr. Pinckney was, that that branch of Congress ought to be chosen by the *State Legislatures*, and not immediately by the people. Accordingly, on the 6th day of June, not many days after presenting his draught, Mr. Pinckney, agreeably to previous notice, moved that, as an amendment to the Resolution of Mr. Randolph, the term "people" should be struck out and the word "Legislatures" inserted; so as to read, "Resolved, That the members of the first branch of the National Legislature ought to be elected by the Legislatures of the several States." But what decides the point is the following extract from him to me, dated March 28, 1789:

"Are you not, to use a full expression, abundantly convinced that the theoretic nonsense of an election of the members of Congress by the people, in the first instance, is clearly and practically wrong; that it will, in the end, be the means of bringing our Councils into contempt, and that the Legislatures are the only proper judges of who ought to be elected?"

Others proofs against the identity of the two draughts may be found in Article VIII of the Draught, which, whilst it specifies the functions of the President, contains no provision for the election of an such officer, nor, indeed, for the appointment of any Executive Magistracy, notwithstanding the evident purpose of the author to provide an *entire* plan of a Federal Government.

Again, in several instances where the Draught corresponds with the Constitution, it is at variance with the ideas of Mr. Pinckney, as decidedly expressed in his votes on the Journal of the Convention. Thus, in Article VIII of the Draught, provision is made for removing the President by impeachment, when it appears that in the Convention, July 20, he was opposed to any impeachability of the Executive Magistrate. In Article III, it is required that all money-bills shall originate in the first branch of the Legislature; and yet he voted, on the 8th August, for striking out that provision in the Draught reported by the Committee on the 6th. In Article V, members of each House are made ineligible, as well as incapable, of holding any office under the Union, &c., as was the case at one stage

of the Constitution; a disqualification disapproved and opposed by him August 14th.

Further discrepancies might be found in the observations of Mr. Pinckney, printed in a pamphlet by Francis Childs, in New York, shortly after the close of the Convention. I have a copy, too mutilated for use, but it may probably be preserved in some of your historical repositories.

It is probable that in some instances, where the Committee which reported the Draught of Aug<sup>s</sup> 6th might be supposed to have borrowed from Mr. Pinckney's Draught, they followed details previously settled by the Convention, and ascertainable, perhaps, by the Journal. Still there may have been room for a passing respect for Mr. Pinckney's plan by adopting, in some cases, his arrangement; in others, his language. A certain analogy of outlines may be well accounted for. All who regard the object of the Convention to be a real and regular Government, as contradistinguished from the old Federal system, looked to a division of it into Legislative, Executive, and Judiciary branches, and of course would accommodate their plans to their organization. This was the view of the subject generally taken and familiar in conversation, when Mr. Pinckney was preparing his plan. I lodged in the same house with him, and he was fond of conversing on the subject. As you will have less occasion than you expected to speak of the Convention of 1787, may it not be best to say nothing of this delicate topic relating to Mr. Pinckney, on which you cannot use all the lights that exist and that may be added?

My letter of April 8th was meant merely for your own information and to have its effect on your own view of things. I see nothing in it, however, unfit for the press, unless it be thought that the friends of Mr. Morris will not consider the credit given him a balance for the merit withdrawn, and ascribe the latter to some prejudice on my part.

TO N. P. TRIST.

DECEMBER, 1831.

I return, with my thanks, the printed speech of Col. Hayne on the 4th of July last. It is blotted with many strange errors, some of a kind not to have been looked for from a mind like that of the author. I cannot see the advantage of this perseverance of South Carolina in claiming the authority of the Virginia proceedings in 1798-'99, as asserting a right in a single State to nullify an act of the United States. Where, indeed, is the fairness of attempting to palm on Virginia an intention which is contradicted by such a variety of contemporary proofs; which has, at no intervening period, received the slightest countenance from her; and which, with one voice, she now disclaims? There is the less propriety in this singular effort, since Virginia, if she could, as is implied, disown a doctrine which was her own offspring, would be a bad authority to lean on in any cause. Nor is the imprudence less than the impropriety, of an appeal from the present to a former period, as from a degenerate to a purer state of political orthodoxy; since South Carolina, to be consistent, would be obliged to surrender her present nullifying notions to her own higher authority, when she declined to concur and co-operate with Virginia at the period of the alien and sedition laws. It would be needless to dwell on the contrast of her present nullifying doctrines with those maintained by her political champions at subsequent and not very remote dates.

Besides the external and other internal evidence that the proceedings of Virginia, occasioned by the alien and sedition laws, do not maintain the right of a single State, as a party to the Constitution, to arrest the execution of a law of the United States, it seems to have been overlooked, that in *every* instance in those proceedings where the *ultimate* right of the States to interpose is alluded to, the *plural* term *States* has been used; the term *State*, as a single party, being invariably avoided. And if it had been suspected that the term *respective*, in the third resolution, would have been misconstrued into such a claim of an individual State, or that the language of the seventh resolution,



invoking the co-operation of the other States with Virginia, would not be a security against the error, a more explicit guard would doubtless have been introduced. But surely there is nothing strange in a concurrence and co-operation of many parties in maintaining the rights of each within itself.

It would seem, also, to be deemed an object of importance to fix the charge of inconsistency on me individually, in relation to the proceedings of Virginia in 1798-99. But it happens that the ground of the charge particularly relied on would, at the same time, exhibit the State in direct and pointed opposition to a nullifying import of those proceedings.

In the seventh resolution, which declares the alien and sedition laws to be "unconstitutional," this term was followed by "null, void, and of no effect," which, it is alleged, express an *actual* nullification; and as they are ascribed to me as the drawer of the resolution, it is inferred that I must then have been a nullifier, though now disclaiming the character. These particular words, though essentially the same with unconstitutional, were promptly and unanimously stricken out by the House as a caution against misconstruction. Now, admitting that they were in the *original* draught of the resolution, and assuming that they meant more than the term unconstitutional, amounting even to nullification, the striking them out turns the authority of the State precisely against the doctrine for which that authority is claimed.

Other, and some not very candid, attempts are made to stamp my political career with discrediting inconsistencies. One of these is a charge that I have on some occasions represented the Supreme Court of the United States as the judge, in the last resort, on the boundary of jurisdiction between the several States and the United States, and on other occasions have assigned this last resort to the parties to the Constitution. It is the more extraordinary that such a charge should have been hazarded, since, besides the obvious explanation that the last resort means, in one case, the last within the purview and forms of the Constitution, and, in the other, the last resort of all, from the Constitution itself to the parties who made it, the distinc-

tion is presented and dwelt on both in the report on the Virginia resolutions and in the letter to Mr. Everett, the very documents appealed to in proof of the inconsistency. The distinction between these ultimate resorts is, in fact, the same within the several States. The judiciary there may, in the course of its functions, be the last resort within the provisions and forms of the Constitution, and the people, the parties to the Constitution, the last in cases ultra-constitutional, and therefore requiring their interposition.

It will not escape notice, that the judicial authority of the United States, when overruling that of a State, is complained of as subjecting a sovereign State, with all its rights and duties, to the will of a court composed of not more than seven individuals. This is far from a true state of the case. The question would be between a single State and the authority of a tribunal representing as many States as compose the Union.

Another circumstance to be noted is, that the nullifiers, in stating their doctrine, omit the particular form in which it is to be carried into execution; thereby confounding it with the extreme cases of oppression which justify a resort to the original right of resistance, a right belonging to every community, under every form of Government, consolidated as well as federal. To view the doctrine in its true character, it must be recollected that it asserts a right in a single State to stop the execution of a federal law, although in effect stopping the law everywhere, until a Convention of the States could be brought about by a process requiring an uncertain time; and finally, in the Convention, when formed, a vote of seven States, if in favour of the veto, to give it a prevalence over the vast majority of seventeen States. For this preposterous and anarchical pretension there is not a shadow of countenance in the Constitution; and well that there is not, for it is certain that, with such a deadly poison in it, no constitution could be sure of lasting a year; there having scarcely been a year since ours was formed without a discontent in some one or other of the States, which might have availed itself of the nullifying prerogative. Yet this has boldly sought a sanction under the name of Mr. Jeffer-

son, because, in his letter to Major Cartwright, he held out a Convention of the States, as, with us, a peaceable remedy, in cases to be decided in Europe by intestine wars. Who can believe that Mr. Jefferson referred to a Convention summoned at the pleasure of a single State, with an interregnum during its deliberations; and, above all, with a rule of decision subjecting nearly three-fourths to one-fourth? No man's creed was more opposed to such an inversion of the republican order of things.

There can be no objection to the reference made to the weakening effect of age on the judgment, in accounting for changes of opinion. But inconsistency, at least, may be charged on those who lay such stress on the effect of age in one case, and place such peculiar confidence where that ground of distrust would be so much stronger. What was the comparative age of Mr. Jefferson, when he wrote the letter to Mr. Giles, a few months before his death, in which his language, though admitting a construction not irreconcilable with his former opinions, is held, in its assumed meaning, to outweigh, on the tariff question, opinions deliberately formed in the vigour of life, reiterated in official reasonings and reports, and deriving the most cogent sanction from his presidential messages and private correspondences? What, again, the age of General Sumter, at which the concurrence of his opinion is so triumphantly hailed? That his judgment may be as sound as his services have been splendid, may be admitted; but, had his opinion been the reverse of what it proved to be, the question is justified by the distrust of opinions, at an age very far short of his, whether his venerable years would have escaped a different use of them.

But I find that, by a sweeping charge, my inconsistency is extended "to my opinions on almost every important question which has divided the public into parties." In supporting this charge, an appeal is made to "Yates's Secret Debates in the Federal Convention of 1787," as proving that I originally entertained opinions adverse to the rights of the States; and to the writings of Col. Taylor, of Caroline, as proving that I was in that Convention "an advocate for a *consolidated national Government.*"

Of the debates, it is certain that they abound in errors, some of them very material in relation to myself. Of the passages quoted, it may be remarked, that they do not warrant the inference drawn from them. They import "that I was disposed to give Congress a power to repeal State laws," and "that the States ought to be *placed under the control of the General Government*, at least as much as they were formerly, when under the British King and Parliament."

The obvious necessity of a control on the laws of the States, so far as they might violate the Constitution and laws of the United States, left no option but as to the mode. The modes presenting themselves were: 1. A veto on the passage of the State laws. 2. A congressional repeal of them. 3. A judicial annulment of them. The first, though extensively favoured at the outset, was found, on discussion, liable to insuperable objections, arising from the extent of country and the multiplicity of State laws. The second was not free from such as gave a preference to the *third*, as now provided by the Constitution. The opinion that the States ought to be placed not less under the Government of the United States than they were under that of Great Britain, can provoke no censure from those who approve the Constitution as it stands, with powers exceeding those ever allowed by the colonies to Great Britain, particularly the vital power of taxation, which is so indefinitely vested in Congress, and to the claim of which by Great Britain a bloody war and final separation were preferred.

The author of the "Secret Debates," though highly respectable in his general character, was the representative of the portion of the State of New York which was strenuously opposed to the object of the Convention, and was himself a zealous partisan. His notes carry on their face proofs that they were taken in a very desultory manner, by which parts of sentences, explaining or qualifying other parts, might often escape the ear. He left the Convention, also, on the 5th of July, before it had reached the midway of its session, and before the opinions of the members were fully developed into their matured and practical shapes. Nor did he conceal the feelings of dis-

content and disgust which he carried away with him. These considerations may account for errors, some of which are self-condemned. Who can believe that so crude and untenable a statement could have been intentionally made on the floor of the Convention, as "that the *several States* were political societies, *varying* from the *lowest corporations* to the *highest sovereigns*," or "that the States had vested *all the essential rights* of Government in the *old Congress*?"

On recurring to the writings of Col. Taylor,\* it will be seen that he founds his imputation against myself and Governor Randolph, of favouring a consolidated national Government, on the resolutions introduced into the Convention by the latter in behalf of the Virginia delegates, from a consultation among whom they were the result. The resolutions imported that a Government, consisting of a *national* Legislature, Executive, and Judiciary, ought to be substituted for the existing Congress. Assuming for the term *national* a meaning co-extensive with a single consolidated Government, he filled a number of pages in deriving from that source a support of his imputation. The whole course of proceedings on those resolutions ought to have satisfied him that the term *national*, as contradistinguished from *federal*, was not meant to express more than that the powers to be vested in the new Government were to operate as in a national Government, directly on the people, and not, as in the old Confederacy, on the States only. The extent of the powers to be vested, also, though expressed in loose terms, evidently had reference to limitations and definitions to be made in the progress of the work, distinguishing it from a plenary and consolidated Government.

It ought to have occurred, that the Government of the United States, being a novelty and a compound, had no technical terms or phrases appropriate to it, and that old terms were to be used in new senses, explained by the context or by the facts of the case.

Some exulting inferences have been drawn from the change

\* See "New Views," written after the journal of convention was printed.

noted in the journal of the Convention of the word *national* into "United States." The change may be accounted for by a desire to avoid a misconception of the former, the latter being preferred as a familiar caption. That the change could have no effect on the real character of the Government was and is obvious; this being necessarily deduced from the actual structure of the Government and the quantum of its powers.

The general charge which the zeal of party has brought against me, "of a change of opinion in almost every important question which has divided parties in this country," has not a little surprised me. For, although far from regarding a change of opinion under the lights of experience and the results of improved reflection as exposed to censure, and still farther from the vanity of supposing myself less in need than others of that privilege, I had indulged the belief that there were few if any of my contemporaries, through the long period and varied services of my political life, to whom a mutability of opinion on great constitutional questions was less applicable.

Beginning with the great question growing out of the terms "common defence and general welfare," my early opinion expressed in the *Federalist*, limiting the phrase to the specified powers, has been adhered to on every occasion which has called for a test of it.

As to the power in relation to roads and canals, my opinion, without any previous variance from it, was formally announced in the veto on the Bonus bill in 1817, and no proof of a subsequent change has been given.

On the subject of the tariff for the encouragement of manufactures, my opinion in favour of its constitutionality has been invariable from the first session of Congress under the new Constitution of the United States, to the explicit and public maintenance of it in my letters to Mr. Cabell in 1828.

It will not be contended that any change has been manifested in my opinion of the unconstitutionality of the alien and sedition laws.

With respect to the supremacy of the judicial power, on questions occurring in the course of its functions, concerning the

boundary of jurisdiction between the United States and individual States, my opinion in favour of it was, as the forty-first number of the *Federalist* shows, of the earliest date; and I have never ceased to think that this supremacy was a vital principle of the Constitution, as it is a prominent feature in its text. A supremacy of the Constitution and laws of the Union, without a supremacy in the exposition and execution of them, would be as much a mockery as a scabbard put into the hand of a soldier without a sword in it. I have never been able to see, that, without such a view of the subject, the Constitution itself could be the supreme law of the land; or that the *uniformity* of the federal authority throughout the parties to it could be preserved; or that without this *uniformity*, anarchy and disunion could be prevented.

On the subject of the bank alone is there a colour for the charge of mutability on a constitutional question. But here the inconsistency is apparent, not real, since the change was in conformity to an early and unchanged opinion, that, in the case of a Constitution as of a law, a course of authoritative, deliberate, and continued decisions, such as the bank could plead, was an evidence of the public judgment, necessarily superseding individual opinions. There has been a fallacy in this case, as, indeed, in others, in confounding a question whether precedents could expound a Constitution, with a question whether they could alter a Constitution. This distinction is too obvious to need elucidation. None will deny that precedents of a certain description fix the interpretation of a law. Yet who will pretend that they can repeal or alter a law?

Another error has been in ascribing to the *intention* of the *Convention* which formed the Constitution, an undue ascendancy in expounding it. Apart from the difficulty of verifying that intention, it is clear, that if the meaning of the Constitution is to be sought out of itself, it is not in the proceedings of the body that proposed it, but in those of the State Conventions, which gave it all the validity and authority it possesses.

TO N. P. TRIST.

DECEMBER 21, 1831.

D<sup>R</sup> SIR,—I return the newspapers. The passage is a sad example of pulpit authenticity, justice, and delicacy. In what relates to me there is scarce any part wholly true in the sense intended. How such a string of misinformation could have been gathered, it is not easy to imagine. I never studied law with Mr. Jefferson. The story about my father's interference, and my evasion of his anxious inquiries, falls of course. That of my studying the Bible on the Sabbath during the first term, and abandoning it during the second term of my service in the Department of State, is, throughout, a sheer fabrication for the sake of the sting put into the tail of it.

The preacher says he had spoken to me on the subject of my faith, and that I always evaded his object. I recollect one person, only, of his name [Wilson] who could have made the allusion. He was presented to me at Washington by Mr. Piper, and perhaps other Pennsylvania members of Congress, and called on me several times afterwards late in the evening. He was considered a man of superior genius, and a profound erudition, for his years, but eccentric, and subject occasionally to flights into the region of mental derangement, of which, it was said, he gave proofs in a sermon preached in Washington. This infirmity betrayed itself during a visit to me with Mr. Piper, who apologized for it. In intervals perfectly lucid, his conversation was interesting.

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TO R. R. GURLEY.

MONTPELLIER, Dec<sup>r</sup> 28, 1831.

DEAR SIR,—I received in due time your letter of the 21 ultimo, and with due sensibility to the subject of it. Such, however, has been the effect of a painful rheumatism on my general condition, as well as in disqualifying my fingers for the use of the pen, that I could not do justice "to the principles and measures



of the Colonization Society, in all the great and various relations they sustain to our own country and to Africa." If my views of them could have the value which your partiality supposes, I may observe, in brief, that the Society had always my good wishes, though with hopes of its success less sanguine than were entertained by others found to have been the better judges; and that I feel the greatest pleasure at the progress already made by the Society, and the encouragement to encounter the remaining difficulties afforded by the earlier and greater ones already overcome. Many circumstances at the present moment seem to concur in brightening the prospects of the Society, and cherishing the hope that the time will come when the *dreadful calamity which has so long afflicted our country, and filled so many with despair, will be gradually removed, and by means consistent with justice, peace, and the general satisfaction; thus giving to our country the full enjoyment of the blessings of liberty, and to the world the full benefit of its great example.* I have never considered the main difficulty of the great work as lying in the deficiency of emancipations, but in an inadequacy of asylums for such a growing mass of population, and in the great expense of removing it to its new home. The spirit of private manumission, as the laws may permit and the exiles may consent, is increasing, and will increase, and there are sufficient indications that the public authorities in slaveholding States are looking forward to interpositions, in different forms, that must have a powerful effect.

With respect to the new abode for the emigrants, all agree that the choice made by the Society is rendered peculiarly appropriate by considerations which need not be repeated, and if other situations should not be found as eligible receptacles for a portion of them, the prospect in Africa seems to be expanding in a highly encouraging degree.

In contemplating the pecuniary resources needed for the removal of such a number to so great a distance, my thoughts and hopes have long been turned to the rich fund presented in the western lands of the nation, which will soon entirely cease to be under a pledge for another object. The great one in question

is truly of a national character, and it is known that distinguished patriots not dwelling in slaveholding States have viewed the object in that light, and would be willing to let the national domain be a resource in effectuating it.

Should it be remarked that the States, though all may be interested in relieving our country from the coloured population, are not equally so, it is but fair to recollect that the sections most to be benefited are those whose cessions created the fund to be disposed of.

I am aware of the constitutional obstacle which has presented itself; but if the general will be reconciled to an application of the territorial fund to the removal of the coloured population, a grant to Congress of the necessary authority could be carried with little delay through the forms of the Constitution.

Sincerely wishing increasing success to the labours of the Society, I pray you to be assured of my esteem, and to accept my friendly salutations.

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TO J. K. PAULDING.

JANUARY—, 1832.

According to my promise, I send you the enclosed sketch. It was my purpose to have enlarged some parts of it, and to have revised and probably blotted out others. But the crippled state of my health makes me shun the task, and the uncertainties of the future induce me to commit the paper, crude as it is, to your friendly discretion. Wishing to know that it has not miscarried, drop a single line saying so.

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TO JAMES T. AUSTIN,

MONTPELLIER, Feb<sup>y</sup> 6, 1832.

D<sup>r</sup> SIR,—I have received your letter of the 19th ultimo requesting a “communication of any facts connected with the service of the late Vice President Gerry in the Convention of 1787.” The letter was retarded by its address to Charlottes-

ville instead of Orange Court House. It would give me pleasure to make any useful contribution to a biography of Mr. Gerry, for whom I had a very high esteem and a very warm regard. But I know not that I could furnish any particular facts of that character, separable from his general course in the Convention, especially without some indicating reference to them. I may say, in general, that Mr. Gerry was an active, an able, and interesting member of that Assembly, and that the part he bore in its discussions and proceedings was important and continued to the close of them. The grounds on which he dissented from some of the results are well known.

I shall, I am sure, sir, be pardoned any deficiency in this answer to your request, when I remark that I am now approaching the 82<sup>d</sup> year of my age, and that besides the infirmities incident to it, I have for a considerable time been suffering from a severe rheumatism, which, among its diffusive effects, has so crippled my hands and fingers that I write my name with pain and difficulty, and am in a manner disqualified for researches which require the handling of papers.

Wishing you, sir, success in acquiring the means of doing full justice to the merits of a distinguished Revolutionary patriot, I pray you to accept assurances of my esteem and cordial respects.

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TO E. D. WHITE, OF LOUISIANA, M. C.

J. M. presents the thanks due for the remarks upon a plan for the total abolition of "slavery in the United States" with which he has been favoured.

The views taken of the subject are very interesting; but an error is noticed in ascribing to him "the opinion that Congress possesses constitutional powers to appropriate public funds to aid this redeeming project of colonizing the coloured people." He wished the powers of Congress to be enlarged on this subject.

MONTPELLIER, 14th Feb., 1832.

TO A. ROBBINS.

MONTPELLIER, March 21, 1832.

J. Madison has duly received the speech of Mr. Robbins on the "Protection of American Industry." J. Madison has read it, as he has others, taking opposite views of the subject, with a just sense of the eloquence and ability brought forth by the discussion. He cannot but hope, notwithstanding the antipode opinions which have appeared, that some intermediate ground will be traced, for an accommodation, so impressively called for by patriotic considerations. With his thanks to Mr. Robbins for his friendly regards, he tenders him assurances of his continued esteem and good wishes.

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TO HENRY CLAY.

(*Confidential.*)

MARCH 22, 1832.

DEAR SIR,—I have duly received yours of the 17th. Although you kindly release me from a reply, it may be proper to say that some of the circumstances to which you refer were not before known to me.

On the great question before Congress, on the decision of which so much depends out of Congress, I ought the less to obtrude an opinion, as its merits essentially depend on many details which I have never investigated, and of which I am an incompetent judge. I know only that the tariff, in its present amount and form, is a source of deep and extensive discontent, and I fear that without alleviations separating the more moderate from the more violent opponents, very serious effects are threatened. Of these, the most formidable and not the least probable would be a Southern Convention; the avowed object of some, and the unavowed object of others, whose views are, perhaps, still more to be dreaded. The disastrous consequences of disunion, obvious to all, will, no doubt, be a powerful check on its partisans; but such a Convention, characterized as it

would be by selected talents, ardent zeal, and the confidence of those represented, would not be easily stopped in its career; especially as many of its members, though not carrying with them particular aspirations for the honours, &c., &c., presented to ambition on a new political theatre, would find them germinating in such a hot-bed.

To these painful ideas I can only oppose hopes and wishes, that, notwithstanding the wide space and warm feelings which divide the parties, some accommodating arrangements may be devised that will prove an immediate anodyne and involve a lasting remedy to the tariff discords.

Mrs. Madison charges me with her affectionate remembrances to Mrs. Clay, to whom I beg to be, at the same time, respectfully presented, with reassurances of my high esteem and cordial regards.

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TO N. P. TRIST.

MONTPELLIER, May—, 1832.

DEAR SIR,—I have received your letter of the 8th, with the book referred to, and dictate the acknowledgment of it to a pen that is near me. I will read the work as soon as I may be able. When that will be I cannot say. I have been confined to my bed many days by a bilious attack. The fever is now leaving me, but in a very enfeebled state, and without any abatement of my rheumatism; which, besides its general effect on my health, still cripples me in my limbs, and especially in my hands and fingers.

I am glad to find you so readily deciding that the charges against Mr. Jefferson can be duly refuted. I doubt not this will be well done. To be so, it will be expedient to review carefully the correspondences of Mr. Jefferson; to recur to the aspects of things at different epochs of the Government, particularly as presented at its outset, in the unrepugnant formalities introduced and attempted, not by President Washington, but by the vitiated political taste of others taking the lead on the

occasion, and again in the proceedings which marked the Vice Presidency of Mr. Jefferson.

Allowances also ought to be made for a habit in Mr. Jefferson, as in others of great genius, of expressing in strong and round terms impressions of the moment.

It may be added, that a full exhibition of the correspondences of distinguished public men through the varied scenes of a long period, would, without a *single exception*, not fail to involve delicate personalities and apparent, if not real, inconsistencies.

I heartily wish that something may be done with the tariff that will be admissible on both sides, and arrest the headlong course in South Carolina. The alternative presented by the dominant party there is so monstrous that it would seem impossible that it should be sustained by any of the most sympathizing States, unless there be latent views apart from constitutional questions, which I hope cannot be of much extent. The wisdom that meets the crisis with the due effect will greatly signalize itself.

The idea that a Constitution which has been so fruitful of blessings, and a Union admitted to be the only guardian of the peace, liberty, and happiness of the people of the States comprising it, should be broken up and scattered to the winds, without greater than any existing causes, is more painful than words can express. It is impossible that this can ever be the deliberate act of the people, if the value of the Union be calculated by the consequences of disunion.

I am much exhausted, and can only add an affectionate adieu.

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TO N. P. TRIST.

MONTPELLIER, May 29, 1832.

MY DEAR SIR,—Whilst reflecting in my sick bed, a few mornings ago, on the dangers hovering over our Constitution, and even the Union itself, a few ideas, though not occurring for the first time, had become particularly impressive at the present. I have noted them by the pen of a friend on the en-

closed paper, and you will take them for what they are worth. If that be anything, and they happen to accord with your own view of the subject, they may be suggested where it is most likely they will be well received; but without naming or designating, in any manner, the source of them.

I am still confined to my bed with my malady, my debility, and my age, in triple alliance against me. Any convalescence, therefore, must be tedious, not to add imperfect.

I have not yet ventured on the perusal of the book you sent me. From passages read to me, I perceive "that the venom of its shafts" are not without "a vigor in the bow."

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29 MAY, 1832.

*(The paper referred to as inclosed in the foregoing letter.)*

The main cause of the discords which hover over our Constitution, and even the Union itself, is the tariff on imports; and the great complaint against the tariff is the inequality of the burthen it imposes on the planting and manufacturing States, the latter bearing a less share of the duties on protected articles than the former. This being the case, it seems reasonable that an equality should be restored, as far as may be, by duties on unprotected articles consumed in a greater proportion by the manufacturing States. Let, then, a selection be made of unprotected articles, and such duties imposed on them as will have that effect. The unprotected article of Tea, for example, known to be more extensively consumed in the manufacturing than in the planting States, might be regarded as, *pro tanto*, balancing the disproportionate consumption of the protected article of coarse woollens in the South. As the repeal of the duty on tea and some other articles has been represented by southern politicians as more a relief to the North than to the South, it follows that the North, in these particulars, has for many years paid taxes not proportionally borne by the South.

Justice certainly recommends some equalizing arrangement;

and in a compound tariff itself, necessary to produce an equilibrium of the burthen, (a duty on any single article, though uniform in law, being uniform in its operation,) such an arrangement might not be impracticable.

Two objections may perhaps be made: first, that it might produce an increase of surplus revenue, which there is an anxiety to avoid. But as a *certain* provision for an *adequate* revenue will always produce a surplus to be disposed of, such an addition, if not altogether avoidable, would admit a like disposition. In any view, the evil could not be so great as that for which it is suggested as a remedy.

The second objection is, that such an adjustment between different sections of the nation might increase the difficulty of a proper adjustment between different descriptions of people, particularly between the richer and the poorer. But here again the question recurs, whether the evil, as far as it may be unavoidable, be so great as a continuance of the threatening discords which are the alternative.

It cannot be too much inculcated, that in a Government like ours, and, indeed, in all governments, and whether in the case of indirect or direct taxes, it is impossible to do perfect justice in the distribution of burthens and benefits, and that equitable estimates and mutual concessions are necessary to approach it.

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TO EDWARD EVERETT.

MONTPELLIER, May 30, 1832.

DEAR SIR,—I am indebted to you, I observe, for a copy of Mr. Doddridge's speech on the subject of Congressional privilege. A part of it has been read to me, and judging from that of what remains, I need not hesitate to pronounce it an able one, as was to be expected from its able author. As he is under a mistake in supposing me to have drawn the Judicial Act of 1789, and wishes for information, it may be proper to set him right. The bill originated in the Senate, of which I was not a



member, and the task of preparing it was understood, justly I believe, to have been performed by Mr. Ellsworth, in consultation, probably, with some of his learned colleagues.

My health has improved but little; I am still confined to my bed in a state of much debility, the effect of the combined causes of rheumatism and bilious fever.

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TO PHILIP DODDRIDGE.

MONTPELLIER, June 6, 1832.

DEAR SIR,—Your letter of the 1st instant, followed by a copy of your speech on Congressional privilege, found me in my bed, to which I have been confined for several weeks by a severe bilious fever uniting itself with a severe rheumatism, which had kept me a cripple, (particularly my hands and fingers,) and a prisoner in my house for many months. The fever has, I hope, ceased, but leaves me in much debility. In this condition you will, I am sure, pardon me for not undertaking that thorough consideration of the subject which would enable me to do justice to your critical and extensive views of it. I feel safe in saying, that your speech is a very able one, as was to be expected; and I may add, that I have always considered the right of self-protection in the discharge of the necessary duties as inherent in legislative bodies as in courts of justice; in the State Legislatures as in the British Parliament; and in the Federal Legislature as in both. In the application of this privilege to emerging cases, difficulties and differences of opinion may arise. In deciding on these the reason and necessity of the privilege must be the guide. It is certain that the privilege has been abused in British precedents, and may have been in American also.

Previous to receipt of your letter I had been favored by Mr. Everett, of Massachusetts, with a copy of your speech, which was read to me; and observing your mistake in supposing me to have drawn the Judicial Act of 1789, I thought it proper, in my answer, to furnish the means of correcting it. The bill originated in the Senate, of which I was not a member, and was un-

derstood, truly I believe, to have proceeded from Mr. Ellsworth, availing himself, as may be presumed, of consultations with some of his most enlightened colleagues. Those who object to the control given to the Supreme Court of the U. States over the State courts, ought to furnish some equivalent mode of preventing a State government from annulling the laws of the U. States through its Judiciary department, the annulment having the same anarchical effect as is brought about through either of its other departments.

If I were in an ill-humour with you, which I am not and never was, I might here advert to the misconstruction which, in your controversy with Mr. Cook, you put on the amendment I proposed in our late Convention, authorizing the Legislature, two-thirds of each House concurring, to reapportion the representation as inequalities might from time to time require. My motive, I am conscious, was pure, and the object I still think proper. The right of suffrage and the rule of apportionment of representatives are fundamentals in a free Government, and ought not to be submitted to legislative discretion. The former had been fixed by the Constitution, but every attempt to provide a constitutional rule for the latter had failed, and of course no remedy could be applied for the greatest inequalities without a Convention, at which the general feeling seemed to revolt. In this alternative it appeared the lesser evil to give the power of redress to the Legislature, controlling its discretion by requiring a concurrence of two-thirds instead of a mere majority. Should the power be duly exercised, all will be well; if not, the same resorts will be open as if the amendment had never been proposed; and I trust I am not too sanguine in anticipating that the claims of justice, with the alternative of refusing it, will prevail over local and selfish considerations.

But I pass with pleasure from this reminiscence to a return of my thanks for your communication, and a tender of my esteem and my friendly salutations.

TO DAVID HOFFMAN.

JUNE 13, 1832.

J. Madison, with his respects to Mr. Hoffman, thanks him for the copy of his lecture lately delivered in the University of Maryland. In the decrepit and feeble state of the health of J. M. he has not been able to bestow on some parts of the lecture the degree of attention which they merit. He can safely pronounce it to be a happy example, in which erudite disquisition is presented in language not less elegant than lucid.

The distinction between what has been called bench legislation and judicial interpretation is by a line not easy to be drawn, though necessary to be observed. It is probable that it has been very imperfectly regarded in the modes by which much of English law, not understood to have been brought by our emigrating ancestors with them, nor adopted by legislative enactments, was admitted into the Colonial codes, and is now found in those of the States. There is an obscurity over this class of innovations which it would require extensive researches to remove—more extensive, perhaps, than might be rewarded by an attainable success.

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29th JUNE, 1832.

I have received, my friends, your letter of the 25th instant, inviting me, in behalf of a portion of the citizens of Orange, to be a guest at their proposed festive celebration on the 4th of July. The respect we all feel for that great anniversary would render the occasion of meeting them highly gratifying to me; but the very feeble state to which I am reduced by a tedious indisposition, does not permit me to consult my inclinations. I avail myself, therefore, of the alternative you suggest of substituting a sentiment; and I offer one which accords with the sensibility expressed by the Committee, to the painful aspect given to our National Confederacy by conflicting opinions on important questions among its members:

“May the political discords in our country, so grateful to the [its?] enemies, be speedily brought to a conclusion that will inspire fresh confidence in the friends of our free institutions.”

I pray the Committee to accept my acknowledgments for the terms, but too partial, in which they have communicated the invitation, and to be assured of my sincere esteem and regard for them individually.

LAWRENCE T. DADE,  
 PEYTON GRYMES,  
 CHARLES P. HOWARD,  
 THOMAS THROOP,  
 WILLIAM R. ROBINSON,  
*Committee.*

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TO C. E. HAYNES.

MONTPELLIER, August 27, 1832.

DEAR SIR,—I have received your letter of the 12th.

In the very crippled and feeble state of my health, I cannot undertake an extended answer to your inquiries, nor should I suppose it necessary if you have seen my letter to Mr. Everett, in August, 1830, in which the proceedings of Virginia in 1798–99 were explained, and the novel doctrine of nullification adverted to.

The distinction is obvious between, 1st, Such interpositions on the part of the States against unjustifiable acts of the Federal Government as are within the provisions and forms of the Constitution. These provisions and forms certainly do not embrace the nullifying process proclaimed in South Carolina, which begins with a single State and ends with the ascendancy of a minority of States over a majority—of seven over seven-teen; a federal law, during the process, being arrested within the nullifying State; and, if a revenue law, frustrated through all the States. 2d, Interpositions not within the purview of the Constitution, by the States in the sovereign capacity in which

they were parties to the unconstitutional compact. And here it must be kept in mind, that in a compact like that of the United States, as in all other compacts, each of the parties has an equal right to decide whether it has or has not been violated and made void. If one contends that it has, the others have an equal right to insist on the validity and execution of it.

It seems not to have been sufficiently noticed, that in the proceedings of Virginia referred to, the *plural* term *States* was invariably used in reference to their interpositions; nor is this sense affected by the object of maintaining, within their respective limits, the authorities, rights, and liberties appertaining to them, which could certainly be best effectuated for each by co-operating interpositions.

It is true that, in extreme cases of oppression justifying a resort to original rights, and in which passive obedience and non-resistance cease to be obligatory under any Government, a single State or any part of a State might rightfully cast off the yoke. What would be the condition of the Union, and the other members of it, if a single member could at will renounce its connexion, and erect itself, in the midst of them, into an independent and foreign power; its geographical relations remaining the same, and all the social and political relations, with the others, converted into those of aliens and of rivals, not to say enemies, pursuing separate and conflicting interests? Should the seceding State be the only channel of foreign commerce for States having no commercial ports of their own, such as that of Connecticut, New Jersey, and North Carolina, and now particularly all the inland States, we know what might happen from such a state of things by the effects of it under the old Confederation among States bound as they were in friendly relations by that instrument. This is a view of the subject which merits more developments than it appears to have received.

I have sketched these few ideas more from an unwillingness to decline an answer to your letter than from any particular value that may be attached to them. You will pardon me, therefore, for requesting that you will regard them as for your-

self, and not for publicity, which my very advanced age renders every day more and more to be avoided.

Accept, sir, a renewal of my respects and regard.

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TO BENJAMIN ROMAINE.

MONTPELLIER, Nov. 8, 1832.

DEAR SIR,—I have received the two copies of your pamphlet on State sovereignty, &c. The enfeebled state to which I am reduced by a tedious illness has abridged my reading to its minimum, and my fingers, stiffened by rheumatism, abhor the pen. I have, notwithstanding, gone through the pamphlet, and drop a line to thank you for it.

I have found in the publication much that is very impressive, and very *apropos* to the existing conjuncture in our political affairs; and I wish its effect in cherishing a devotion to the Union and an allegiance to the Constitution may correspond with the patriotic counsels of the author.

How far the light in which the pamphlet has regarded some of the lineaments of the Constitution may not be identical with the view I have taken of them, I do not critically examine, the rather as there is often a greater difference in the expression than in the intention.

Having, in a letter published in the North American Review some time ago, sketched my understanding of the foundation and frame of our political fabric, you can, if you think the comparison worth making, bring the difference to that test. The letter embraced the subject of nullification, on which our judgments and feelings are without a difference.

I am sensible, sir, of what I owe for the kind terms in which you have forwarded your copies, and I beg you to accept this cordial return for the favor.

I need not say that these crude lines are not for public use, of which they are obviously not worthy.

TO N. P. TRIST.

DEC<sup>r</sup> 4th, 1832.

DEAR SIR,—I have seen the ordinance of the Convention of S. Carolina, and the Report introducing it. The latter is speciously written; will be demonstration in S. Carolina, and not without effect in cherishing the anti-tariff sympathies of the other Southern States. The ordinance must have a counteracting effect; to what extent is to be seen. It will depend much on the course of the Federal Government, which I trust will combine with effectual means for defeating the nullifying process, a wise moderation that will transfer to it the sympathies withdrawn from the contrasted violence in S. Carolina. The expedients you suggest for the upper country there, would, under other circumstances, be at once decisive, and might be so at present; but it is difficult for reason to calculate the rashness of the passions, infuriated as they are in the nullifying party. At all events, if any effective Government or the Union itself is to be maintained, a triumph of that party in a scheme fatal to both must not be permitted.

I wish you may be able to pursue your object of compiling the printed materials which shew the state of things during the interval between the peace of 1783 and the adoption of the Constitution, as well as during the early period of the latter. I have long wished for such a work, not only for its future value, but for the salutary lights it would give to those who were not cotemporaries with those interesting scenes in our Revolutionary drama, and are liable to be misled by false or defective views of them. How far I may be able to aid your researches, by particular references, I cannot say. It may be a subject of conversation, when I have the pleasure of your promised visit a few weeks hence.

TO N. P. TRIST.

MONTPELLIER, December 23, 1832.

DEAR SIR,—I have received yours of the 19th, enclosing some of the South Carolina papers. There are in one of them some interesting views of the doctrine of secession—one that had occurred to me, and which for the first time I have seen in print—namely, that if one State can, at will, withdraw from the others, the others can, at will, withdraw from her, and turn her, *nolentem volentem*, out of the Union. Until of late, there is not a State that would have abhorred such a doctrine more than South Carolina, or more dreaded an application of it to herself. The same may be said of the doctrine of nullification, which she now preaches as the only faith by which the Union can be saved.

I partake of the wonder, that the men you name should view secession in the light mentioned. The essential difference between a free government and governments not free, is, that the former is founded in compact, the parties to which are mutually and equally bound by it. Neither of them, therefore, can have a greater right to break off from the bargain, than the other or others have to hold them to it. And certainly there is nothing in the Virginia resolutions of 1798 adverse to this principle, which is that of common sense and common justice. The fallacy which draws a different conclusion lies in confounding a *single* party with the *parties* to the constitutional compact of the United States. The latter having made the compact, may do what they will with it. The former, as one only of the parties, owes fidelity to it till released by consent, or absolved by an intolerable abuse of the power created. In the Virginia resolutions and report the *plural* number, *States*, is in *every* instance used where reference is made to the authority which presided over the Government. As I am now known to have drawn those documents, I may say, as I do with a distinct recollection, that the distinction was intentional. It was, in fact, required by the course of reasoning employed on the occasion. The Kentucky resolutions, being less guarded, have been more easily perverted. The pretext for the liberty taken with those of Vir-



ginia is the word *respective*, prefixed to the "rights," &c., to be secured within the States. Could the abuse of the expression have been foreseen or suspected, the form of it would doubtless have been varied. But what can be more consistent with common sense, than that all having the same rights, &c., should unite in contending for the security of them to each?

It is remarkable how closely the nullifiers, who make the name of Mr. Jefferson the pedestal for their colossal heresy, shut their eyes and lips whenever his authority is ever so clearly and emphatically against them. You have noticed what he says in his letters to Monroe and Carrington, pages 43 and 203, vol. ii, with respect to the powers of the old Congress to coerce delinquent States, and his reasons for preferring for the purpose a naval to a military force; and, moreover, that it was not necessary to find a right to coerce in the federal articles, that being inherent in the nature of a compact. It is high time that the claim to secede at will should be put down by the public opinion; and I shall be glad to see the task commenced by one who understands the subject.

I know nothing of what is passing at Richmond, more than what is seen in the newspapers. You were right in your foresight of the effect of the passages in the late proclamation. They have proved a leaven for much fermentation there, and created an alarm against the danger of consolidation, balancing that of disunion. I wish, with you, the Legislature may not seriously injure itself by assuming the high character of mediator. They will certainly do so if they forget that their real influence will be in the inverse ratio of a boastful interposition of it.

If you can fix and will name the day of your arrival at Orange Court House, we will have a horse there for you; and if you have more baggage than can be otherwise brought than on wheels, we will send such a vehicle for it. Such is the state of the roads, produced by the wagons hurrying flour to market, that it may be impossible to send our carriage, which would answer both purposes.

TO JOSEPH C. CABELL.

MONTPELLIER, Dec. 27, 1832.

DEAR SIR,—I have this moment only received yours of the 22d. I regret the delay, as you wished an earlier answer than you can now have, though I shall send this immediately to the post-office. My correspondence with Judge Roane originated in the request that I would take up the pen on the subject he was discussing, or about to discuss. Although I concurred much in his views of it, I differed, as you will see, with regard to the power of the Supreme Court of the United States in relation to the State court. This was in my last letter, which being an answer, did not require one, and none was received. My view of the supremacy of the federal court, when the Constitution was under discussion, will be found in the *Federalist*. Perhaps I may, as could not be improper, have alluded to cases (of which all courts must judge) within the scope of its functions. Mr. Pendleton's opinion that there ought to be an appeal from the *Supreme Court* of a State to the *Supreme Court* of the United States, contained in his letter to me, was, I find, avowed in the Convention of Virginia, and so stated by his nephew, latterly in Congress. I send you a copy of Col. J. Taylor's argument on the carriage tax. If I understand the beginning pages, he is not only high-toned as to judicial power, but regards the federal court as the *paramount* authority. Is it possible to resist the nullifying inference from the doctrine that makes the State courts uncontrollable by the Supreme Court of the United States?

I cannot lay my hand on my letter to Judge Roane.\* The word omitted, I presume, is *argument*. It is a common compliment among the French, as you know, to say you have given all its lustre, &c. \* \* \* \*

What is said in my letter to Mr. Everett, in the *North American Review*, as to the origin of the Constitution, I considered as squaring with the account given in the *Federalist* of the mix-

\* See Vol. iiii., p. 222.

ture of national and federal *features* in the Constitution. That view of it was well received at the time by its friends, and, I believe, has not been controverted by the republican party. A marked and distinctive feature in the resolutions of 1798 is, that the *plural* number is *invariably* used in them, and not the singular, and the *course of the reasoning* required it.

As to my change of opinion about the bank, it was in conformity to an unchanged opinion that a certain course of practice required it.

The tariff is unconnected with the resolutions of 1798. In the first Congress of 1789 I sustained, and have in every situation since adhered to it. I had flattered myself, in vain it seems, that whatever my political errors may have been, I was as little chargeable with inconsistencies as any of my fellow-labourers through so long a period of political life.

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TO JOSEPH C. CABELL.

MONTPELLIER, Dec. 28, 1832.

DEAR SIR,—I wrote you a few lines last evening in answer to yours of the 22d. Resuming my search for the letter of June 29, 1821, \*I have been successful, and hasten to give you the words omitted in your copy. After "their full lustre," fill the blank with the words "to the arguments against the suability of States by individuals." I was rather surprised to find such a substantial identity in several respects between the letter and that to Mr. Everett, the member of Congress, which went into the North American Review. I am less apprehensive of being convicted of inconsistencies in political opinions than I am unwilling to be thought obtrusive of them on the public. I believe not a single letter of that sort has been published which was not an *answer*, as was that to Mr. Everett. The occasion which led to the tenour of this last, was the reference to, and misconstruction of, the Virginia resolutions of 1798, which I wished to rescue from the erroneous use of them. I will mention to you in confidence, that I had previously written a very similar

\* See Vol. iii., p. 222.

one to Col. Hayne, in answer to a communication of his speech, &c., in which he had referred to, and supported his heresy, by the authority of Virginia. He promised to answer my letter, but never did.

I mentioned that I had been uniform in my views of several great constitutional questions. I might have added to them the question concerning roads and canals, and the phrase "common defence and general welfare." On the subject of the tariff, now the theme and the torch which agitates and inflames the public mind, my course has not varied through the period commencing with the Federal Government, and down to my letters to you a few years ago.

I observe that the Report of the Committee on the South Carolina and other papers copy into it one of the resolutions of 1798, and italicize it. The aspect of it, without the explanation of the report of 1799, may be perverted to a nullifying use by the word "respective." But it was not extraordinary that the *States* should co-operate *all* for attaining the objects of *each*. Had a nullification by a *single State* occurred as a doctrine likely to claim countenance from the expression, the contemporary evidence which has been given of the temper and views of the General Assembly justifies the presumption that it would have been sufficiently varied. It is not probable that such an idea as the South Carolina nullification had ever entered the thoughts of a single member, or even those of a citizen of South Carolina herself.

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TO PROFESSOR DAVIS.—(NOT SENT.)

MONTPELLIER, 1832. [1833.]

DEAR SIR,—I received in due time the copy of your lectures on the constitutionality of the "protective duties."

No one can commend more than I do the freedom with which you have discussed the subject, or be more disposed than I am to do justice to the ingenuity of the reasoning and the literary stamp which the lecture exhibits. But as it has taken for its

text "a view of the constitutional power of Congress to promote and protect domestic manufactures," contained in a letter from me to J. C. Cabell, I may be permitted to offer the remarks to which I think the adverse view maintained in the lecture is liable.

I must begin with a protest against the passage which classes me "with others who extend the constitutional power of Congress over commerce, even to the occupations of tradesmen, such as carpenters," &c. Against such an error I might safely appeal to the language in several parts of the letter, and to the obvious scope of all its reasoning, as necessarily showing that the trade which Congress had the power to regulate meant commerce, and, in its application there, "foreign commerce." But in the outset of the letter is a sentence which, if it had not been overlooked, would have saved the lecture from the error it committed. The sentence is in these words: "It [the question to be examined] is a simple question, whether the power to regulate trade with *foreign* nations, as a distinct and substantive item in the enumerated powers, embraces the object of encouraging, by duties, restrictions, and prohibitions, the manufactures and products of the country." If, in citing the Constitution, the word *trade* was put in the place of *commerce*, the word *foreign* made it synonymous with commerce. Trade and commerce are, in fact, used indiscriminately, both in books and in conversation. Free trade, in its most familiar sense, is the phrase for the freedom of foreign commerce; and the internal interchanges between the towns and the country are as often expressed by the term commerce as by the term trade. Whether there be "others" who extend the commercial power of Congress to the occupations of tradesmen, I know not. If there be, it may be doubted whether so gross a misconstruction was entitled to all the disproof bestowed on it.

The grounds on which the constitutionality of the tariff for the encouragement of manufactures is denied, are, that the express power granted to Congress to impose duties, limits them to the sole purpose of revenue, and that no power to impose

them is involved in, or incident to, the power to regulate commerce with foreign nations.

According to this construction of the Constitution, Congress would be without the power to impose duties on imports for protecting domestic articles for public defence, for retaliating or countervailing foreign regulations against our products, or even for securing our navigation against the monopolizing policy of other Governments.

Yet it is admitted by some of the most intelligent opponents of a tariff for the encouragement of domestic manufactures, that Congress have the power to protect domestic articles necessary for public defence; and there are few who deny the power to retaliate or countervail foreign restrictions and discriminations; nor any, perhaps, who deny it in behalf of our navigation. Now in all those cases it is known that, among the means of executing the protective power, duties on imports are the most common, the most familiar, and the most appropriate; often, too, where they have the necessary effect of abridging or preventing, instead of raising revenue.

Those who admit the protective power by duties on imports, but only where the protective effect is involved in, or results from, duties having revenue directly and principally for their object, are not a little puzzled by cases where the protective effect obviously and necessarily defeats or diminishes the revenue object. They might be reminded, also, that they would make a protection of the vital interests of their country depend on *revenue* duties on imports, when the wants of the Government might be preferably supplied by direct taxes, by the sales of public lands, by metallic or other adventitious resources. The great demand for revenue, and an extensive resort to duties on imports, has been occasioned by public debts; and it would be a strange doctrine that those vital interests could not be best encouraged or protected by the United States, without the misfortune of being in debt, or with the good fortune of having other resources rendering duties on imports unnecessary and ineligible. The casualties and fluctuations of the pecuniary wants

of a Government would, indeed, be inconsistent with any steady and adequate protection of domestic products, if dependent on the amount of those wants.

On the concessions made by the adversaries of a protective tariff, the lecture seems not a little to waver; sometimes limiting the power of Congress to duties for revenue alone, at others admitting, though with hesitation and doubts, retaliatory or countervailing duties against foreign restrictions, but under the following limitations: 1. That the duties be not continued after they are found to be ineffectual to produce the repeal of the foreign restrictions (pages 14, 15.) 2. That the duties be laid for the purpose of *promoting* commerce. 3. That the regulation must operate externally, not *internally*. 4. That the object be not an encouragement of domestic manufactures.

1. The condition on which a continuance of a retaliating measure is made to depend, namely, its being found to be ineffectual, is too indefinite for a constitutional rule. But, apart from this, what would be the effect if it were believed to be a constitutional rule, or even an inviolable policy of the Government, that if the foreign party would hold out, this country would give in? It would be as well to submit at once, as to enter the contest with such a notice to the other party. Nor would the effect of our retirement from it be, as the lecture supposes, (p. 15) a "*reciprocal* injury." It would, on the contrary, be a complete attainment of the object of the foreign party. Take, for example, the case of a foreign government discriminating between its vessels and ours, by a tonnage duty in favour of its own, and a retaliating discrimination on our part; is it not obvious that a repeal of our discrimination, instead of inflicting an injury on the persevering party, would secure to him a monopoly of the navigation between the two countries? If illustration could be required, it might be found in what occurred between the peace of 1783 and the establishment of the present Constitution of the United States. Great Britain did not fail to enforce her discriminating laws against the navigation of this country in its independent character. Several of the States, Virginia in the number, being anxious for a just re-

reciprocity, made regulations having that for their object. It was soon found, however, that the experiments were rendered ineffectual by the want of a common authority to unite the whole, and by the utter failure of individual retaliations. The consequence was, that Great Britain, being satisfied that her monopoly had nothing to dread from this quarter, persevered in the enjoyment of it until the federal authority created by the new Constitution was put in force against it.

2. If by *promoting* be meant a necessary enlargement of commerce, the authority for applying in that sense the terms "regulate commerce" does not appear. Commerce may be advantageously checked in some cases as well as extended in others. Most, if not all, of the regulating or countervailing regulations, have the effect of abridging commerce, some of them durably and even permanently. In regulating commerce with the Indian tribes, it may well happen that its limits ought to be narrowed. Congress are authorized to regulate the value of foreign coin. It was never understood that the value might not be reduced, as well as raised; reduced, not with a view to promote, but to prevent its circulation. [The term "promote," taken in the latitude it would bear, would open a wider door, certainly a less definite range, for the power "to regulate" foreign commerce than is claimed for it.]

3. Nor can the constitutional power of Congress to regulate commerce be limited to regulations operating externally only, and in no manner internally, so as to interfere with, or control, the pursuits of the States. There are perhaps but few regulations of foreign commerce which do not operate on internal pursuits, whether the regulations be in the form of municipal enactments or of treaties. What is the duty which protects ship-building itself, which is a species of manufacture, but a regulation operating internally, and so far inviting labour and capital from other pursuits? What are the late stipulations in the treaty with France, in favour of her silks and wines, but so many interferences controlling the production of these articles among ourselves?

4. The final limitation of duties requires "that they be not



laid for the purposes of protecting or encouraging manufactures." To avoid anticipating too much the main question to be decided, the following case will be only here stated as bearing on it. Should a foreign government, a case far from imaginary, give a bounty on the export of its manufactures, for the obvious purpose of underselling and undermining the vital manufactures of another country, would not a duty balancing the bounty be a commercial regulation, an exercise of the power "to regulate commerce with foreign nations?" Yet the object and effect of the regulation would not be revenue, for that would be diminished, if not prevented, by the discouragement of the imports. The sole object and effect would be a support and protection of domestic manufactures.

The lecture appears to have fallen into several errors or inaccuracies in the following passage (page 7:) "While duties are imposed for the sole purpose of revenue, the *uniformity* of contribution *required* by the Constitution may be *easily* obtained. But if they may be laid for any other purpose, gross practical inequality is the *unavoidable* result. Again: while duties are imposed for the sole purpose of revenue, their amount is necessarily regulated by the wants of the treasury for those objects confided to the care of the Federal Government. But if they may be laid for the purpose of regulating commerce, their amount is *illimitable*, and may exceed the wants of the treasury by countless millions. What then becomes of the restriction which controls the appropriation of the funds of the Government? By that restriction, Congress may only appropriate money for certain objects. These objects are precisely enumerated, and the requisite appropriations for them are limited, if not previously ascertained. But whatever funds are raised by the exercise of the powers of Government, Congress will surely appropriate to some objects," &c.

If by uniformity, be meant equality, (though that is not its constitutional meaning,) it does not follow that it would be *easily* obtained by duties on imports [that is, on consumption] for revenue alone. Whatever be the purpose for which such duties are laid, inequality is in some degree unavoidable, and

gross inequality but too practicable. Duties for the mere support of Government may be so distributed on articles differently consumed in different places or by different classes, as to have the most unequal operation.

Nor does it follow, if duties be laid for the purpose of regulating commerce, "that their amount is illimitable, and may exceed the wants of the treasury by countless millions." The power to regulate commerce being one of the objects expressly confided to the care of the Federal Government, the language used would import, that no duty could be laid for regulating commerce, at least if not producing revenue, a point yielded [by most of the opponents of the tariff in favour of manufactures, and apparently elsewhere] by the lecture itself, though here it seems to be *decided* on the ground that duties laid, not for revenue, but "for the purpose of regulating commerce," confided, as this is, to the care of the Federal Government, and if so *limited*, if not precisely ascertained, is "illimitable." Supposing that the lecture meant, by regulating commerce, regulations for the encouragement of manufactures, still the amount of the encouraging duties would not *necessarily* be illimitable more than the amount of duties for revenue alone. The amount would depend in both cases on that of the imports, which must be the subject of estimate in both; with this difference only, that precision in the estimate where the encouragement of manufactures is the object may be slightly affected by the influence of the annual progress of manufactures, itself, however, not unsusceptible of estimate.

The lecture, in this passage, has not sufficiently kept in view the distinction between the abuse and the usurpation of power, and between the taxing and appropriating power. It takes for granted that Congress, abusing its power, will draw more money into the treasury than may be wanted for it, and will appropriate it to objects, whether submitted to them by the Constitution or not. That they may do both, and may have done both, is quite possible. But the power to lay duties for the encouragement of manufactures, from which revenue may accrue, and the power to appropriate it, involve distinct constitutional

questions. Not a few who regard the protective tariff as constitutional, limit the appropriating power to the enumerated objects strictly interpreted, whatever be the source of the revenue, whether duties on imports, direct taxes, mines, captures in war, or other adventitious sources. However liable to abuse the contested power of protection may be, as a source of surplus revenue, and as a means of wasteful application, the extent of these abuses is not to be compared with those of which the acknowledged power of providing for wars, and armies and navies, is susceptible. The constitutional control of Congress, in applying surplus moneys in the treasury to *constitutional* objects, is in the responsibility of that body to its constituents. The liability to abuse cannot invalidate a granted power, though it may be a reason for not granting it where the liability to abuse was not more than balanced by the expected use of it. I have said that equality in distributing the burden of duties paid by the consumption of imported articles is not easily obtained. This would be the case if the duties were imposed by the States individually on their own citizens. In the United States, the difficulty is increased by the greater diversity in the habits and other circumstances among the States themselves. No single article is equally consumed everywhere, and it is only by a mixed tariff, in which inequalities of consumption in different sections may balance each other, that a fair distribution of the burden can be approximated. This might be effected, in a certain degree at least, even in a protective tariff. by such an arrangement of the duties as would balance the burden between sections consuming the unprotected articles, and the consumers of the protected articles, thus leaving the policy of protection in every case, as much as possible, to the question, how far the protection would be a temporary sacrifice, compensated by its general and permanent advantages, or otherwise.

In a marginal note [page 20] it is observed, that "so far as the partial operation of any measure of the Federal Government may affect its constitutionality, it is in regard to *States*, and not *individuals* or *classes* of individuals, that it must have this operation, because *States*, and not individuals, are the parties to

the federal compact. This is more particularly the case in respect to all measures relating to taxation, in consequence of the provisions of the Constitution intended to secure equality of contribution among the States. If they bear unequally on individuals or classes, they are unjust and oppressive, but not, therefore, unconstitutional."

The precise import of this passage is not very clear. The only constitutional provision securing equality of contribution among the States is in the case of direct taxes. In the case of indirect taxes no such effect could be secured. The provision which requires a uniformity of duties in all the ports throughout the States, does not secure equality of contribution among the States more than among individuals or classes, the intercourse among the States being free, and the articles consumed not being distinguished by reference to their ports of entry, not to mention that there are States having no ports of entry. Nor is the distinction which seems to be implied in the note less unsound than the reason assumed for it, "that States, not individuals, are parties to the federal compact."

True it is, that the federal compact was not formed by individuals as the parties—that is, by the people acting as a single community. It was formed, nevertheless, by the people acting as separate communities, in their sovereign and highest capacity; a capacity in which, if they had so willed, they could have made themselves a single community, or have reduced their confederate system into an ordinary league or alliance; and the authority which could have done the former, could certainly take the middle course, which was taken in establishing the existing Constitution. In a word, the constitutional compact being formed by an authority perfectly competent, its *obligatory* and *operative* character must be the same as if it had been formed in any other mode by an authority not more competent; and while undissolved by consent or by force, it must be executed, within the extent of its granted powers, according to the forms and provisions prescribed in it, without reference to the mode of its formation. In the event of a dissolution of the compact, a distinctive effect would be, that the States would fall

back into their character of single and separate communities; whereas a dissolution of the social compact on which single communities are founded, would have the effect of restoring or reducing individuals to a state of nature.

But the people were not only parties to the Constitution in the mode explained; they stand under its organization in the same relation to their representatives in the Legislature of the United States, as they do to their representatives in the State legislature, and have the same right to expect from the former, as from the latter, a like regard to the rules of justice in distributing burdens, especially those of taxation, among individuals and classes, as among sections of country, however denominated. The Constitution must have had this in view when vesting in the representatives of the people, in exclusion of the representatives of the States, the right to originate bills of revenue. It may be added, that the obligation of the federal representatives to a fair apportionment of taxes on individuals is strengthened by the consideration, that the greatest expenditures will be required for objects submitted to the federal authority, for the state of war, and for the military and naval establishments intended to prevent or to meet it.

The lecture, assuming that Congress has been *denied* the power to encourage manufactures, because it is not specially granted as a direct and substantive power, considers the patrons of the power as exercising a prohibited power by means of a power not granted. But the very point in question is, whether the power has been denied; whether the *granted* power to regulate commerce with foreign nations does not embrace the object of domestic manufactures, though not specially named in the grant. If every exercise of power not named in the grant was understood to be prohibited, which of the granted powers might not be without the necessary and proper means of attaining its object? It is admitted by the lecture itself, and still more explicitly, as heretofore noticed, by many of the most zealous opponents of a protective tariff, that duties and restrictions may be laid on imports by virtue of the power to regulate foreign commerce, as encouragements of navigation and ship-building,

of articles for public defence, and as retaliating and countervailing the discriminations and restrictions of foreign nations against our vessels and the articles of commerce conveyed by them. Yet neither of these exercises of power is specially named in the grant "to regulate commerce with foreign nations." And it is worthy of special remark, that this retaliating or countervailing power is far less familiar in the practice of nations than the simple power to encourage domestic products by commercial regulations, and especially by duties on imports. How is it possible to define the scope of the regulating power without either limiting it to the ports of entry and clearance, and other particulars affecting the vessels and their crews, or extending the power to the articles composing the cargoes, which, in fact, constitute the commerce itself? and how can they be regulated, or when have they been regulated, either by laws or treaties, without including a reference to the effect of the regulation on the product of the article exchanged?

Examine the commercial codes of all nations, and the commercial treaties forming or enacted into regulations of foreign commerce, and it will be seen at once that the most important parts of them describe the articles to be exchanged between the parties, with the rate of duties on them, and that this is done principally with reference to the effect of the regulations on their respective products, particularly the manufactured branch of them. Examples might easily be multiplied. See treaty of 1786 between France and Great Britain.

After all, we must be guided in expounding "the power to regulate commerce with foreign nations" by the intention of those who framed, or, rather, who adopted the Constitution; and must decide that intention by the meaning attached to the terms by the "*usus*" which is the *arbitrium*, the *jus* and the *norma loquendi*, a rule as applicable to phrases as to single words. It need scarcely to be observed that, according to this rule, the intention, if ascertained by contemporaneous interpretation and continued practice, could not be overruled by any latter meaning put on the phrase, however warranted by the grammatical rules of construction were these at variance with it.

To this test, the *intention* of the parties to the Constitution, the lecture may be considered as making the appeal in the following paragraph :

“The power to regulate commerce, like all other grants of power contained in the Constitution, must be construed according to the *intention* of the parties to the compact, to be ascertained by the terms employed to express this particular grant, by the context of the instrument, and by the general objects and character of the Federal Government. That intention, so far as it can be thus ascertained, we shall find to be unequivocally adverse to the construction of this power, under which is claimed the right to encourage domestic manufactures.”

To the inference that the intention of the parties to the Constitution will be found to be unequivocally adverse to the power of encouraging domestic manufactures, may be opposed the following considerations :

All commercial and manufacturing nations had been, and then were, in the practice of imposing duties and restrictions on imported manufactures, as a protection and encouragement of their own. It is true that the Government of those nations had other powers which the Government of the United States had not. But it is not less true that it was by the exercise of that particular power, the power to regulate commerce with other nations, as embracing the object of protecting domestic products, that duties and restrictions were imposed on the articles imported.

In no nation was the usage more constant than in Great Britain, the parent both of our common and our commercial language.

Such was understood to be an appropriate use of the power among the States, Virginia included, as appears by her attempts to give effect to it, previous to the surrender of the power to the Legislature of the United States.\*

That it was the intention of the States to include in the grant of power to Congress over foreign commerce a power to encour-

\* See letters to Mr. Cabell of September 18 and October 30, 1828, a letter of J. M. to Mr. Jefferson, of ———, and Journal of the House of Delegates, and also acts of the General Assembly of Virginia.

age manufactures by a use of it, may be inferred from the degree in which manufactures had grown up during the Revolutionary war, and from the threatened danger of overwhelming importations if checked only by the inadequate regulations of commerce by the manufacturing States. Mr. Coxe, an able and well-informed author of a work entitled *Coxe's View of the United States*, in the part written prior to the present Constitution, but as an argument for, and in the prospect of such an event, says, that the manufacturing interest was then considerable, and next in importance to that of the fisheries. He farther alludes to the Federal Convention, then meeting, or met, as promising what was wanted. The evidence of the state of manufactures, particularly in Pennsylvania, will be found in the journals and other prints of the period.

That the power of regulating foreign commerce was expected to be given to, and used by, Congress in favour of domestic manufactures, may be seen in the debates in the Convention of Massachusetts. They were there called "a great interest," and the power to encourage them taken for granted by the language used on both sides of the question of adopting and rejecting the Constitution; a fair and uncontradicted indication of the general view of the subject. [See the case stated by Mr. Webster's speech at Pittsburg.] In the earliest debates [see Lloyd] in the new Congress, Mr. Fitzsimmons, a member from Pennsylvania, and a high authority in such a case, remarks: "I observed, Mr. Chairman, by what the gentlemen have said who have spoken on the subject before you, that the proposed plan of revenue is viewed by them as a temporary system, to be continued only until proper materials are brought forward and arranged in more perfect form. I confess, sir, that I carry my views on this subject much farther; that I earnestly wish such a one, which, in its operation, will be some way adequate to our present situation, as it respects our agriculture or manufactures, and our commerce.

"An honorable gentleman (Mr. Lawrence) has expressed an opinion, that an enumeration of articles will operate to confuse the business. So far am I from seeing it in this point of view,



that, on the contrary, I conceive it will tend to facilitate it. Does not every gentleman discover that, when a particular article is offered to the consideration of the committee, he will be better able to give his opinion upon it than on an aggregate question? because the partial and convenient impost laid on such article by individual States is more or less known to every member in the committee. It is also well known, that the amount of such revenue is more accurately calculated and better to be relied on, because of the certainty of collection, less being left to the officers employed in bringing it forward to the public treasury.

“It being my opinion that an enumeration of articles will tend to clear away difficulties, I wish as many to be selected as possible; for this reason I have prepared myself with an additional number, which I wish subjoined to those already mentioned in the motion on your table; among these are some calculated to encourage the productions of our country, and protect our infant manufactures, besides others tending to operate as sumptuary restrictions upon articles which are often termed those of luxury.”

By another member (Mr. Hartley) it was remarked, that “The business before the House is certainly of very great importance, and worthy of strict attention. I have observed, sir, from the conversation of the members, that it is in the contemplation of some to enter on this business in a limited and partial manner, as it relates to revenue alone; but, for my own part, I wish to do it on as broad a bottom as is at this time practicable. The observations of the honorable gentleman from South Carolina (Mr. Tucker) may have weight in some future stage of the business, for the article of tunnage will not probably be determined for several days, before which time his colleagues may arrive and be consulted in the manner he wishes; but surely no argument derived from that principle can operate to discourage the committee from taking such measures as will tend to protect and promote our domestic manufactures.

“If we consult the history of the ancient world, we shall see that they have thought proper, for a long time past, to give

great encouragement to establish manufactures, by laying such partial duties on the importation of foreign goods as to give the home manufactures a considerable advantage in the price when brought to market. It is also well known to the committee, that there are many articles that will bear a higher duty than others, which are to remain in the common mass, and be taxed with a certain impost *ad valorem*: from this view of the subject, I think it both politic and just that the fostering hand of the General Government should extend to all those manufactures which will tend to national utility. I am therefore sorry that the gentlemen seem to fix their minds to so early a period as 1783, for we very well know our circumstances are much changed since that time. We had then but few manufactures among us, and the vast quantities of goods that flowed in upon us from Europe at the conclusion of the war, rendered those few almost useless; since then, we have been forced by necessity and various other causes to increase our domestic manufactures to such a degree as to be able to furnish some insufficient quantity to answer the consumption of the whole Union, while others are daily growing into importance. Our stock of materials is in many instances equal to the greatest demand, and our artisans sufficient to work them even up for exportation; in these cases I think it to be the policy of every enlightened nation to give their manufactures that degree of encouragement necessary to perfect them, without oppressing the other parts of the community; and under this encouragement the industry of the manufacturer will be employed to add to the wealth of the nation."

A farther evidence of the general anticipation is found in the petitions from manufacturers addressed to Congress at the first opportunity that occurred. [See Mr. Webster, as above.]

But a proof not to be resisted, that the power to encourage domestic products by duties on imports was intended to be granted to Congress, is not only the use made of the power at their first session under the new Constitution, but a continued use of it for a period of forty years, with the express sanction of the executive and judicial departments, and with the positive concurrence or manifest acquiescence of the State authorities

and of the people at large, with a very limited exception during a few late years.

It deserves particular attention, that the Congress which first met contained sixteen members, eight of them in the House of Representatives,\* fresh from the Convention which framed the Constitution, and a considerable number who had been members of the State Conventions which had adopted it, taken as well from the party which opposed as from those who had espoused its adoption. Yet it appears from the debates in the House of Representatives, (those in the Senate not having been taken,) that not a doubt was started of the power of Congress to impose duties on imports for the encouragement of domestic manufactures. It is not unworthy of farther notice, that propositions of that character were made by three members from Virginia; by one of a duty on coals, in favour of her coal-pits; by another of a duty on hemp, to encourage the growth of the article; and by a third, a prohibition of beef, in favour of American graziers; a duty being proposed at the same time by a member from South Carolina on hemp, as a proper encouragement to the culture of the article in the suitable soil and climate of that State. None of these propositions appears to have had revenue in view; and that as to beef, of course, excluded revenue. If any doubt on the point of constitutionality had existed, these propositions, though not agreed to, could not have failed to call forth an expression of it. Add to all this that the preamble to the bill, as it passed into a law, contained an express avowal that the encouragement of manufactures was an object of the tariff imposed by it, and that General Washington, who was president of the Convention and signed the Constitution, signed the bill as President of the United States. It has been alleged that this particular clause was not repeated in any succeeding preamble to a like law; and that the omission amounted to a silent disavowal of the precedent. The inference would be a very fair one, if the fact on which it rests had not been un-

\* Nicholas Gilman, Elbridge Gerry, Roger Sherman, George Clymer, Thomas Fitzsimmons, Daniel Carroll, James Madison, Jr., Abraham Baldwin.

true, for in an act of the following year the same clause is inserted in the preamble; and if true, the inference would have been met by another fact, that Congress soon discontinued preambles to their statutes as sources of dilatory discussion, leaving the enactments to speak for themselves.

What stronger contemporaneous evidence could be required than is here given of the meaning attached by the Federal Legislature, at the outset of the Government, and with the best means of knowing that attached by the Federal Convention, to the power of regulating commerce with foreign nations, while it is not denied that, for thirty years, that meaning, as including the encouragement of manufactures, was not drawn into question; that, when so drawn, it was constantly decided by majorities in the Legislature in favour of the constitutionality of the power; and few, if any, will allege that there ever has been a time when majorities, both of the States and of the people, were not of opinion that the power existed.

With respect to the Executive department, it appears that every President, from Washington to the present inclusive, concurred in the legislative construction of the Constitution. For the reiterated and emphatic proofs, let me refer to the extracts from Executive messages appended to the letters of J. Madison to J. C. Cabell, in a pamphlet published in Richmond in 1829. It will be there seen, that besides the messages of Mr. Jefferson, the great weight of whose name has been so loudly claimed for the adverse construction, his very able and elaborate reports, when Secretary of State, on the fisheries and on foreign commerce, inculcated the policy of exercising the protective power, without indicating the slightest doubt of its constitutionality. Nay, more, it will be seen, that in addition to these high official sanctions to it, his correspondence, when out of office and at leisure to review his opinions, shows that he adhered to the protective principle and policy, without any doubt on the point of constitutional authority. In the scale opposed to all this evidence, given at different periods of his long life and under varied circumstances, has been but a brief passage in a letter written a few months before his death to Mr. Giles,

which does not necessarily imply any change of opinion; on the contrary, by referring the one there expressed to an erroneous and "*indefinite*" abuse of power, in the case of the tariff equivalent to a usurpation of power, any appearance of inconsistency might be avoided.

Of the sanctions given to the constitutionality of the protective power by the Judiciary department, it would be superfluous to speak.

If all these authoritative interpretations of the Constitution on a particular point cannot settle its meaning and the intention of its authors, we can never have a stable and known Constitution. A new one may be made by every new Congress; while a like disregard by the Judiciary department of its own deliberate practice would have a like effect in setting afloat the laws also, and producing that instability which is incompatible with good government, and has been the reproach and downfall of too many popular Governments.

If an acknowledged, a uniform, and a long-continued practice under written constitutions and laws cannot settle their meaning, the preposterous result would be, that the longer the period of practice the greater would be the liability to new constructions of them, from the effect of time in changing the meaning of words and phrases. What inroads would be made in a code if the ancient statutes were to be read through the modern meaning of their phraseology? Some of the terms of the Federal Constitution have already undergone perceptible deviations from their original import.

It has been argued against the authority of the precedents regularly continued for thirty or forty years, that the true character of a political system might not be disclosed even within such a period. But this would not disprove the intention of those who made the Constitution. It would show only that it was made liable to abuses not foreseen nor soon to appear; and that it ought to be amended, but by the authority which made it, not by the authority subordinate to it; by the creator, not by the creature of the Constitution.

It cannot be admitted that, in ascertaining the controverted

meaning of the constitutional "power to regulate commerce with foreign nations," no regard ought to be had to the consideration, that, if the power to protect domestic products be not in Congress, it is extinguished in the United States; a nation already, in some degree, a manufacturing one, with a certainty of becoming deeply interested in that branch of industry, and consequently needing the protective armour against the hostile policy of other nations.

The powers of government in our political system are divided between the States in their united capacity and in their individual capacities. The powers, taken together, ought to be equal to all the objects of Government, not specially excepted for special reasons, as in case of duties on exports; or not inconsistent with the principles of Republican Government. The presumption, therefore, must be a violent one, that a power for the encouragement of domestic manufactures was meant to be included in the power vested in Congress "to regulate commerce with foreign nations," as exercised by all nations for that purpose, unless it be left in an adequate form with the individual States. The question then is, whether the power has been so left with the States; and it seems to be admitted by all, that it has been taken from them, if not reserved to them, by the tenth section of article first of the Constitution. Now, apart from the indication on the face of the Journal of the Federal Convention, that the power reserved in that section was a limited one for local purposes, it may be affirmed without hesitation, that the States individually could not if they would, and would not if they could, exercise it for the encouragement of their manufactures. They could not, because the imported articles being less burdened in the other States, would find their way from and through the adjoining States, and defeat the object; and they would not if they could, because the money accruing from the consumption of the articles would be paid, not into the State, but into the National Treasury, while the cost of guarding and enforcing the collection would exceed the advantage of the manufacture; and the advantage itself, if attained, would be, in a manner, common to all the States. The result, however, on the

whole, would be, that the State making the attempt would lose the commerce in the article without gaining the manufacture of it.

The incapacity of the States separately to regulate their foreign commerce was fully illustrated by an experience which was well known to the Federal Convention when forming the Constitution. It was well known that the incapacity gave a primary and powerful impulse to the transfer of the power to a common authority capable of exercising it with effect. It may be confidently foretold, that if, as has been proposed, Congress should grant a general consent to the States to impose duties on imports in favour of their domestic manufactures, and any State should avail itself of the consent, the experiment would never be repeated by the same nor the example be followed by any other State.

It is true, that certain States having peculiar advantages for foreign commerce, might levy both on their non-importing neighbours and on themselves a very limited impost, without throwing the trade into other channels, and be able so far to encourage their domestic manufactures. But as such an object would not fail to arouse the indignation of the suffering States, it cannot be doubted that the revision and control expressly reserved to Congress would be at once interposed to arrest the grievance. New York, Pennsylvania, Rhode Island, and Virginia, previous to the establishment of the present Constitution, had opportunities of taxing the consumption of their neighbours, and the exasperating effect on them formed a conspicuous chapter in the history of the period. The grievance would now be extended to the inland States, which necessarily receive their foreign supplies through the maritime States, and would be heard in a voice to which a deaf ear would not be turned.

The condition of the inland States is of itself a sufficient proof that it could not be the intention of those who framed the Constitution to *substitute* for a power in Congress to impose a protective tariff, a power merely to permit the States individually to do it. Although the present inland States were not then in existence, it could not escape foresight that it would soon, and

from time to time, be the case. Kentucky was then known to be making ready to be an independent State, and to become a member of the Confederacy. What is now Tennessee was marked by decided circumstances for the same distinction. On the north side of the Ohio new States were in embryo under the arrangements and auspices of the Revolutionary Congress, and it was manifest, that within the Federal domain others would be added to the Federal family.

As the anticipated States would be without ports for foreign commerce, it would be a mockery to provide for them a permit to impose duties on imports or exports in favour of manufactures, and the mockery would be the greater as the obstructions and difficulties in the way of their bulky exports might the sooner require domestic substitutes for imports; and a protection for the substitutes, by commercial regulations, which could not avail if not general in their operation and enforced by a general authority. Even at this time, notwithstanding the facilities of steamboats, canals, and railroads, there remains for much of the inland portion of the United States an extent of transportation, in some cases a terraqueous one, rendering the expense of exchanging their exports for imports a motive for manufacturing efforts, which need for their infancy, and against contingencies, the shield of Federal protection.

But those who regard the permission grantable in section ten, article one, to the States to impose duties on foreign commerce, as an intended substitute for a general power in Congress, do not reflect that the object of the permission, qualified as it is, might be less inconsistently explained by supposing it a concurrent or supplemental power, than by supposing it a substituted power.

Finally, it cannot be alleged that the encouragement of manufactures permissible to the States by duties on foreign commerce, is to be regarded as an incident to duties imposed for revenue. Such a view of the section is barred by the fact that revenue cannot be the object of the State, the duties accruing, not to the State, but to the United States. The duties also would even diminish, not increase, the gain of the federal treasury, by di-



minishing the consumption of imports within the States imposing the duties, and, of course, the aggregate revenue of the United States. The revenue, whatever it might be, could only be regarded as an incident to the manufacturing object, not this to the revenue.

Under no aspect of the subject can the clause in question favour the idea that it was meant to provide a substitute for a national power to protect domestic manufactures by duties on foreign commerce; and consequently, that if the power be not included in the power vested in Congress, the United States would be a solitary example of a nation disarming itself of the power altogether.

Attempts have been made to show, from the journal of the Convention of 1787, that it was intended to withhold from Congress a power to protect manufactures by commercial regulations. The intention is inferred from the rejection or not adopting of particular propositions which embraced a power to encourage them. But, without knowing the reasons for the votes in those cases, no such inference can be sustained. The propositions might be disapproved because they were in a bad form or not in order; because they blended other powers with the particular power in question; or because the object had been, or would be, elsewhere provided for. No one acquainted with the proceedings of deliberative bodies can have failed to notice the frequent uncertainty of inferences from a record of naked votes. It has been seen with some surprise, that a failure or final omission of a proposition "to establish public institutions, rewards, and immunities for the promotion of agriculture, commerce, and manufactures," should have led to the conclusion that the Convention meant to exclude from the federal power over commerce regulations encouraging domestic manufactures. [See Mr. Crawford's letter to Mr. Dickerson, in the *National Intelligencer* of ——.] Surely no disregard of a proposition embracing *public institutions, rewards, and immunities* for the *promotion of agriculture, commerce, and manufactures*, could be an evidence of a refusal to encourage the particular object of manufactures, by the particular mode of duties or restrictions on rival imports. In expounding the Constitution and deducing

the intention of its framers, it should never be forgotten, that the great object of the Convention was to provide, by a new Constitution, a remedy for the defects of the existing one; that among these defects was that of a power to regulate foreign commerce; that in all nations, this regulating power embraced the protection of domestic manufactures by duties and restrictions on imports; that the States had tried in vain to make use of the power, while it remained with them; and that, if taken from them and transferred to the Federal Government, with an exception of the power to encourage domestic manufactures, the American people, let it be repeated, present the solitary and strange spectacle of a nation disarming itself of a power exercised by every nation as a shield against the effect of the power as used by other nations. Who will say that such considerations as these are not among the best keys that can be applied to the text of the Constitution? and infinitely better keys than unexplained votes cited from the records of the Convention.

It has been asked for what purpose, other than the encouragement of manufactures, the consent of Congress was grantable to the States to impose duties on exports and imports; and here the answer is easily given, and perfectly satisfies the language of the Constitution. The object was such improvement in harbours and other cases, having, like their inspection laws, relation to their maritime commerce, as particular States might have a local interest in making apart from, or in addition to, federal provisions. That this was understood to be the meaning of the clause, is demonstrated by the early, continued, and only use made of the power granted by Congress. It appears from the laws of the United States, that, beginning with the year 1790, and previous to the year 1815,\* the consent of Congress, on applications from Massachusetts, Rhode Island, Penn-

\* See Acts of Congress, August 11, 1790; January 10, 1791; February 9, 1791; March 19, 1792; June 9, 1794; March 2, 1795; May 12, 1796; March 27, 1798; March 17, 1800; February 27, 1801; April 14, 1802; March 16, 1804; March 1, 1805; February 28, 1806; March 28, 1806; April 20, 1808; June 15, 1809; March 2, 1811; March 2, 1813; April 16, 1814. There has not been an opportunity of consulting the laws of Congress subsequent to 1815, nor any of the State laws making application to Congress. It is presumed that nothing in either would affect the view here taken of the subject.

sylvania, Maryland, Virginia, South Carolina, and Georgia, was in pursuance of the tenth section, article one, of the Constitution, granted or renewed in not less than twenty instances for State duties, to defray the expense of cleaning out harbours or rivers, erecting piers or light-houses, or appointing health-officers, without a single instance through a period of more than twenty years, and it may now be said, of more than forty years, of an application for the purpose of encouraging State manufactures. Nor, for reasons heretofore given, is there the least probability that such an application ever will be made, or, if made, receive the assent of Congress. The assent could not be desired unless by a State which, like New York, Rhode Island, Virginia, or South Carolina, might possess such peculiar local advantages for foreign commerce as would admit duties to a small extent, without throwing its trade into other channels. But the effect of such duties on the neighboring States would, if not preventing the consent of Congress, lead at once, as heretofore observed, to the demand of its recall by the suffering party. It need not be repeated, that to guard against this evil was a material object in the exchange of the old for the new federal system. New Jersey did not accede to the old without a protest against that defect in it; and it appears from the printed journal of the Convention (page 369,) that New Hampshire, New Jersey, and Delaware, which carried on their foreign commerce through the ports of other States, voted against a power in the States to impose duties, though requiring the previous consent, and subject to the subsequent revision, of Congress; so jealous were they of the power under which they had smarted.

A passage is cited from the *Federalist*, No. xlv, excluding, by its description of the powers of the Federal Government [as few and of an external character,] the power to encourage domestic manufactures. The passage is in the following words: "The powers delegated to the Federal Government are few and defined, and will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liber-

ties, and properties of the people, and the internal order, improvement, and prosperity of the State.”

The stress laid on the passage is at least vastly disproportionate to its importance. It is evident that the writer was taking a general and glancing notice only of the partition of power between the Federal and State governments, the less exposed to be misunderstood or criticised, as the constitutional powers of the former had been detailed in a review of them in several numbers immediately preceding No. xlv. But there is nothing in the passage that can affect the question of a protective tariff, derived from the power of regulating commerce with foreign nations, which is one of the powers named in the passage as of an *internal* character. The simple question, therefore, to be decided, is, whether the protective power be embraced by the regulating power.

That the enumerated powers of the Federal Government are few, when compared with the mass of State powers, is certain. That the powers of “war, peace, negotiation, or treaties, and foreign commerce,” particularly as a main source of revenue, will be *principally* the objects of federal legislation, is proved by the statute-book; and that the word *principally* implies and leaves room for other powers, not of an external character, is sufficiently obvious; besides that, the commerce, though external in its character, operates, as we have seen, internally as well as externally.

It must be confessed, that the classification of constitutional powers into external and internal, though often used to express the division between federal and State powers, is liable to too many exceptions to be a safe guide, without keeping the exceptions in view. Not only do the federal powers, which have been referred to as external, operate internally, but some of the internal powers, whether exercised by the one government or the other, have also an external operation. Excises or direct taxes on vending of imports, if employed by the State authorities, must have a bearing on imports or exports, as real and material as duties imposed on them. On the other hand, certain federal powers have an operation altogether internal, as in

the case of the post office, direct taxes, &c. Occasionally the definition of the federal power is extended to the relations with and between the States, as well as to the relations with foreign nations. But the definition is still defective. Questions arising under a bankrupt law, and under State laws violating contracts, though between *citizens of the same State*, are within the federal jurisdiction.

The Constitution of the United States is truly *sui generis*; and in expounding it, the delineation and distribution of power on the face of it must never be overlooked.

It is asked "whether, as the power to regulate commerce between the States is in the same words with that to regulate it with foreign nations, it would not necessarily follow, if Congress could impose duties to protect American industry against foreign competition, that Congress might impose them for the purpose of protecting the industry and productions of the States against the competition of each other." Waiving the constitutional obstacles presented by the communion of rights and privileges among citizens of different States, the difficulties, the inutility, and the odium of such a project would be a sufficient security against it; a better security than can be found against abuses incident to most of the powers vested in every Government. The power to regulate commerce among the States was well known, and so explained by the advocates of the Constitution,\* when before the people for their consideration, to be meant as a necessary control on the conduct of some of the importing States towards their non-importing neighbours. A recurrence to the angry legislation produced by it among the parties, some of whom had passed commercial laws more rigid against others than against foreign nations, will well account for the constitutional remedy. A condensed view of the evil is given by Mr. Coxe in his work above referred to.

In a marginal note (page 15) it is pronounced, that "if all the nations of the earth were at once to abandon their commercial restrictions, every *real* motive on which ours is founded

\* See Federalist, No. xlii.

would continue to operate;" alluding evidently to personal and local interests as the only motives for a protective tariff.

Should it have happened that acts of Congress in favour of manufactures were sought by individuals reckless of all feeling but the greediness of gain, and patronised by representatives yielding to the voice of their constituents, it would be but to suppose that some of the manufacturers themselves had honestly believed that they were promoting the public interest as well as their own; certain it is that they were sustained by not a few, who persuaded themselves that a protective tariff, by creating a home market and a competition with foreign manufactures, would balance the account with the agriculturalists; and by many of the most intelligent, independent, uninterested, and private citizens, who viewed a tariff within calculated limits as a cheap provision for our infant and nascent establishments, enabling them to take root and flourish without the legal aid, and, in due time, more than repay the cost of protection by the rich addition to the resources of the country, and a diminution of its dependence on foreign supplies of its wants. Nor ought it to have been overlooked, that a farther motive, unbiased by personal or local interest, for espousing a protective policy, was furnished by the frequent occurrence of wars, and the effect of war, in raising the cost of foreign supplies beyond that of protecting, in time of peace, domestic substitutes. It will be readily admitted, that the cost of imports would not now be such as occurred during our revolutionary war, when foreign powers would not trade with us, nor during the war of 1812, when the maritime ascendancy of one of them obstructed the trade of others with us. We have, moreover, a maritime force of our own to protect our intercourse with other nations. Still it is true, and always will be true, that a state of war, more especially when our country is involved in it, by raising the cost of foreign manufactures, may make it a real economy, a political adherence to the rule of cheapness, to avoid that cost by a lesser cost of fostering our own in time of peace. All nations regulate their policy more or less with a reference to the contingency of wars. What are the armies and fleets, with

the costly hoards of materials for them? what the forts and garrisons, the armories and arsenals, but so many peculiar sacrifices to the anticipated dangers of war and invasion? A tariff of protection, well calculated as to its amount and its objects, is within the purview of the same policy. It is not an inapposite reflection, that if the agitating topic of the tariff had arisen in the midst of a war or with a war in prospect, instead of a period of a general and apparently a lasting peace, the doctrines and discussions which have been witnessed would have materially felt the influence of such a difference in the state of things.

For myself, although my name has been seen on the ultra tariff list, I have adhered to the doctrine stated in my letters to Mr. Cabell, which concurred in that of free trade as a theoretic rule, and subject to exceptions only not inconsistent with the principle of it. And I cannot but say that I have not met with any disproof of the soundness of such exceptions. Those who admit no exception to the rule, and those who multiply the exceptions into the rule, equally forget the prudent rule of avoiding extremes. Theories are the offspring of the closet; exceptions to them, the lessons of experience.

I am aware that the views I have taken of the protective power are in opposition to the dominant opinions in Virginia as well as elsewhere. I am equally aware, that in the high degree of excitement in which those opinions are involved, reasonings, however just, and constitutional investigations, however instructive, will find averted eyes and unwilling ears. But the most violent excitements are not the most lasting. And a change may be hastened by the light of facts forcing themselves on the public attention, and by reflections inseparable from them.

That a ferment in the popular mind, almost beyond example, should have been wrought by means not less beyond example, cannot, however regretted, be wondered at. We have seen the finest talents, the most ardent zeal, and the most captivating eloquence, indefatigably exerted in painting in the deepest colours all the sufferings, public and private, real and imaginary; and in inculcating a belief that the tariff was the cause, the sole

cause of them; that it had occasioned the distressing fall in the value of land and in the price of its staple productions; that it had converted the splendid mansions of the rich into decaying abodes of embarrassment and degradation; that it ground to dust the faces of the poor and drove them from their ancient homes to look for better in the wilderness of the West; that it threw the whole burden of taxes on the Southern planters, who alone produced the exports which paid for the imports, and who alone were able to consume the imports on which the taxes were levied; in a word, that the tariff, in its protective operation, was a system of plunder, wresting the money from the pockets of the Southern agriculturalist and putting it into the pockets of the Northern manufacturers.

While this side of the medal was exhibited in its highest relief, the medal was never reversed. It was kept out of view that the ability of the planters to consume was not a little reduced by the draughts on the proceeds of their crops for the various purchases in the West, for the unprotected manufactures in the North, necessary, useful, or convenient, and for the expense of their regular tours and temporary residences in northern sections of the Union. It was equally withheld from public view that, besides the registered exports, the people of the North had a variety of means enabling them to consume and contribute to the Treasury, in their carrying trade abroad, in their freights in the ordinary trade, including the coasting trade of the country; in the great mercantile profits from the Northern capital employed in the general trade which exchanges the vast amount of exports for the vast amount of imports; to all which may be added the larger share of the interest and instalments heretofore paid on the public debt, and of the final discharge of it now taking place.

If it be not wonderful that such a one-sided and overcharged exhibition should have produced an indignation against the tariff, and that willing ears should have been lent to comments on the Constitution, rescuing it from the reproach of a meaning which could be so abused, will it be wonderful if, when the paroxysm of the fever shall be over, the public mind shall be open



to the proofs that it had been misled from the real causes of the suffering complained of, and return to the impressions and opinions which prevailed through a long period prior to the delusion?

What then, if not the tariff, is to account for the great depression complained of in the Southern States within a late period? And here the explanation is so evident and so abundantly sufficient, that it must be satisfactory to every mind that will but suspend its prejudices.

The depression felt is mainly and palpably the result of the great fall in the value of land and in the price of its produce; and this double fall is as palpably the result, in the former case, of the quantity of cheap and fertile land at market in the West, and in the latter case, of the increase of the produce of the land beyond any corresponding increase in the demand for it.

How could it otherwise happen than that a superabundant offer of more fertile land at 125 cents per acre in one quarter should depress the value of the less fertile land in another quarter? How could it happen otherwise than that thousands would sell their less productive lands, which, though greatly reduced in price, still might be exchanged one acre for five or six of the fertile land in the West, and transfer their labour to a region easily accessible, and whence its trebled fruits would be almost as cheaply transported to the common market as from the region abandoned? How, again, could it but happen that this rapidly augmenting product of the soil, augmented at the same time by an increase of the population in the old region, notwithstanding the emigrations to the new; how, let it be repeated, could it fail to happen that these causes should have the impoverishing effects in the old which have been experienced from them?

The soil and the products of the soil constitute more especially the wealth of the Southern States; and whatever reduces the value of both, must reduce the capital of the proprietors, and the means of their enjoyment. Were the tariff, whatever be the degree in which it has added to the other causes of depression, to be removed so far as it has protective operation, the other causes remaining the same, the relief would be but little felt.

Had the other great causes never existed, an idea at which an enlarged patriotism revolts, or were they now to cease, which a miracle only could effect, and that at the expense of every philanthropic feeling, such would have been, and would now be, the augmented value of land and of the labour employed on it in the Atlantic States, that the operation of the tariff, in its double character of revenue and protection, would be merged in the general prosperity.

It cannot be impertinent here to remark, though comparisons are not always allowable, that Virginia, though not the loudest complainant of the actual state of things, has been, and is, the greatest sufferer from it. Her lands have sunk most in their value, and the price of her exports most in foreign markets. The prices of her great staples, flour and tobacco, are, and have been for a considerable time, at a lower ebb than the more Southern staples cotton and rice, and her agricultural prospects are more gloomy than those of her Southern sisters, from the Western attraction of population and the rivalry of Western exports. It is a fact but little known, that more tobacco was exported from New Orleans in the year ending September——, than was exported that year from Virginia to foreign markets. And it is manifest, from the fitness for grain of all sorts in the climate and soil north and northwest of the Ohio, and the increasing facilities of their conveyance to market, that wheat and flour will more and more feel a like depression with that of tobacco. The effect of the southwestern culture of cotton on that staple, though doubtless great and increasing, is as yet less than the staples of Virginia have felt, and are likely to feel, from the Western causes alluded to. Is it an unreasonable calculation, that reflections suggested by these truths will lead to a less biased estimate of the tariff, and of the questions connected with it?

The more the question of the tariff is brought to the test of facts, the more it will be found that the public discontents have proceeded more from the *inequality* than from the *weight* of its pressure, and more from the exaggerations of both than from the reality, whatever it may have been, of either.

The discontent of not a few has been heightened by the greater productiveness of capital in the Northern States than in Virginia, which is ascribed to a legislative policy partial to the former, and particularly to the manufacturing capital. That Northern capital, in its several investments, yields a greater income than a Virginia estate, consisting of lands and servile labourers, is true. But it may be readily explained, without calling in the aid of the tariff. The lands and slaves of Virginia proprietors never yielded a revenue equal to their money value. Their value to the resident proprietor has resulted in part from the articles furnished for his household establishment, partly from the proceeds of his crops, while he enjoyed what made up for the inferiority of his income in the silent growth of the capital itself, first in the rising value of his land, which the progress of the country doubled nearly as soon as money was doubled by its interest; secondly, in the natural increase of his slaves, which had an equivalent effect. At present, his land has fallen, greatly fallen, instead of rising in its market value, and his slaves, though increasing as fast as ever in numbers, are decreasing in value, with the temporary exception of purchases made by the Western and Southwestern planters in the slaveholding States. Hence the condition of the Virginia planters is worse than that of the merchant, the shipowners, and the manufacturers, and the money-lenders, whose capital does not decrease, while its annual profits are greater than those of the Virginia capitals, which, with less of annual profits, are at the same time decreasing in value. This difference, being ascribed to the tariff, has added fuel to the flame created by it. It cannot be unreasonable to expect that a cooler moment will listen to the error, and contribute to assuage the feelings and moderate the opinions which it has fostered. It is fair to notice another error which has found its way into the popular mind, namely, that the capitals of the manufacturers are the offspring of the tariff. In many instances it has doubtless swelled the amount. But they had their origin previous to the tariff in its obnoxious form, in the enterprise of commerce during the wars of Europe, and in the rich captures and successful adventures

during our late war. A farther plea of the manufacturers is, that the present investment of their capitals was made under the patronage and implied pledge of the law, and that their ruin would necessarily follow a repeal of the law. Considering the circumstances under which some of the tariff laws were passed, the plea cannot be sustained. To a certain extent it ought to avail. There is room, therefore, for equitable compromises and salutary reflections, which will tend to alleviate *sectional* discords, and rectify the errors which have been the parents and nurses of them.

May we not look forward to a more radical cure of the evil of discontent in an approaching diminution of the difference of the employment of capital and labour in the great sections of our country? The difference at present lies in the almost exclusive employment of labour in the Southern section in agriculture, and the extensive employment of it in manufactures in the Northern. In proportion as the Southern section becomes manufacturing, the dissimilarity will be removed, and with it the conflicting views engendered by it. And is not a substitution of manufacturing for agricultural labour in the slaveholding section, in Virginia particularly, manifestly approaching?

Without descending to minor appropriations of labour, the great mass of it in our country may be divided into three portions: the first employed in procuring from the earth the food and other articles required for domestic use; the second, which derives from the earth the supplies called for by foreign markets; the third, the portion which, not being needed by either, will be applicable to such mechanical and manufacturing employments as will supply at home what a failure of demand for our agricultural products will disable us from purchasing abroad.

It is evident that this surplus of labour beyond the first and second demand for it is already felt, and that the attractions of the cheap and fertile lands in the West and Southwest will more and more augment the aggregate products of the soil beyond any probable accumulations in the demand for them. It enters into this interesting calculation, that, notwithstanding the increasing population in Europe, and in the British dominions

more especially, the improvements in agriculture have kept pace with the consumption of food; so that there is little prospect of any steady and extensive demand of that staple from our stores. It is moreover found, that even occasional demands can be supplied from sources less distant or more favoured than ours.

Assuming, then, what will not be denied, that the foreign market is already glutted, and the home market always saturated with agricultural products, more especially those from the labour of slaves, it follows, from the rapid increase of that population, that an increasing surplus of the labour beyond the demands for agriculture must be employed on the other branches of industry, and, consequently, in diminution of the distinction between the agricultural and manufacturing States. Labour will not continue to be employed on the earth, notwithstanding its co-operating powers, more than it will in any other way, where its fruits would perish on hand.

In thickly-settled countries the application of labour to the arts, &c., is understood to result from the surplus beyond what is required for a full cultivation of a limited soil. In the United States, notwithstanding the sparseness of the population compared with the extent of the vacant soil, there is found to be a growing surplus of labourers beyond a *profitable* culture of it; a peculiarity which baffles the reasonings of foreigners concerning our country, and is not sufficiently adverted to by our own theoretic politicians. Our country must be a manufacturing as well as an agricultural one, without waiting for a crowded population, unless some revolution in the world or the discovery of new products of the earth, demanded at home or abroad, should unexpectedly interpose.

Will it be too much to hope, that, on a failure of manufacturing establishments in the South, likening its condition to that of the North, the success of them in the North, without a public patronage offensive to the South, may have the effect, advantageous to both, of substituting for a foreign commerce interchanges of the articles respectively furnished by them, which will add that cement of mutual interest to the many others which bind them together, and ought forever to do so? The

commerce now between the South and the North in articles of the latter not protected by the tariff, is considerable and progressive in its amount, and is found to be valuable on both sides. In ten years ——— millions will be added to our population, ——— of which can be spared for manufactures. Not less than ——— by emigrants, many of them professed manufacturers. Should the culture of tobacco be discontinued, a proportion of the 40 or 50,000 hands will be another fund of manufacturing recruits.

The interior commerce of a country is known to be more important than its exterior. It has the great advantage of being independent of wars and of other foreign contingencies; and, as far as commerce among nations has the general advantage of multiplying physical enjoyments and extending intellectual acquirements and improvements, a sufficient scope for it will always remain, and with a due share to the United States, in the variety of soil, of climate, of pursuits, of habits, and even of fashions and tastes, which distinguish one country from another, and the United States from most others.

You will not fail to observe, that in the preceding pages I have not done more than contend for the power of Congress to impose duties and restrictions on imports for the encouragement of domestic products; and for the fact that the pressure of the tariff, in whatever aspect of it, is not the principal cause of the suffering in the South, but that this is to be ascribed to the other causes which will account for it.

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TO THOMAS S. GRIMKE.

JANUARY 10th, 1833.

D<sup>R</sup> SIR,—I have received the copy of your “letter to the people of S. Carolina,” after the delay of passing to Charlotte county, thence to Charlottesville, and finally to Orange Court House, the post-office nearest to me. I beg you to accept my thanks for the publication, which are the more due as they were not preceded by what were so for the several other favors from

your pen. Such has been the degree of my ill health, for a long time, as to occasion many regretted omissions.

The letter makes a powerful and persuasive appeal to the understandings, the interests, and the feelings of your erring fellow-citizens; and it would seem impossible that such an appeal should be altogether unavailing, accompanied as it is by the universal protest against the novel doctrines and rash counsels of the ascendent party; a protest varying in language from friendly expostulation to the strongest tone of denunciation.

The Legislature of Virginia has now the whole subject under animated discussion. What is to be the precise result of the discordant opinions called forth I cannot conjecture. Before this reaches you, better means of judging than I possess will probably be furnished through the press directly from Richmond.

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TO N. P. TRIST.

JAN<sup>y</sup> 18, 1833.

D<sup>R</sup> SIR,—Yours of the 11th was duly received. I am sorry that you could not visit us at the intended time; and still more so, for the obstacles to it. We shall look for you at the period you now have in view, with a hope that the trip on horseback will be as favorable to your health as it promises to be. I have not yet looked into the volumes of the Gazette kindly enclosed to me on the Bank transaction. I have, indeed, not gone much into the details of any of the prominent subjects under discussion at Washington, trusting to the result as decided by the public opinion. It gives me pleasure to learn that a reaction is taking place in South Carolina. Common sense, common good, and the universal protest out of the State against nullification, cannot fail to break down the party which supports it. The coming generation will look back with astonishment at the infatuation which could produce the present state of things.

You see what is going on at Richmond as quickly as I do. Among the diversified projects of the mediators, it is not cer-

tain which will prevail, and very possible that they may all sink together. It would seem that the doctrine of secession is losing ground; but it has, as yet, more adherents than its twin heresy nullification, though it ought to be buried in the same grave with it. Many seem to have lost sight of the great principle that compact is the basis and essence of free government, and that no right to disregard it belongs to a party till released by causes of which the other parties have an equal right to judge. In the event of an irreconcilable conflict, not of rights, but of opinions and claims of rights, force becomes the arbiter.

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TO EDWARD LIVINGSTON.

JAN<sup>y</sup> 24, 1833.

D<sup>r</sup> SIR,—I have received your letter of the 19th instant, in which you ask assent to the publication of my\* answer to yours of April 29, 1830, inclosing a copy of your speech on Mr. Foot's resolution. As the answer contained nothing of a confidential import, there can be no objection to that use of it, other than that the formal sanction of the writer might seem to attach more importance to the epitome of an argument previously published at some length than it could merit. It may be well, therefore, if passed to the press, to let it have as little of that appearance as possible.

The promised bust will be received by Mrs. Madison with pleasure; the greater, as she knows I shall share it with her. It will be associated, in the little group we possess, with the class which adds to other titles to commemorative distinction, appeals to the feelings of private friendship.

I thank you, sir, for the kind interest you take in my health. Since the deficient visit paid us, which we hope may be repeated

\* On recurring to the answer as it was copied for my files, I observe a little *erratum*, which vitiates the structure of a sentence, and which may be in the letter sent you. The word "is" should be erased, making it read, "The doctrine, [nullifying,] as new to me as it was to you, derives no support," &c. [See *ante*, p. 80.]



in an amended form, my health has somewhat improved, but the wishes of my friends have too much influenced their estimate of it. A singular change is in an *occasional* relaxation of the terminating joints of my rheumatic fingers, which gives a degree of easy play to the pen in the microscopic characters of which I am giving a sample.

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TO ANDREW STEVENSON.

FEBRUARY 4, 1833.

DEAR SIR,—I have received your communication of the 29th ultimo, and have read it with much pleasure. It presents the doctrines of nullification and secession in lights that must confound, if failing to convince, their patrons.

You have done well in rescuing the proceedings of Virginia in 1798–99 from the many misconstructions and misapplications of them. The seventh resolution ought to have explained the third, and the report both. Many, however, have strangely overlooked the distinction, obvious in itself, and indicated by the course of the reasoning between the right of the *States* (plural always used) as *parties* to the Constitution, and the right of a single party. Few, also, seem to have looked back to the question raised by the alien and sedition laws, as one essentially between the government and the constituent body; or to the other question raised, how far a decision of the Supreme Court of the United States was a bar to the interposition of the States; it having been alleged to be so, even to declarations of legislative opinions. These questions account for the scope of the reasoning in material parts of those documents.

Secession presents a question more particularly between the States themselves, as parties to the constitutional compact; and the great argument for it is derived from the sovereignty of the parties; as if the more complete the authority to enter into a compact, the less was the obligation to abide by it. It is but fair to observe, that those who assert the right present it in forms essentially different; some as a right always existing,

and to be used at pleasure; others as a right created by extreme cases requiring it. The latter class are wrong only in using terms which confound them with the former.

Of late, attempts are observed to shelter the heresy of secession under the case of expatriation, from which it essentially differs. The expatriating party removes only his person and his movable property, and does not incommode those whom he leaves. A seceding State mutilates the domain, and disturbs the whole system from which it separates itself. Pushed to the extent in which the right is sometimes asserted, it might break into fragments every single community.

It is curious to see how the nullifying and seceding champions draw arguments from the difficulty, under the Constitution of the United States, of avoiding collisions, and from the want of remedies for possible occurrences. This is the case more or less of all free governments, and of every State in the Union. The government of a State would be as readily destroyed by a refusal or neglect of the people to exercise their franchise, as the Government of the United States by a like conduct in the States towards it. If the two Houses of Congress or of a State Legislature were absolutely inflexible in a revenue bill, the effect would be the same in both governments. The judiciary of a State is the last resort within the purview of a State constitution, and a gross usurpation or abuse of its powers would produce a state of things like that resulting from such an occurrence within the federal sphere.

Just as I received your favour, I was furnishing a sketch of ideas in compliance with a wish which had been conveyed to me. I enclose a copy of it.\* In the present diversity of opinions and effervescences of the passions, it is not probable that anything will be done by the public authorities which will accord with the cooler judgment of a future day, to which I have endeavoured to conform mine. Be so good as to let Mr. Patton have a sight of the paper, and Mr. Rives also, if you choose.

\* The enclosure incorporated in another paper on nullification. [See *post*, 395.—*Ed.*]

They are the two of your political comrades with whom I happen to have most communication on political subjects. I am well aware that their sentiments may be very different from some of mine, as some of yours may also be. As the sketch was hastily made, and I am sensible may be made more free from criticism in its phraseology, and as it is possible I may expand it in some of its positions, I must request the favour of you to return it, at your leisure, without any copy having been taken.

If legislative resolutions declaring the essential characteristics of the Constitution of the United States be deemed expedient, they ought to be conformed as much as possible to acknowledged principles, to known facts, and to the text of the Constitution.

In the present state of things in our country, if I am to answer the wish conveyed to me, I must say that the members of Congress from Virginia would do well to urge a reduction and modification of the tariff laws; but, in the first place, with a reasonable attention as well to the great interests at stake, and the circumstances under which they were created, in one section, as to the justice and the interests appealed to in behalf of another section. It is quite possible that a sudden withdrawal from the market of domestic supplies, extended as they now are, might, while ruinous to the manufacturers, be injurious also to the consumers; since some time would elapse before the vacuum could be filled from other sources, the prices in the mean time rising, of course, from a diminution of the supply and a continuance of the demand.

Secondly, without incurring the appearance of yielding to threatened consequences of not doing what is required by the discontented anywhere.

Thirdly, without opposing any constitutional provisions that may be necessary and proper to defeat a resistance to the execution of the laws; and particularly any constitutional provision that may insure the execution of the laws, in a mode that will avoid a resort to, or the risk of, a conflict at arms.

Fourthly, without any course whatever that would pledge or

commit Virginia to take side with South Carolina, or any other State, in resisting the laws of the United States, unless causes should arise, of which Virginia should be free to judge, justifying and requiring her so to do; and particularly without any commitment of her to view in that light laws of the United States now existing.

Mrs. M. joins in affectionate salutations.

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TO ANDREW STEVENSON.

MONTPELLIER, February 10, 1833.

DEAR SIR,—Your favour of the 8th instant, with the paper returned, was safely received. It may not be amiss for me to say, that the opinion expressed in the letter, that constitutional provisions, necessary and proper to defeat resistance to the laws, ought not to be opposed, had no specific reference to the bill depending, but was a general remark, that whatever constitutional provisions might be necessary and proper for that purpose ought not to be opposed. I consider a successful resistance to the laws, as now attempted, if not immediately mortal to the Union, as at least a mortal wound to it.

I hope it is well understood that my object in giving our two friends a sight of the paper was merely a compliance with a wish indirectly conveyed by one,\* and a mark of respect for the other;† and to intimate my views of the subject without any bearing on theirs. I am well aware, that, in choosing between alternatives, they may have lights I do not possess; and, moreover, that those in public trust may justly feel an obligation to respect the opinions of their constituents which is not imposed on a private citizen.

I am sorry to learn that the prospect of a conciliatory result to the deliberations of Congress is so little encouraging. I wish it may not be found that Virginia will be caught in

\* Mr. Patton. [See *ante*, p. 270.]

† Mr. Rives. [See *ante*, p. 270.]

the trap with an anti-tariff bait in it. If South Carolina recedes, it will be on the avowed grounds of her respect for the interposition of Virginia, and a reliance that Virginia is to make a common cause with her throughout. In that event, and a continuance of the tariff laws, the prospect before us would be a rupture of the Union; a Southern confederacy; mutual enmity with the Northern; the most dreadful animosities and border wars, springing from the case of slaves; rival alliances abroad; standing armies at home, to be supported by internal taxes; and federal Governments, with powers of a more consolidating and monarchical tendency than the greatest jealousy has charged on the existing system.

I have just read Mr. Marshall's\*speech in the House of Delegates on Federal Relations. It is a very able one, and a strong backer of your letter on the subject of secession. The peroration is as beautiful as its warning to Virginia is solemn and impressive.

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TO THE REV<sup>D</sup> R. R. GURLEY.

D<sup>R</sup> SIR,—Since I received your letter of the 31 ult., requesting, in behalf of the Rev<sup>d</sup> Mr. Brooks, now in Europe, a letter of introduction to the friends of American Colonization in England and France, I have been more than usually indisposed; and for some days I have been suffering under a new malady, which makes the use of the pen very painful. With this apology may I ask the favor of you to comply with the object of Mr. Brooks by a letter from yourself? Your better knowledge of all the circumstances of such a case will enable you the better to adapt to it the proper shape and scope of the introduction asked for. The benevolent views of Mr. Brooks preclude, of course, the idea of expense in any form to the Society. But they might, on the contrary, promote the idea of pecuniary aids to the Society, which, though the great desideratum with it, I have always wished to be obtained at home without a resort to foreign con-

\* Speech, delivered 7th January, 1833. Published in Richmond Enquirer, February 7th.

tribution. A vital object of the Institution being to free our country of a great internal evil, justice requires this; and our pride, while we are describing the prosperity of our country as greater than that of any other, would seem to be a motive against taxing any other for an interest so far as it may not be a common one. In this light I have always viewed solicitations of money from abroad for schools, &c., &c. You will, however, take for what they are worth merely remarks which may deserve more consideration than, in my present condition, I can give them; assuring yourself always of my great and cordial esteem.

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TO THE REV<sup>D</sup> R. R. GURLEY.

MONTPELLIER, Feb<sup>y</sup> 19, 1833.

DEAR SIR,—I have received your letter of the 12th, informing me that I have been unanimously elected to the office of President by the “American Colonization Society.”

The great and growing importance of the Society and the signal philanthropy of its members give to the distinction conferred on me a value of which I am deeply sensible.

It is incumbent on me, at the same time, to say, that my very advanced age and impaired health leave me no hope of an adequacy to the duties of the station which I should be proud to perform. It will not the less be my earnest prayer that every success may reward the labours of an Institution which, though so humble in its origin, is so noble in its object of removing a great evil from its own country by means which may communicate to another the greatest of blessings.

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TO THOMAS R. DEW.

MONTPELLIER, Feb<sup>y</sup> 23, 1833.

DEAR SIR,—I received, in due time, your letter of the 15th ult., with copies of the two pamphlets; one on the “Restrictive System,” the other on the “Slave Question.”

The former I have not yet been able to look into, and in reading the latter with the proper attention I have been much retarded by many interruptions, as well as by the feebleness incident to my great age, increased as it is by the effects of an acute fever, preceded and followed by a chronic complaint under which I am still labouring. This explanation of the delay in acknowledging your favor will be an apology, also, for the brevity and generality of the answer. For the freedom of it, none, I am sure, will be required. In the views of the subject taken in the pamphlet, I have found much valuable and interesting information, with ample proof of the numerous obstacles to a removal of slavery from our country, and everything that could be offered in mitigation of its continuance; but I am obliged to say, that in not a few of the data from which you reason, and in the conclusion to which you are led, I cannot concur.

I am aware of the impracticability of an immediate or early execution of any plan that combines deportation with emancipation, and of the inadmissibility of emancipation without deportation. But I have yielded to the expediency of attempting a gradual remedy, by providing for the double operation.

If emancipation was the sole object, the extinguishment of slavery would be easy, cheap, and complete. The purchase by the public of all female children, at their birth, leaving them in bondage till it would defray the charge of rearing them, would, within a limited period, be a radical resort.

With the condition of deportation, it has appeared to me, that the great difficulty does not lie either in the expense of emancipation, or in the expense or the means of deportation, but in the attainment—1, of the requisite asylums; 2, the consent of the individuals to be removed; 3, the labour for the vacuum to be created.

With regard to the expense—1, much will be saved by voluntary emancipations, increasing under the influence of example, and the prospect of bettering the lot of the slaves; 2, much may be expected in gifts and legacies from the opulent, the philanthropic, and the conscientious; 3, more still from legislative

grants by the States, of which encouraging examples and indications have already appeared; 4, nor is there any room for despair of aid from the indirect or direct proceeds of the public lands held in trust by Congress. With a sufficiency of pecuniary means, the facility of providing a naval transportation of the exiles is shewn by the present amount of our tonnage and the promptitude with which it can be enlarged; by the number of emigrants brought from Europe to N. America within the last year, and by the greater number of slaves which have been, within single years, brought from the coast of Africa across the Atlantic.

In the attainment of adequate asylums, the difficulty, though it may be considerable, is far from being discouraging. Africa is justly the favorite choice of the patrons of colonization; and the prospect there is flattering—1, in the territory already acquired; 2, in the extent of coast yet to be explored, and which may be equally convenient; 3, the adjacent interior into which the littoral settlements can be expanded under the auspices of physical affinities between the new comers and the natives, and of the moral superiorities of the former; 4, the great inland regions now ascertained to be accessible by navigable waters, and opening new fields for colonizing enterprises.

But Africa, though the primary, is not the sole asylum within contemplation; an auxiliary one presents itself in the islands adjoining this continent, where the coloured population is already dominant, and where the wheel of revolution may from time to time produce the like result.

Nor ought another contingent receptacle for emancipated slaves to be altogether overlooked. It exists within the territory under the control of the United States, and is not too distant to be out of reach, whilst sufficiently distant to avoid, for an indefinite period, the collisions to be apprehended from the vicinity of people distinguished from each other by physical as well as other characteristics.

The consent of the individuals is another pre-requisite in the plan of removal. At present there is a known repugnance in those already in a state of freedom to leave their native homes, and



among the slaves there is an almost universal preference of their present condition to freedom in a distant and unknown land. But in both classes, particularly that of the slaves, the prejudices arise from a distrust of the favorable accounts coming to them through white channels. By degrees truth will find its way to them from sources in which they will confide, and their aversion to removal may be overcome as fast as the means of effectuating it shall accrue.

The difficulty of replacing the labour withdrawn by a removal of the slaves, seems to be urged as of itself an insuperable objection to the attempt. The answer to it is—1, that notwithstanding the emigrations of the whites, there will be an annual and by degrees an increasing surplus of the remaining mass; 2, that there will be an attraction of whites from without, increasing with the demand, and, as the population elsewhere will be yielding a surplus to be attracted; 3, that as the culture of tobacco declines with the contraction of the space within which it is profitable, and still more from the successful competition in the West, and as the farming system takes place of the planting, a portion of labour can be spared without impairing the requisite stock; 4, that although the process must be slow, be attended with much inconvenience, and be not even certain in its result, is it not preferable to a torpid acquiescence in a perpetuation of slavery, or an extinguishment of it by convulsions more disastrous in their character and consequences than slavery itself?

In my estimate of the experiment instituted by the Colonization Society, I may indulge too much my wishes and hopes, to be safe from error. But a partial success will have its value, and an entire failure will leave behind a consciousness of the laudable intentions with which relief from the greatest of our calamities was attempted in the only mode presenting a chance of effecting it.

I hope I shall be pardoned for remarking, that in accounting for the depressed condition of Virginia, you seem to allow too little to the existence of slavery, ascribe too much to the tariff

laws, and not to have sufficiently taken into view the effect of the rapid settlement of the Western and Southwestern country.

Previous to the Revolution, when, of these causes, slavery alone was in operation, the face of Virginia was, in every feature of improvement and prosperity, a contrast to the Colonies where slavery did not exist, or in a degree only, not worthy of notice. Again, during the period of the tariff laws prior to the latter state of them, the pressure was little, if at all, regarded as a source of the general suffering. And whatever may be the degree in which the extravagant augmentation of the Tariff may have contributed to the depression, the extent of this cannot be explained by the extent of the cause. The great and adequate cause of the evil is the cause last mentioned, if that be indeed an evil which improves the condition of our migrating citizens, and adds more to the growth and prosperity of the whole than it subtracts from a part of the community.

Nothing is more certain than that the actual and prospective depression of Virginia is to be referred to the fall in the value of her landed property, and in that of the staple products of the land. And it is not less certain that the fall in both cases is the inevitable effect of the redundancy in the market both of land and of its products. The vast amount of fertile land offered at 125 cents per acre in the West and S. West could not fail to have the effect already experienced, of reducing the land here to half its value; and when the labour that will here produce one hogshead of tobacco and ten barrels of flour will there produce two hhd<sup>s</sup> and twenty barrels, now so cheaply transportable to the destined outlets, a like effect on these articles must necessarily ensue. Already more tobacco is sent to New Orleans than is exported from Virginia to foreign markets; whilst the article of flour, exceeding for the most part the demand for it, is in a course of rapid increase from new sources as boundless as they are productive. The great staples of Virginia have but a limited market, which is easily glutted. They have in fact sunk more in price, and have a more threatening prospect, than the more southern staples of cotton and rice.

The case is believed to be the same with her landed property. That it is so with her slaves is proved by the purchases made here for the market there.

The reflections suggested by this aspect of things will be more appropriate in your hands than in mine. They are also beyond the tether of my subject, which I fear I have already overstrained. I hasten, therefore, to conclude, with a tender of the high respect and cordial regards which I pray you to accept.

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TO JUDGE BUCKNER THRUSTON.

MARCH 1, 1833.

DEAR SIR,—YOUR letter of the 13th instant was duly received with a copy of Judge Cranch's Memoir of President Adams, to which is annexed your Latin epitaph, embracing the coincidences in the lives and deaths of him and of President Jefferson.

After an alienation through so long a period from classical studies, I may well distrust my competency to decide on the Latinity of the epitaph. To the vein of just thought which runs through it, and the apt management of the points most in relief, it is not difficult to do justice. And the Latinity would seem to be more exempt from modernism in its cast than is common with Latin compositions of modern date.

A striking difference between the Latin and English idioms is in the collocation of the words; the inflections and terminations of the former admitting a wide separation, by interposed words, of those belonging to each other, without confusion or obscurity, and with an enlarged scope for variety and euphony in the structure of sentences. A literal translation of Latin into English, word for word, according to the order of the words, would be startling to an English eye, as a like version of English into Latin would be, though, perhaps, in a less degree to the eye of a Roman. Hence the difficulty in modern Latin of avoiding a distribution of the words not conformable to that of ancient models.

But the greatest difficulty, as in every use of a foreign lan-

guage, is in selecting the appropriate word or phrase among those differing in the shades of meaning, and where the meaning may be essentially varied by the particular applications of them. Hence the mistakes, sometimes ludicrous, in the use of a foreign language imperfectly understood; as in the case of the Frenchman, who, finding in the dictionary that to pickle meant to preserve, took leave of his friends with a G—— pickle you.

I have made these remarks with reference to my own deficiencies as a critic, and by no means as a criticism on the epitaph.

The Memoir, in perusing which I have been much retarded, appears to be well written, and to comprise much interesting information doing justice to the distinguished subject of it. With respect to some of the diplomatic passages, there have been intimations that important lights, not yet known to the public, exist in foreign archives.

Mrs. M. and myself are gratified by your kind remembrances and those of Mrs. T. and your daughter, and offer a sincere return of them.

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TO JOHN TYLER.\*

In your speech of February 6, 1833, you say: "He [Edmund Randolph] proposed [in the Federal Convention of 1787] a supreme National Government, with a supreme Executive, a supreme Legislature, and a supreme Judiciary, and a power in Congress to veto State laws.

"Mr. Madison, I believe, sir, was also an advocate of this plan of Government. If I run into error on this point I can easily be put right. The design of this plan, it is obvious, was to render the States nothing more than the provinces of a great Government, to rear upon the ruins of the old Confederacy a consolidated Government, one and indivisible."

\* This letter, it appears, was not sent.

I readily do you the justice to believe that it was far from your intention to do injustice to the Virginia Deputies to the Convention of 1787. But it is not the less certain that it has been done to all of them, and particularly to Mr. Edmund Randolph.

The resolutions proposed by him were the result of a consultation among the Deputies, the whole number, seven, being present. The part which Virginia had borne in bringing about the Convention suggested the idea that some such initiative step might be expected from their deputation, and Mr. Randolph was designated for the task. It was perfectly understood that the propositions committed no one to their precise tenor or form, and that the members of the deputation would be as free in discussing and shaping them as the other members of the Convention. Mr. Randolph was made the organ on the occasion, being then the Governor of the State, of distinguished talents, and in the habit of public speaking. General Washington, though at the head of the list, was, for obvious reasons, disinclined to take the lead. It was also foreseen that he would be immediately called to the presiding station.

Now what was the plan sketched in the propositions?

They proposed that "the Articles of Confederation should be so corrected and enlarged as to accomplish the objects of their institution, namely, common defence, security of liberty, and general welfare;" [the words of the Confederation.]

"That a national Legislature, a national Executive, and a national Judiciary should be established. [This organization of departments the same as in the adopted Constitution.]

"That the right of suffrage in the Legislature should be [not equal among the States, as in the Confederation, but] proportioned to quotas of contribution or numbers of free inhabitants, as might seem best in different cases. [The same corresponding in principle with the mixed rule adopted.]

"That it should consist of two branches; the first elected by the people of the several States, the second by the first, of a number nominated by the State Legislatures. [A mode of forming a Senate regarded as more just to the large States than the

equality which was yielded to the small States by the compromise with them, but not material in any other view. In reference to the practicable equilibrium between the General and the State authorities, the comparative influence of the two modes will depend on the question whether the small States will incline most to the former or to the latter scale.]

“That a national Executive, with a council of revision consisting of a number of the Judiciary, [which Mr. Jefferson would have approved,] and a qualified negative on the laws, be instituted, to be chosen by the Legislature for the term of — years, to be ineligible a second time, and with a compensation to be neither increased nor diminished so as to affect the existing magistracy. [There is nothing in this executive modification materially different in its constitutional bearing from that finally adopted in the Constitution of the United States.]

“That a national Judiciary be established, consisting of a supreme appellate and inferior tribunals, to hold their offices during good behaviour, and with compensations not to be *increased* or diminished so as to affect persons in office. [There can be nothing here subjecting it to unfavourable comparison with the article in the Constitution existing.]

“That provision ought to be made for the admission of new States, lawfully arising within the limits of the United States, with the consent of a number of votes in the National Legislature less than the whole. [This is not at variance with the existing provisions.]

“That a republican government ought to be guaranteed by the United States to each State. [This is among the existing provisions.]

“That provision ought to be made for amending the articles of Union without requiring the assent of the National Legislature. [This is done in the Constitution.]

“That the legislative, executive, and judiciary powers of the several States ought to be bound by oath to support the articles of Union. [This was provided with the emphatic addition of ‘anything in the constitution or laws of the States notwithstanding.’]

“That the act of the Convention, after the approbation of the (then) Congress, to be submitted to an assembly or assemblies of representatives recommended by the several Legislatures to be expressly chosen by the people to consider and decide thereon.” [This was the course pursued.]

So much for the structure of the Government as proposed by Mr. Randolph, and for a few miscellaneous provisions. When compared with the Constitution as it stands, what is there of a consolidating aspect that can be offensive to those who applaud, approve, or are satisfied with the Constitution?

Let it next be seen what were the powers proposed to be lodged in the Government as distributed among its several departments.

The Legislature, each branch possessing a right to originate acts, was to enjoy, 1. The *legislative* rights vested in the Congress of the Confederation. [This must be free from objection, especially as the powers of that description were left to the selection of the Convention.]

2. Cases to which the several States would be incompetent, or in which the harmony of the United States might be interrupted by individual legislation. [It cannot be supposed that these descriptive phrases were to be left in their indefinite extent to legislative discretion. A selection and definition of the cases embraced by them was to be the task of the Convention. If there could be any doubt that this was intended and so understood by the Convention, it would be removed by the course of proceeding on them as recorded in its journal. Many of the propositions made in the Convention fall within this remark; being, as is not unusual, general in their phrase, but, if adopted, to be reduced to their proper shape and specification.]

3. To negative all laws passed by the several States, contravening, in the opinion of the national Legislature, the articles of union, or any treaty subsisting under their authority. [The necessity of some constitutional and effective provision, guarding the Constitution and laws of the Union against violations of them by the laws of the States, was felt and taken for granted by all, from the commencement to the conclusion of the work

performed by the Convention. Every vote in the journal involving the opinion, proves a unanimity among the deputations on this point. A voluntary and unvaried concurrence of so many (then thirteen, with a prospect of continued increase) distinct and independent authorities in expounding and acting on a rule of conduct which must be the same for all or in force in none, was a calculation forbidden by a knowledge of human nature, and especially so by the experience of the Confederacy, the defects of which were to be supplied by the Convention.]

With this view of the subject, the only question was, the mode of control on the individual Legislatures. This might be either preventive or corrective; the former by a negative on the State laws, the latter by a legislative repeal, by a judicial supersedeas, or by an administrative arrest of them. The preventive mode, as the best, if equally practicable with the corrective, was brought by Mr. Randolph to the consideration of the Convention. It was, though not a little favoured, as appears by the votes in the journal, finally abandoned as not reducible to practice. Had the negative been assigned to the Senatorial branch of the Government representing the State Legislatures, thus giving to the whole of these a control over each, the expedient would probably have been still more favourably received, though even in that form subject to insuperable objections, in the distance of many of the State Legislatures, and the multiplicity of the laws of each.

Of the corrective modes, a repeal by the national Legislature was pregnant with inconveniences rendering it inadmissible.

The only remaining safeguard to the Constitution and laws of the Union against the encroachment of its members and anarchy among themselves, is that which was adopted, in the declaration that the Constitution, laws, and treaties of the United States should be the supreme law of the land, and, as such, be obligatory on the authorities of the States as well as those of the United States.

The last of the proposed legislative powers was "to call forth the force of the Union against any member failing to fulfil its duty under the articles of union."



The evident object of this provision was not to enlarge the powers of the proposed Government, but to secure their efficiency. It was doubtless suggested by the inefficiency of the confederate system, from the want of such a sanction, none such being expressed in its articles; and if, as Mr. Jefferson\* argued, necessarily implied, having never been actually employed. The proposition, as offered by Mr. Randolph, was in general terms. It might have been taken into consideration as a substitute for, or as a supplement to, the ordinary mode of enforcing the laws by civil process; or it might have been referred to cases of territorial or other controversies between States and a refusal of the defeated party to abide by the decision; leaving the alternative of a coercive interposition by the Government of the Union, or a war between its members and within its bowels. Neither of these readings, nor any other which the language would bear, could countenance a just charge on the deputation or on Mr. Randolph of contemplating a consolidated Government with unlimited powers.

The executive powers do not cover more ground than those inserted by the Convention to whose discretion the task of enumerating them was submitted. The proposed association with the executive of a council of revision could not give a consolidating feature to the plan.

The judicial power in the plan is more limited than the jurisdiction described in the Constitution, with the exception of cases of "impeachment of any national officer," and questions which involve the national peace and harmony.

The trial of impeachments is known to be one of the most difficult of constitutional arrangements. The reference of it to the judicial department may be presumed to have been suggested by the example in the Constitution of Virginia. The option seemed to lie between that and the other departments of the Government, no example of an organization excluding all the departments presenting itself. Whether the judicial mode proposed was preferable to that inserted in the Constitution or not,

\* See his published letter of August 4, 1787, to Edward Carrington.

the difference cannot affect the question of a consolidating aspect or tendency.

By questions involving "the national peace and harmony," no one can suppose more was meant than might be *specified* by the Convention as proper to be referred to the judiciary, either by the Constitution or the constitutional authority of the Legislature. They could be no rule in that latitude to a court, nor even to a Legislature with limited powers.

That the Convention understood the entire resolutions of Mr. Randolph to be a mere sketch in which omitted details were to be supplied, and the general terms and phrases to be reduced to their proper details, is demonstrated by the use made of them in the Convention. They were taken up and referred to a committee of the whole in that sense; discussed one by one; referred occasionally to special committees, to committees of detail on special points, at length to a committee to digest and report the draught of a Constitution, and finally to a committee of arrangement and diction.

On this review of the whole subject, candour discovers no ground for the charge, that the resolutions contemplated a Government materially different from, or more national than, that in which they terminated, and certainly no ground for the charge of consolidating views in those from whom the resolutions proceeded.

What, then, is the ground on which the charge rests? It could not be on a plea that the plan of Mr. Randolph gave unlimited powers to the proposed Government, for the plan expressly aimed at a specification, and, of course, a limitation of the powers.

It could not be on the supremacy of the general authority over the separate authorities, for that supremacy is, as already noticed, more fully and emphatically established by the text of the Constitution.

It could not be on the proposed ratification by the people instead of the States, for such is the ratification on which the Constitution is founded.

The charge must rest on the term national, prefixed to the

organized departments in the propositions of Mr. Randolph; yet how easy is it to account for the use of the term without taking it in a consolidating sense?

In the first place, it contradistinguished the proposed Government from the Confederacy which it was to supersede.

2. As the system was to be a new and compound one, a non-descript without a technical appellation for it, the term "national" was very naturally suggested by its national features: 1. In being established, not by the authority of State Legislatures, but by the original authority of the people. 2. In its organization into legislative, executive, and judicial departments; and, 3. In its action on the people of the States immediately, and not on the governments of the States, as in a Confederacy.

But what alone would justify and account for the application of the term national to the proposed Government is, that it would possess, exclusively, all the attributes of a National Government in its relations with other nations, including the most essential one of regulating foreign commerce, with the effective means of fulfilling the obligation and responsibility of the United States to other nations. Hence it was that the term national was at once so readily applied to the new Government, and that it has become so universal and familiar. It may safely be affirmed that the same would have been the case, whatever name might have been given to it by the propositions of Mr. Randolph or by the Convention. A Government which alone is known and acknowledged by all foreign nations, and alone charged with the international relations, could not fail to be deemed and called at home a National Government.

After all, in discussing and expounding the character and import of a Constitution, let candour decide whether it be not more reasonable and just to interpret the name or title by facts on the face of it, than to torture the facts by a bed of Procrustes into a fitness to the title.

I must leave it to yourself to judge whether this exposition of the resolutions in question be not sufficiently reasonable to protect them from the imputation of a consolidating tendency,

and still more, the Virginia Deputies from having that for their object.

With regard to Mr. Randolph particularly, is not some respect due to his public letter to the Speaker of the House of Delegates, in which he gives for his refusal to sign the Constitution, reasons irreconcilable with the supposition that he could have proposed the resolutions in a [the?] meaning charged on him? Of Colonel Mason, who also refused, it may be inferred, from his avowed reasons, that he could not have acquiesced in the propositions if understood or intended to effect a consolidated Government.

So much use has been made of Judge Yates's minutes of the debates in the Convention, that I must be allowed to remark that they abound in inaccuracies, and are not free from gross errors, some of which do much injustice to the arguments and opinions of particular members. All this may be explained without a charge of wilful misrepresentation, by the very desultory manner in which his notes appear to have been taken; his ear catching particular expressions and losing qualifications of them; and by prejudices giving to his mind all the bias which an honest one could feel. He and his colleague were the representatives of the dominant party in New York, which was opposed to the Convention and the object of it; which was averse to any essential change in the Articles of Confederation; which had inflexibly refused to grant even a duty of five per cent. on imports for the urgent debts of the Revolution; which was availing itself of the peculiar situation of New York for taxing the consumption of her neighbours; and which foresaw that a primary aim of the Convention would be to transfer from the States to the common authority the entire regulation of foreign commerce. Such were the feelings of the two Deputies, that, on finding the Convention bent on a radical reform of the Federal system, they left it in the midst of its discussions, and before the opinions and views of many of the members were drawn out to their final shape and practical application.

Without impeaching the integrity of Luther Martin, it may be observed of him also, that his report of the proceedings of

the Convention, during his stay in it, shows, by its colourings, that his feelings were but too much mingled with his statements and inferences. There is good ground for believing that Mr. Martin himself became sensible of this, and made no secret of his regret, that in his address to the Legislature of his State, he had been betrayed, by the irritated state of his mind, into a picture that might do injustice both to the body and to particular members.

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TO W. C. RIVES.

MONTPELLIER, March 12, 1833.

DEAR SIR,—I have received your very kind letter of the 6th, from Washington, and by the same mail a copy of your late speech in the Senate,\* for which I tender my thanks. I have found, as I expected, that it takes a very able and enlightening view of its subject. I wish it may have the effect of reclaiming to the doctrine and language held by all from the birth of the Constitution, and till very lately by themselves, those who now contend that the States have never parted with an atom of their sovereignty; and, consequently, that the constitutional band which holds them together is a mere league or partnership, without any of the characteristics of sovereignty or nationality.

It seems strange that it should be necessary to disprove this novel and nullifying doctrine; and stranger still that those who deny it should be denounced as innovators, heretics, and apostates. Our political system is admitted to be a new creation—a real nondescript. Its character, therefore, must be sought within itself, not in precedents, because there are none; not in writers whose comments are guided by precedents. Who can tell, at present, how Vattel and others of that class would have qualified (in the Gallic sense of the term) a compound and peculiar system with such an example of it as ours before them?

\* Speech of 14th February, 1833, on the Bill further to provide for the collection of duties on imports, intended to counteract the *nullification ordinance* of South Carolina.

What can be more preposterous than to say that the States, as united, are in no respect or degree a nation, which implies sovereignty; although acknowledged to be such by all other nations and sovereigns, and maintaining, with them, all the international relations of war and peace, treaties, commerce, &c.; and, on the other hand, and at the same time, to say that the States separately are completely nations and sovereigns, although they can separately neither speak nor hearken to any other nation, nor maintain with it any of the international relations whatever, and would be disowned as nations if presenting themselves in that character?

The nullifiers, it appears, endeavor to shelter themselves under a distinction between a delegation and a surrender of powers. But if the powers be attributes of sovereignty and nationality, and the grant of them be perpetual, as is necessarily implied, where not otherwise expressed, sovereignty and nationality according to the extent of the grant are effectually transferred by it, and a dispute about the name is but a battle of words. The practical result is not indeed left to argument or inference. The words of the Constitution are explicit that the Constitution and laws of the United States shall be supreme over the constitution and laws of the several States; supreme in their exposition and execution, as well as in their authority. Without a supremacy in these respects, it would be like a scabbard in the hand of a soldier without a sword in it. The imagination itself is startled at the idea of twenty-four independent expounders of a rule that cannot exist but in a meaning and operation the same for all.

The conduct of South Carolina has called forth not only the question of nullification, but the more formidable one of secession. It is asked whether a State, by resuming the sovereign form in which it entered the Union, may not of right withdraw from it at will. As this is a simple question, whether a State, more than an individual, has a right to violate its engagements, it would seem that it might be safely left to answer itself. But the countenance given to the claim shows that it cannot be so lightly dismissed. The natural feelings which laudably attach

the people composing a State to its authority and importance, are at present too much excited by the unnatural feelings with which they have been inspired against their brethren of other States not to expose them to the danger of being misled into erroneous views of the nature of the Union and the interest they have in it. One thing, at least, seems to be too clear to be questioned; that while a State remains within the Union it cannot withdraw its citizens from the operation of the Constitution and laws of the Union. In the event of an actual secession, without the consent of the co-States, the course to be pursued by these involves questions painful in the discussion of them. God grant that the menacing appearances which obtruded it may not be followed by positive occurrences requiring the more painful task of deciding them!

In explaining the proceedings of Virginia in 1798-99, the state of things at that time was the more properly appealed to as it has been too much overlooked. The doctrines combated are always a key to the arguments employed. It is but too common to read the expressions of a remote period through the modern meaning of them, and to omit guards against misconstruction not anticipated. A few words with a prophetic gift might have prevented much error in the proceedings. The remark is equally applicable to the Constitution itself.

Having thrown these thoughts on paper in the midst of interruptions, added to other dangers of inaccuracy, I will ask the favor of you to return the letter after perusal. I have latterly taken this liberty with more than one of my corresponding friends, and every lapse of very short periods becomes now a fresh apology for it.

Neither Mrs. Madison nor myself have forgotten the promised visit, which included Mrs. Rives, and we flatter ourselves the fulfilment of it will not be very distant. Meanwhile we tender to you both our joint and affectionate salutations.

P. S. I enclose a little pamphlet received a few days ago, which so well repaid my perusal that I submit it to yours, to be returned only at your leisure. It is handsomely written, and

its matter well chosen and interesting. A like task as well executed in every State would be of historical value; the more so as the examples might both prompt and guide researches, not as yet too late, but rapidly becoming so.

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TO BARON DE HUMBOLDT.

MARCH 12, 1833.

Will you permit me, my dear Baron, after such an oblivious lapse of time, to recall myself to you by a few lines introducing Professor Hoffman, who fills, with distinguished qualifications, the Chair of Law in the University of Maryland? He is about to take a look at Europe, and will be particularly gratified by an opportunity of paying his respects to one whose fruitful genius, philosophical researches, and moral excellences, have given him so high a rank everywhere among the benefactors of science and humanity.

Mr. Hoffman will be able to give you whatever information may be desired concerning his own country, in the destinies of which you have taken a philanthropic interest. You intimated once, that the unscrutinized region of which it makes a part offered physical attractions to another voyage across the Atlantic. To those would now be added a different one in the effect of our political institutions in a period of twenty years on our national growth, features, and condition.

There may be little hope now that a fulfilment of your original intention would be compatible with the many interesting demands on your time elsewhere. I can only assure you, therefore, that on a more favorable supposition, you would nowhere be welcomed by more general gratulations than among the citizens of the United States; and that if the contingency should fall within the short span of life remaining to me, I shall be second to none of them in the sincerity of mine.

Mrs. Madison, not having forgotten the pleasure afforded by the few social days passed at Washington, begs to be joined in the homage and all the good wishes which I pray you to accept.



TO DANIEL WEBSTER.

MONTPELLIER, March 15, 1833.

DEAR SIR,—I return my thanks for the copy of your late very powerful speech in the Senate of the United States. It crushes "nullification," and must hasten the abandonment of "secession." But *this* dodges the blow, by confounding the claim to secede at will with the right of seceding from intolerable oppression. The former answers itself, being a violation, without cause, of a faith solemnly pledged. The latter is another name only for revolution, about which there is no theoretic controversy. Its double aspect, nevertheless, with the countenance received from certain quarters, is giving it a popular currency here which may influence the approaching elections both for Congress and for the State Legislature. It has gained some advantage, also, by mixing itself with the question whether the Constitution of the United States was formed by the people or by the States, now under a theoretic discussion by animated partisans.

It is fortunate when disputed theories can be decided by undisputed facts. And here the undisputed fact is, that the Constitution was made by the people, but as imbodyed into the several States who were parties to it, and, therefore, made by the States in their highest authoritative capacity. They might, by the same authority and by the same process, have converted the Confederacy into a mere league or treaty; or continued it with enlarged or abridged powers; or have imbodyed the people of their respective States into one people, nation, or sovereignty; or, as they did by a mixed form, make them one people, nation, or sovereignty for certain purposes, and not so for others.

The Constitution of the United States being established by a competent authority, by that of the sovereign people of the several States who were the parties to it, it remains only to inquire what the Constitution is; and here it speaks for itself. It organizes a government into the usual legislative, executive, and judiciary departments; invests it with specified powers, leaving others to the parties to the Constitution; it makes the Government, like other governments, to operate directly on the people; places at

its command the needful physical means of executing its powers; and, finally, proclaims its supremacy, and that of the laws made in pursuance of it, over the constitutions and laws of the States; the powers of the Government being exercised, as in other elective and responsible governments, under the control of its constituents, the people and legislatures of the States, and subject to the revolutionary *rights* of the people in extreme cases.

It might have been added, that while the Constitution, therefore, is admitted to be in force, its *operation* in *every respect* must be precisely the *same*, whether its authority be derived from that of the *people* in the one or the other of the modes in question, the authority being equally competent in both; and that, without an annulment of the Constitution itself, its supremacy must be submitted to.

The only distinctive effect between the two modes of forming a constitution by the authority of the people, is, that if formed by them as imbodyed into separate communities, as in the case of the Constitution of the United States, a dissolution of the constitutional compact would replace them in the condition of separate communities, that being the condition in which they entered into the compact; whereas, if formed by the people as one community, acting as such by a numerical majority, a dissolution of the compact would reduce them to a state of nature, as so many individual persons. But while the constitutional compact remains undissolved, it must be executed according to the forms and provisions specified in the compact. It must not be forgotten that compact, express or implied, is the vital principle of free governments as contradistinguished from governments not free; and that a revolt against this principle leaves no choice but between anarchy and despotism.

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TO JOSEPH C. CABELL.

MONTPELLIER, April 1, 1833.

DEAR SIR,—I received, by the last mail, yours from Albe-  
marle, with the documents referred to. That from Nelson, with

its accompaniments, had previously come to hand. I regret much my loss of a visit which I was so near being favoured with. Besides the personal gratifications it would have afforded me, we could not well have been together without touching on topics not personal, and on which our ideas might be worth interchanging.

As to the suggestion of a pamphlet comprising some of my letters on constitutional questions, it may be remarked that this has, as I understand, been lately done with respect to some of them—those to Mr. Everett and Mr. Ingersoll, if no more. Nor could such a task be now executed in time for any critical influence on public opinion. Whether it may become expedient during the next winter will be decided by the intermediate turn and complexion of the politics of the country.

I had noticed the charge of inconsistency against me, but it had been so often refuted on different occasions and from different quarters, that I was content to let it die of its wounds. There would, indeed, be no end to refutations if applied to every repetition of unfounded imputations. The attempt to prove me a nullifier, by a misconstruction of the resolutions of 1798–99, though so often and so lately corrected, was, I observe, renewed some days ago in the Richmond Whig, by an inference from an erasure in the House of Delegates from one of those resolutions, of the words, “are null, void, and of no effect,” which followed the word “constitutional.” These words, though synonymous with “unconstitutional,” were alleged by the critic to mean nullification; and being, of course, ascribed to me, I was, of course, a nullifier. It seems not to have occurred, that if the insertion of the words could convict me of being a nullifier, the erasure of them [unanimous, I believe] by the Legislature was the strongest of protests against the doctrine; a consideration of infinitely more importance than any opinion of mine, if real, could be. The vote in that case seems not to have engaged the attention due to it. It not merely deprives South Carolina of the authority of Virginia, on which she has relied and exulted so much in support of her cause, but turns that authority pointedly against her.

In referring to this incident I am reminded of another erasure from one of the resolutions. After the word "States," as parties to the compact, the word "alone" was inserted. This was unanimously stricken out. I was always at a loss for the reason, till it was lately stated, on the authority of Mr. Giles, that the word was considered by some as excluding the people of a State from being a party to the compact. The word was not meant to guard against that misconstruction, which was not apprehended, the people being the State itself when acting in its highest capacity, but to exclude the idea of the State governments or the Federal Government being a party. The common notion previous to our Revolution had been, that the governmental compact was between the Governors and the governed; the former stipulating protection, the latter allegiance. So familiar was this view of the subject that it slipped into the speech of Mr. Hayne on Foot's resolution, and produced the prostrating reply of Mr. Webster. So apt, also, was the distinction between a State and its government to be overlooked, that Judge Roane, with all his sagacity and orthodoxy, was betrayed into a language that made the State government a party to the constitutional compact of the United States. In the fifth letter of his "Algernon Sidney," he says: "If without this jurisdiction [of the Supreme Court of the United States] now claimed, it is alleged that danger will ensue to the constitutional rights of the General Government, let us not forget that there is *another party to the compact*. That party is the *State governments*, who ought not to be deprived of their *only* defensive armour."

What an example is here, where it would be so little looked for, of the erroneous and one-sided view so often taken of the relations between the Federal and the State governments! Is it not obvious that the jurisdiction claimed for the States is not their *only* defensive armour? and that another and more complete defence is in the responsibility of the Federal Government to the people and Legislatures of the States as its constituents? whereas the jurisdiction claimed for the Federal Judiciary is truly the *only* defensive armour of the Federal Government, or, rather, for the Constitution and laws of the United States.

Strip it of that armour, and the door is wide open for nullification, anarchy, and convulsion, unless twenty-four States, independent of the whole and of each other, should exhibit the miracle of a voluntary and unanimous performance of every injunction of the parchment compact.

I must not let the occasion pass without congratulating you on your successful progress in the arduous and patriotic plan of connecting the West and the East by a route through Virginia. I wish you may continue to triumph over all the difficulties to be encountered. Such works are among the antidotes to the poisonous doctrines of disunion, as well as otherwise of the most beneficial tendencies.

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TO GEORGE W. BASSETT, CHAIRMAN OF THE MONUMENTAL COMMITTEE.

MONTPELLIER, April 30, 1833.

DEAR SIR,—I have received your letter of the 25th instant, which requests my company at the laying of the corner-stone of the proposed Monument to the memory of the Mother of Washington.

I feel much regret that my very advanced age, to which is added a continued indisposition, will not permit me to be present on an occasion commemorative of the mother of him who was the Father of his own Country, and has left in his example and his counsels a rich legacy to every country.

Be pleased to accept, sir, for yourself and your colleagues of the Monumental Committee, the expression of my cordial respects.

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TO BENJAMIN F. PAPOON.

MONTPELLIER, May 18, 1833.

DEAR SIR,—Your favor of the 13th ult. was duly received, and I thank you for the communication.

It cannot be doubted that the rapid growth of the individual States in population, wealth, and power must tend to weaken the ties which bind them together. A like tendency results from the absence and oblivion of external danger, the most powerful control on disuniting propensities in the parts of a political community. To these changes in the condition of the States, impairing the cement of their union, are now added the language and zeal which inculcate an incompatibility of interests between different sections of the country, and an oppression on the minor by the major section, which must engender in the former a resentment amounting to serious hostility.

Happily these alienating tendencies are not without counter tendencies, in the complicated frame of our political system; in the geographical and commercial relations among the States, which form so many links and ligaments, thwarting a separation of them; in the gradual diminution of conflicting interests between the great sections of country, by a surplus of labour in the agricultural section, assimilating it to the manufacturing section; or by such a success of the latter, without obnoxious aids, as will substitute for the foreign supplies which have been the occasion of our discords, those internal interchanges which are beneficial to every section; and, finally, in the obvious consequences of disunion, by which the value of union is to be calculated.

Still the increasing self-confidence felt by the members of the Union, the decreasing influence of apprehensions from without, and the natural aspirations of talented ambition for new theatres, multiplying the chances of elevation in the lottery of political life, may require the co-operation of whatever moral causes may aid in preserving the equilibrium contemplated by the theory of our compound Government. Among these causes may justly be placed appeals to the love and pride of country; and few could be made in a form more touching than a well-executed picture of the magical effect of our national emblem, in converting the furious passions of a tumultuous soldiery into an enthusiastic respect for the free and united people whom it represented.

How far the moral effect of the proposed exhibition may be countervailed by charging it with a party, instead of a national object, I cannot judge. That it should have originated in South Carolina may be well accounted for by the recent occurrences in that State, and particularly by the circumstance that the prominent figure in the scene was one of her gallant and patriotic sons. Should the original painting be consigned to a national depository, it will so far also give a nationality to its character and object.

The tenor of your polite and friendly letter has led me into observations some of which may be more free than pertinent. I let them pass, however, in a letter which is marked *private*. Every day added to my prolonged life increases my anxiety not to be brought into public view. When age becomes an answer to argument, as it usually does at a period much short of mine, it is a signal for self-distrust as well as for avoiding obtrusions on public attention.

I owe you an apology for so tardy an acknowledgment of your favor. Such has been latterly the state of my health, as to require a respite from the use of the pen.

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TO HENRY CLAY.

JUNE, 1833.

DEAR SIR,—Your letter of May 28 was duly received. In it you ask my opinion on the retention of the land bill by the President.

It is obvious that the Constitution meant to allow the President an adequate time to consider the bills, &c., presented to him, and to make his objections to them; and, on the other hand, that Congress should have time to consider and overrule the objections. A disregard on either side of what it owes to the other must be an abuse for which it would be responsible under the forms of the Constitution. An abuse on the part of the President, with a view sufficiently manifest, in a case of sufficient magnitude to deprive Congress of the opportunity

of overruling objections to their bills, might doubtless be a ground for impeachment. But nothing short of the signature of the President, or a lapse of ten days without a return of his objections, or an overruling of the objections by two-thirds of each House of Congress, can give legal validity to a bill. In order to qualify [in the French sense of the term] the retention of the land bill by the President, the first inquiry is, whether a sufficient time was allowed him to decide on its merits; the next, whether, with a sufficient time to prepare his objections, he unnecessarily put it out of the power of Congress to decide on them. How far an anticipated passage of the bill ought to enter into the sufficiency of the time for Executive deliberation is another point for consideration. A minor one may be, whether a silent retention, or an assignment to Congress of the reasons for it, be the mode most suitable to such occasions.

I hope, with you, that the compromising tariff will have a course and effect avoiding a renewal of the contest between the South and the North, and that a lapse of nine or ten years will enable the manufacturers to swim without the bladders which have supported them. Many considerations favour such a prospect. They will be saved in future much of the expense in *fixtures* which they had to encounter, and in many instances unnecessarily incurred. They will be continually improving in the management of their business. They will not fail to improve occasionally on the machinery abroad. The reduction of duties on imported articles consumed by them will be equivalent to a direct bounty. There will probably be an increasing cheapness of food from the increasing redundancy of agricultural labour. There will, within the experimental period, be an addition of four or five millions to our population, no part or little of which will be needed for agricultural labour, and which will consequently be an extensive fund of manufacturing recruits. The current experience makes it probable that not less than fifty or sixty thousand, or more, of emigrants will annually reach the United States, a large proportion of whom will have been trained to manufactures and be ready for that employment.



With respect to Virginia, it is quite probable, from the progress already made in the Western culture of tobacco, and the rapid exhaustion of her virgin soil, in which alone it can be cultivated with a chance of profit, that, of the forty or fifty thousand labourers on tobacco, the greater part will be released from that employment and be applicable to that of manufactures. It is well known that the farming system requires much fewer hands than tobacco fields.

Should a war break out in Europe, involving the manufacturing nations, the rise of the wages there will be another brace to the manufacturing establishments here. It will do more; it will prove to the "absolutists" for free trade that there is, in the contingency of war, one exception at least to their theory.\*

It is painful to observe the unceasing efforts to alarm the South by imputations against the North of unconstitutional designs on the subject of the slaves. You are right, I have no doubt, in believing that no such intermeddling disposition exists in the body of our Northern brethren. Their good faith is sufficiently guaranteed by the interest they have as merchants, as ship-owners, and as manufacturers, in preserving a union with the slaveholding States. On the other hand, what *madness* in the South to look for greater safety in disunion. It would be worse than jumping out of the frying-pan into the fire: it would be jumping into the fire for fear of the frying-pan. The danger from the alarm is, that the pride and resentment exerted by them may be an over-match for the dictates of prudence, and favor the project of a Southern Convention, insidiously revived, as promising, by its councils, the best securities against grievances of every sort from the North.

The case of the tariff and land bills cannot fail of an influence on the question of your return to the next session of Congress. They are both closely connected with the public repose.

\* This clause overlooked in the letter sent to Mr. Clay.

TO P. R. FENDALL.

MONTPELLIER, June 12, 1833.

DEAR SIR,—I have received your letter of the 6th instant, containing, among other communications on the part of the Managers of the Colonization Society, [?] the exhausted state of its treasury. This is the more to be lamented, as it is in one view an indication [un?] favorable to the interesting object for which the Society was formed. I hope the late circular appeal of the Board of Managers to the friends of that object will not be without effect.

You will be so good as to place the inclosed fifty dollars in the proper depository, and to accept my friendly salutations.

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TO BENJAMIN WATERHOUSE.

MONTPELLIER, June 21, 1833.

DEAR SIR,—Your letter of the 30th ult. was duly received with the little volume to which it refers. The facts contained in this are an acceptable appendix to the stock of information on a subject which has awakened much curiosity. I the less wonder at the relish shewn for such a treat as you have provided, considering the plums and the sauce you have added to the pudding.

Although the state of my eyes permits me to read but little, and my rheumatic fingers abhor the pen, I did not resist the attraction of your literary present, and I drop you a line to thank you for it. Mrs. Madison's eyes being in the same state with mine, we found it convenient to read in a sort of partnership; and you may consider her as a partner also in the thanks for it. Should you enlarge a new edition, as you hint, by the introduction of a Pocahontas or two among the *dramatis personæ*, the redness of the skin would not, in her eyes, impair the merits it would cover. She offers a return of your kind remembrances, and joins me in the cordial respects and all good wishes which I pray you to accept.

TO PROFESSOR TUCKER.

JULY 6, 1833.

DEAR SIR,—I inclose my answers to two letters from Mr. Jefferson referred to in your inquiries through Dr. Dunglison. They are in the form of extracts, the answers, one of them more particularly, containing irrelative paragraphs not free from delicate personalities. You will have noticed the letter of Mr. Jefferson to Dr. Gem immediately following that of Sep<sup>r</sup> 6 [1789] to me, as explaining the *age* of a generation.

My letter of Oct<sup>r</sup> 17, '88, appears to have been written *currente calamo*. Perhaps an extract from the extract may suffice for your purpose.

The objection to the power of *treaties* made by the States had, as noted in my letter of Oct., '88, particular reference to the British Treaty on the subject of debts, the source of so much subsequent agitation.

It is observable that Mr. Jefferson, in his letter of March 15, '89, says, "this instrument [the Constitution of U. S.] forms us into *one State*, for certain objects," &c. In a number of other places, if I mistake not, he speaks of the Constitution as making us one people and one nation for certain purposes. Yet his authority is made to support the doctrine that the States have parted with none of their sovereignty or nationality.

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TO W. C. RIVES.

MONTPELLIER, August 2, 1833.

Your favor of the 28 ult. was, my dear sir, duly received. I thank you for Mr. Tyler's pamphlet, with the accompanying newspaper; and I thank you still more for the friendly disposition you express on the subjects of them, as they relate to me. If I mistake not, Mr. T. has omitted in his pamphlet a passage in the newspaper edition of his speech, which was levelled against the Virginia Deputies to the Convention of 1787 generally, as well as against Mr. Randolph and myself.

Should my health permit, which has varied a little the wrong way latterly, I will endeavor to point to some of the errors of "Mutius," if not of Mr. T. also, in the views they have taken of my political career.

Dr. Mason and his companion called on me last evening and left me this morning, duly impressed with their title to your introduction. I learnt from them, that, with Mrs. Rives, you will soon be under weigh [way?] for the Springs, and, of course, for some time beyond any communication with you. I hope the excursion will have every advantage in confirming your health. We are glad to understand that the health of Mrs. Rives needs no aid of any sort. Mrs. Madison joins in respectful and affectionate salutations to you both.

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TO GALES & SEATON.

August 5, 1833.

I have received your letter of the 29th ult<sup>o</sup>. The task in which you are engaged is a very interesting one, and I should feel much pleasure in aiding your researches for the necessary materials. But my recollections are very barren.

I know of no "debates" during the period of Lloyd's, but his, which are very defective and abound in errors, some of them very gross, where the speeches were not revised by the authors. If there be any depositories of what passed, they must be the cotemporary newspapers or periodicals, to be found, I presume, in public Libraries. Whilst Congress sat in New York, Fenno was the printer most to be looked to. On the removal to Philadelphia, Freneau's National Gazette was the favorite of the other party, and contains reports of the debates, at least in some instances, when the speakers revised them. Whether the same be not in Fenno, also, or in other Gazettes of the day, or republished in Carey's Museum, or other periodicals, I cannot say. If there be any difference between Freneau and Fenno in a speech of mine, Freneau gives the correct one. Freneau's Ga-

zette, I should suppose, would be among the bound newspapers in the Library of Mr. Jefferson, now in that of Congress. Callender and Carpenter took the debates at one period; but they probably make a part of those published by Fenno, Brown, Dunlap, and Duane.

I do not possess a manuscript copy of a single speech, having never written one beforehand, nor corrected the reporter's notes of one beyond making it faithful in substance, and to be reported as, such in the third, not in the first person.

You yielded too much to an apprehension that a visit might not in my condition be convenient to me. You would have been welcomed with the respect and cordiality of which I now beg you to accept the assurance.

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TO THOMAS S. GRIMKE.

AUGUST 10, 1833.

D<sup>R</sup> SIR,—I owe you many thanks for the several communications with which you have from time to time favored me since the date of my last; and I owe you many apologies for the delay in acknowledging them. The last favors just received are your "Oration on the 4th of July," and your "letter on temperance." In all of them I recognise the same ability, accurate information, and eloquence, the same vein of patriotic solicitude and Christian benevolence, by which your pen has always been characterized. My present knowledge has discovered a few errors of fact in some of the political passages, which future lights may correct.

I owe you a special apology for so long failing to comply with your request on the subject of autographs. I must do myself the justice, at the same time, of saying that I have never entirely lost sight of it. But the thief, "procrastination," has taken advantage of the clumsiness of my rheumatic hands, the crowd of my epistolary files, and the uncertainty as to the names which you may already possess. If you will be so obliging as to make a note of these, I will add with real pleasure such of

those deemed worthy of selection as my pigeon-holes will now furnish.

I congratulate you on the effect of the comprising [compromising] anodyne adopted by Congress. I hope it will keep the patient quiet, notwithstanding the renewed attempts to disturb him, till the "*vis medicatrix*" of time and a good constitution shall produce a permanent state of health.

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TO MAJOR H. LEE.

AUGUST 14, 1833.

SIR,—I have received your letter of June 5th under cover of one to Mr. P. A. Jay, of New York. I find that you have been misled on the subject of Mr. Jefferson's letter to me of December 28, 1794, by an unlucky *misprint* of *Jay* for *Joy*, [G. Joy, in London,] the writer of the letter to which Mr. Jefferson refers. This letter has no reference to Mr. Jay, nor to anything that could be within the scope of your conjectures.

My great age, now considerably advanced into its 83<sup>d</sup> year with the addition of much disease to the usual infirmities incident to it, would alone forbid my engaging in the heavy task of correcting the "statements and inferences" in your "observations on the writings of Mr. Jefferson." I will not, however, suppress the brief remark, that if you had consulted the files of your father, you would have seen in his correspondence with me that he was among the harshest censors of the policy and measures of the Federal Government during the first term of Washington's Administration. You would have seen, also, that he patronized the Gazette of Mr. Freneau, and was anxious to extend the circulation of its strictures on the Administration through another Gazette. He had, indeed, a material agency in prevailing on Freneau, with whom he had been, as was the case with me, a College mate, to comply with Mr. Jefferson's desire of establishing him at the seat of Government.

TO PETER AUGUSTUS JAY.

MONTPELLIER, Aug<sup>st</sup> 14, 1833.

SIR,—Your letter of the 8th instant, inclosing one from Major H. Lee, has been duly received. On recurring to the original letter of Dec<sup>r</sup> 28, 1794, from Mr. Jefferson to me, it appears that both of you have been misled on the occasion of it, by an unlucky *misprint* of *Jay* for *Joy*, [G. Joy, in London,] the writer of the letter to me, referred to by Mr. Jefferson. This letter has no reference to your father, or to any subject connected with him or with Major Lee.

I must ask the favor of you to let the inclosed letter pass under cover of your answer to Major Lee.

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TO EDWARD EVERETT.

AUGUST 22d, 1833.

DEAR SIR,—I received in due time the copy of your address at Worcester on the last 4th of July, and I tender my thanks for it. Its value is enhanced by the recurrence to remote events interesting to the history of our country. It would be well if all our anniversary Orators would follow the example of substituting for part at least of their eloquent repetitions, occurrences now new because they have become old, and which would be acceptable contributions to the general reservoir from which the historian must draw the materials for his pen.

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TO JAMES B. LONGACRE.

AUGUST 27, 1833.

DEAR SIR,—I have duly received your letter of the 21 instant. I am aware of the wish you naturally feel for such a biographical sketch of me as will preserve a uniformity in your Gallery, and I am glad that you are sensible of the control I may feel in supplying materials for it.

A friend will attempt a brief chronicle of my career, with,

perhaps, a few remarks and references, and will forward the paper when prepared.

Mrs. M. is much gratified by the impressions you carried from Montpelier, and desires me to say in reply to your letter to her, as I do for myself, that a hospitality so well merited is greatly overpaid by the terms in which you speak of it.

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TO W. A. DUER.

SEPTEMBER, 1833.

DEAR SIR,—I have received your letter of the 28th ult., inclosing the outlines of your work on the Constitutional Jurisprudence of the United States. The object of the work is certainly important and well chosen, and the plan marked out in the analysis gives full scope for the instructive execution which is anticipated. I am very sensible, sir, of the friendly respect which suggested my name for the distinguished use made of it, and I am not less so of the too partial terms which are applied to it.

As an attention to the design of the work is invited from me as "the Head of the University of Virginia," as well as an individual, it is proper for me to observe, that I am but the presiding member of a Board of Visitors; that the superintendence of the Institution is in the Faculty of Professors, with a chairman annually appointed by the Visitors; and that the choice of text and class books is left to the Professors respectively. The only exception is in the school of law, in which the subject of Government is included, and on that the Board of Visitors have prescribed as text authorities, "The Federalist," the Resolutions of Virginia in 1798, with the comment on them in '99, and Washington's Farewell Address. The use, therefore, that will be made of any analogous publications will depend on the discretion of the Professor himself. His personal opinions, I believe, favor very strict rules of expounding the Constitution of the U. States.

I shall receive, sir, with thankfulness, the promised volume,



with the outlines of which I have been favored; though such is the shattered state of my health, added to the 83<sup>d</sup> year of my age, that I fear I may be little able to bestow on it all the attention I might wish, and doubt not it will deserve. I can the less calculate the degree in which my views of the Constitution accord with or vary from yours, as I am so imperfectly acquainted with the authorities to which I infer yours are in the main conformable.

I had, as you recollect, an acquaintance with your father, to which his talents and social accomplishments were very attractive; and there was an incidental correspondence between us, interchanging information at a critical moment when the elections and State conventions which were to decide the fate of the new Constitution were taking place. You are, I presume, not ignorant that your father was the author of several papers auxiliary to the numbers in the "Federalist." They appeared, I believe, in the Gazette of Mr. Childs.

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TO W. C. RIVES.

MONTPELLIER, October 21, 1833.

DEAR SIR,—Your favor of the 4th was duly received. I had not forgotten the intention of which I am reminded by it; but unabated interruptions, added to my crippled health, have produced a delay which I could not avoid; and since I have had notice of your return from the Springs the same causes have operated. I found also, on the trial, more of tediousness in consulting documents and noting references than was anticipated. Such tasks are indeed particularly tedious with my clumsy fingers and fading vision. I have, however, at length sketched the paper now enclosed. It is not, as you will observe, in a form for the press. I have hitherto thought it better, gross as the misrepresentations of me have been, to let them die a natural death, than to expose myself to answers drawn from my age, or to a repetition of teasing calls on my personal knowledge after an appeal to it myself; and apart from these, to sophistries and

false statements forcing me into the dilemma of a war with the pen, for which I am unfit, or a surrender of truth to persevering assailants. The topics and authorities I have referred to are accessible to all; and through a version of them in the idiom of another, some of them might speak for themselves better, perhaps, than through me as their organ.

We look with equal confidence and pleasure for the promised visit of Mrs. Rives and yourself, and beg you both to be assured of our affectionate regards.

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OCTOBER, 1833.

As the charges of "Mutius" are founded, in the main, on "Yates's Debates in the Federal Convention of 1787," it may be remarked, without impeaching the integrity of the reporter, that he was the representative in that body of the party in New York which was warmly opposed to the Convention, and to any change in the principles of the "Articles of Confederation;" that he was doubtless himself, at the time, under all the political bias which an honest mind could feel; that he left the Convention, as the journals show, before the middle of the session, and before the opinions or views of the members might have been developed into their precise and practical application; that the notes he took are, on the face of them, remarkably crude and desultory, having often the appearance of scraps and expressions, as the ear hastily caught them, with a liability to omit the sequel of an observation, or an argument which might qualify or explain it.

With respect to inferences from votes in the journal of the Convention, it may be remarked, that, being unaccompanied by the reasons for them, they may often have a meaning quite uncertain, and sometimes contrary to the apparent one. A proposition may be voted for with a view to an expected qualification of it, or voted against as wrong in time or place, or as blended with other matter of objectionable import.

Although such was the imperfection of Mr. Yates's notes of

what passed in the Convention, it is on that authority alone that J. M. is charged with having said "that the States never possessed the essential *rights of sovereignty*; that these were always vested in *Congress*."

It must not be overlooked, that this language is applied to the condition of the States, and to that of Congress, under "the Articles of Confederation." Now can it be believed that Mr. Yates did not misunderstand J. M. in making him say "that the States had *then* never possessed the essential *rights of sovereignty*," and that "*these* had always been vested in the *Congress then* existing?" The charge is incredible when it is recollected that the second of the Articles of Confederation emphatically declares "that each State *retains* its *sovereignty*, freedom, and independence, and every power, &c., which is not expressly delegated to the United States in Congress assembled."

It is quite possible that J. M. might have remarked that certain powers, attributes of sovereignty, had been vested in Congress; for that was true as to the powers of war, peace, treaties, &c. But that he should have held the language ascribed to him in the notes of Mr. Yates is so far from being credible, that it suggests a distrust of their correctness in other cases where a strong presumptive evidence is opposed to it.

Again, J. M. is made to say "that the States were only great political corporations, having the power of making by-laws; and these are effectual only if they were not contradictory to the general confederation."

Without admitting the correctness of this statement in the sense it seems meant to convey, it may be observed that, according to the *theory* of the old Confederation, the laws of the States contradictory thereto would be ineffectual. That they were not so in *practice* is certain; and this practical inefficacy is well known to have been the primary inducement to the exchange of the old for the new system of government for the United States.

Another charge against J. M. is an "opinion that the States ought to be placed under the control of the General Government, at least as much as they formerly were under the King and Parliament of Great Britain."

The British power over the Colonies, as admitted by them, consisted mainly of—1. The royal prerogatives of war and peace, treaties, coinage, &c., with a veto on the colonial laws as a guard against laws interfering with the general law and with each other. 2. The parliamentary power of regulating commerce, as necessary to be lodged somewhere, and more conveniently there than elsewhere. These powers are actually vested in the Federal Government, with the difference that for the veto power is substituted the general provision that the Constitution and laws of the United States shall be paramount to the constitutions and laws of the States; and the farther difference, that no tax whatever should be levied by the British Parliament, even as a regulation of commerce; whereas, an *indefinite* power of taxation is allowed to Congress, with the exception of a tax on exports, a tax the least likely to be resorted to. When it is considered that the power of taxation is the most commanding of powers, the one which Great Britain contended for, and the Colonies resisted by a war of seven years; and when it is considered that the British government was in every branch irresponsible to the American people, while every branch of the Federal Government is responsible to the States and the people as their constituents, it might well occur, on a general view of the subject, that, in an effectual reform of the federal system, as much power might be safely intrusted to the new Government as was allowed to Great Britain in the old one.

An early idea taken up by J. M., with a view to the security of a government, for the union and harmony of the State governments, without allowing to the former an unlimited and consolidated power, appears to have been a negative on the State laws, to be vested in the senatorial branch of the Government, but under what modifications does not appear. This, again, is made a special charge against him. That he became sensible of the obstacles to such an arrangement, presented in the extent of the country, the number of the States, and the multiplicity of their laws, cannot be questioned. But is it wonderful that, among the early thoughts on a subject so complicated and full of difficulty, one should have been turned to a provision in the

compound, and, on this point, analogous system of which this country had made a part, substituting for the distant, the independent, and irresponsible authority of a king, which had rendered the provision justly odious, an elective and responsible authority within ourselves?

It must be kept in mind that the radical defect of the old Confederation lay in the power of the States to comply with, to disregard, or to counteract the authorized requisitions and regulations of Congress; that a radical cure for this fatal defect was the essential object for which the reform was instituted; that all the friends of the reform looked for such a cure; that there could, therefore, be no question but as to the mode of effecting it. The Deputies of Virginia to the Convention, consisting of George Washington, Governor Randolph, &c., appear to have proposed a power in Congress to repeal the unconstitutional and interfering laws of the States. The proposed negative on them, as the Journals show, produced an equal division of the votes. In every proceeding of the Convention where the question of paramountship in the Union could be involved, the necessity of it appears to have been taken for granted. The mode of controlling the legislation of the States, which was finally preferred, has been already noticed. Whether it be the best mode experience is to decide. But the necessity of some adequate mode of preventing the States, in their individual characters, from defeating the constitutional authority of the States in their united character, and from collisions among themselves, had been decided by a past experience. [It may be thought not unworthy of notice that Col. Taylor regarded the control of the Federal Judiciary over the State laws as more objectionable than a legislative negative on them. See *New Views*, &c., p. 18; contra, see Mr. Jefferson, vol. ii, p. 163.]

Mutius asks, "If the States possessed no sovereignty, how could J. M. demonstrate that the States retained a *residuary sovereignty*, and call for a solution of the problem?" He will himself solve it by answering the question, which is most to be believed, that J. M. should have been guilty of such an

absurdity, or that Mr. Yates should have erred in ascribing it to him?

Mr. Yates himself says that J. M. expressed as much attachment to the rights of the States as to the trial by jury.

By associating J. M. with Mr. Hamilton, who entertained peculiar opinions, Mutius would fain infer that J. M. concurred with those opinions. The inference would have been as good if he had made Mr. Hamilton concur in all the opinions of J. M. That they agreed, to a certain extent, as the body of the Convention manifestly did, in the expediency of an energetic Government adequate to the exigencies of the Union, is true. But when Mutius adds, "that Mr. Hamilton and Mr. Madison advocated a system not only independent of the States, but which would have reduced them to the meanest municipalities," he failed to consult the recorded differences of opinion between the two individuals.

Mutius, in his anxiety to discredit the opinions of J. M., endeavours to discredit the "Federalist," in which he bore a part, by observing, "that the work was no favourite with Mr. Jefferson." Mutius is probably ignorant of, and will be best answered by, the fact that Mr. Jefferson proposed, that, with the Declaration of Independence, the Valedictory of General Washington, and the Resolutions and Report of 1798-99, the Federalist should be, as it now is, a text-book in the University. He describes it as "being an authority to which appeal is habitually made by all, and rarely declined or denied by any, as evidence of the general opinion of those who framed and of *those who accepted* the Constitution of the United States, on questions as to its general meaning." See in vol. ii, p. 382. [He\* speaks of the Federalist "as being, in his opinion, the best commentary on the principles of Government that ever was written. In some parts, it is discoverable that the author meant only to say what may be best said in defence of opinions in which he did not concur. But, in general, it establishes firmly the plan of

\* This in brackets omitted in the letter.

Government. I confess it has rectified me on several points. As to the Bill of Rights, however, I think it should still be added." This was materially affected by the amendments to the Constitution.]

Mutius finds another charge against J. M. of inconsistency between the report of 1799 and his letter to Mr. Everett in 1830; a charge which he endeavours to support by a comparison of the following extracts from the documents, but which is deprived of all its force, or rather is turned against him by the plain distinction between the "last resort" within the forms of the Constitution and the ulterior resort to the authority which is paramount to the Constitution itself.\*

*Extract from the Report of 1799, 1800.*

"However true it may be that the Judicial department is, in all questions submitted to it by the forms of the Constitution, to decide in the last resort, this resort must necessarily be deemed the last in relation to the authorities of the other departments of the Government, not in relation to the *rights* of the parties to the constitutional compact, for which the judicial as well as the other departments hold their delegated trusts. On any other hypothesis the delegation of judicial power would annul the authority delegating it; and the concurrence of this department with the others in usurped powers might subvert forever, and beyond the possible reach of any rightful remedy, the very Constitution which all were instituted to preserve.

"It appears to your committee to be a plain principle, founded in common sense, illustrated by common practice, and essential to the nature of compacts, that when resort can be had to no tribunal superior to the authority of the parties, *the parties themselves must be the rightful judges in the last resort, whether the bargain made has been pursued or violated.* The States being the parties to the constitutional compact, and in their sovereign capacity, it follows, of necessity, *that there can be no tribunal above their authority to decide in the last resort whether the com*

\* For the extracts see the Richmond Whig, September 17, 1833.

*pact made by them be violated*; and, consequently, that as the parties to it they must *themselves decide*, in the last resort, such questions as may be of sufficient magnitude to require their interposition.

“If the deliberate exercise of dangerous powers, palpably withheld by the Constitution, could not justify the parties to it in interposing *even so far* as to *arrest* the progress of the evil, and thereby to *preserve the Constitution itself*, as well as to provide for the safety of the parties to it, there *would be an end to all relief from usurped power*, and a direct subversion of the rights specified or recognised under all the State constitutions, as well as a plain denial of the fundamental principle on which our independence was declared.

“The authority of constitutions over governments, and of the *sovereignty of the people over constitutions*, are truths which are *at all times* necessary to be kept in mind, and *at no time*, perhaps, more necessary than at the present.”

*Extracts from Mr. Madison's letter to the Editor of the North American Review, dated August, 1830.\**

“It is true that, in controversies relating to the boundary between the two jurisdictions, the tribunal which is *ultimately to decide is to be established under the General Government*. *But this does not change the principle of the case*. The decision is to be impartially made, according to the rules of the Constitution, and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is *clearly essential* to prevent an appeal to the sword and a dissolution of the compact, and that it ought to be established under the general rather than under the local governments; or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated.” Having quoted the above from the Federalist, † Mr. Madison proceeded and remarked, “that the Constitution is a compact; that its text is to be expounded *according to the provisions for expounding it*,

\* *Ante*, p. 95

† Number 39.



making a *part of the compact*; and *that none of the parties can rightfully renounce the expounding provision more than any other part*. When such a right accrues, as it may accrue, it must grow out of the abuses of the compact, releasing the sufferers from their fealty to it."

"In the event of a failure of every constitutional resort, and an accumulation of usurpations and abuses rendering passive obedience and non-resistance a greater evil than resistance and revolution, there can be but one resort, the last of all, an appeal from the cancelled obligations of the constitutional compact to original rights and the law of self-preservation. This is the *ultima ratio* under all governments."

The positions in the report are, that although the Judiciary department is, in all questions submitted to it by the forms of the Constitution, to decide in the last resort, the resort is not the last in relation to the rights of the parties to the constitutional compact; that these, from whom the judicial as well as the other departments hold their delegated trust, are the rightful judges in the last resort, whether the compact has been pursued or violated. [This view of the subject appears, from the report itself, to have been specially called for by the extravagant claims in behalf of judicial decisions as precluding any interposition whatever on the part of the States.]

In the letter to Mr. Everett, the positions are, as cited from the "Federalist," that, "in controversies relating to the boundaries between the two jurisdictions," [the Federal and the State,] "the tribunal which is ultimately to decide is to be established under the General Government; that the decision is to be impartially made, according to the rules of the Constitution; that some such tribunal was essential, to prevent an appeal to the sword and a dissolution of the Union; and that it ought to be established under the *general* rather than under the *local* governments; or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated."

It is sufficiently clear that the *ultimate* decision of the tribunal here referred to is confined to cases within the judicial scope of

the Government; that it had reference to interfering decisions of a local or State authority; and that it neither denies nor excludes a resort to the authority of the parties to the Constitution, an authority above that of the Constitution itself.

That the letter to Mr. Everett understood the term *ultimately*, as applied to the decisions of the Federal tribunal, to be of a limited scope, is shown by the paragraph omitted by Mutius. "Should the provisions of the Constitution as here reviewed" [including the judiciary] "be found not to secure the governments and rights of the States against usurpations and abuses on the part of the United States, the *final resort* within the purview of the Constitution lies in an amendment of the Constitution according to a process applicable by the States." [Here is a special *resort* provided by the Constitution, which is *ulterior* to the *judicial* authority; the authority of three-fourths of the States being made equivalent, with two specified exceptions, to the entire authorities of the parties to the Constitution.]

And that the ultimate decision of the judicial authority could not be meant, in the letter to Mr. Everett, to be the last of all, is shown by the paragraph not omitted by Mutius. "And in the event of a failure of every constitutional resort, and an accumulation of usurpations and abuses rendering passive obedience and non-resistance a greater evil than resistance and revolution, there can remain but one resort, the *last* of all, an appeal from the cancelled obligations of the constitutional compact to original rights and the law of self-preservation. This is the *ultima ratio* under all governments."

Instead of the paragraph omitted by Mutius, he has inserted from the letter a remark, "that the Constitution is a compact; that its text is to be expounded according to the provisions for expounding it, making a part of the compact; and that none of the parties can rightfully renounce the expounding provision more than any other part. When such a right accrues, as it may accrue, it must grow out of the abuses of the compact releasing the sufferers from their fealty to it." What is this but saying that the compact is binding in all its parts on those who

made it? that the acts of the authorities constituted by it must be observed by the parties till the compact be changed or abolished? Is not this true of all compacts, and the dictate of common sense as well as universal practice?

Where, now, is the inconsistency between the report of 1799 and the letter to Mr. Everett? They both recognise and adhere to the distinction between a *last resort* in behalf of constitutional rights, within the forms of the Constitution, and the ulterior resorts to the authority paramount to the Constitution.

These different resorts, instead of being incompatible, necessarily result from the principles of all free Governments, whether of a Federal or other character. Is not the expounding authority, wherever lodged by the constitution of Virginia, the last resort within the purview of the Constitution against violations of it? and are not the people who made the Constitution a last resort against violations of it, even when committed by the last resort within the constitutional provisions? The people as composing a State, and the States as composing the Union, may, in fact, interpose either as constituents of their respective governments, according to the forms of their respective constitutions, or as the creators of their constitutions, and as paramount to them as well as to the governments.

It cannot, as is believed, be shown that J. M. ever admitted that a *single* State had a constitutional right to annul, resist, or control a law of the United States, or that he ever denied either the right of the *States* as *parties* to the Constitution [not a single State or party] to interpose against usurped power; or the right of a single State, as a natural right, to shake off a yoke too oppressive to be borne. These distinctions are clear, and, if kept in view, would dispel the verbal and sophistical confusion so apt to bewilder the weak and to disgust the wise.

It has been a charge against J. M. that, in his letter to Mr. Everett, he represents the people of the several States as constituting themselves *one people* for certain *purposes*.

That the authority of the people of the States, which, exercised as it was in their highest sovereign capacity in each, could have made them, if they had so pleased, *one people* for *all pur-*

poses, was sufficient to make them one people for *certain purposes*, cannot be denied; and that they did make themselves one people for certain purposes, results from the nature of the Constitution formed by them, which, like the State constitutions presents a Government organized into the regular departments of legislative, executive, and judiciary, and, like the State governments, operating immediately and individually on the people, by the same coercive forms and means.

The *oneness*, the *sovereignty*, and the *nationality* of the people of the United States, within the *prescribed limits*, has hitherto been the language of all parties; and of no one of the Republican party more expressly than of Mr. Jefferson, whose opinions have been so often misunderstood and misapplied. Take some of the extracts which his printed writings furnish. In a letter to J. M., vol. ii, p. 442, he says: "This instrument [the Federal Constitution] forms us into *one State*, as to *certain objects*, and gives us a legislative and executive body for those objects." He elsewhere uses the expression, "to make us one as to others, but several as to ourselves." In his letter to Destutt Tracy, he applies the term *amalgamated* to the union of the States; and in one to Mr. Hopkinson, the term *consolidated* to the Government. These terms are doubtless to be taken with the proper qualifications; but surely they would not have been applied to a constitution purely and exclusively federal in its character.

In a letter to Mr. Wythe, vol. ii, p. 230, he says: "My own general idea was, that the States should severally preserve their *sovereignty*, and that the exercise of the *federal sovereignty* should be divided among the three several bodies, legislative, executive, and judiciary, as the *State sovereignties* are; and that some peaceable means should be contrived for the federal head to force compliance on the part of the States." [Having reference, it may be presumed, to an obstruction of their trade, repeatedly suggested in his correspondence with his friends as applicable even to the "Articles of Confederation," or to the operation of the laws on the people, as in the Constitution of the United States, which was then before him.]

In a letter to J. M., vol. ii., p. 64, alluding to the expected

Convention of 1787, his language is, "to make us *one nation* as to foreign concerns, and keep us distinct as to domestic ones. gives the outline of the proper division of power between the general and particular governments."

To question the nationality of the States in their united character has a strange appearance, when in that character *only* they are known to and acknowledged by other nations; in that *only* can make war, peace, and treaties; and in that *only* can entertain the diplomatic and all the other international relations which appertain to the national character.

With all this evidence at hand, what ought to be the designation of those who, renouncing the views and language which have been applied by the Republican party to the Constitution of the United States, are now charging, in the name of republicanism, those who remain steadfast to their creed, with innovation, inconsistency, heresy, and apostasy? Such an outrage on truth, on justice, and even on common decorum, must be of short endurance. The illusion under which it is propagated is the misapplication to a peculiar and complex modification of political power, views of it applicable only to ordinary and simple forms of Government. Happily, appeals can be always triumphantly made from such perversions to the nature and text of the Constitution and the facts inseparable from it.

Returning to the special charge of inconsistency against J. M., it is not more than justice to him to say, that it will be difficult to find among our public men, who have passed through the same changes of circumstances and vicissitudes of parties, one who has been more uniform in his opinions on the great constitutional questions which have agitated the country. To the constitutionality of the bank, originally opposed by him, he acceded; but, as appears by his letter to Mr. Ingersoll, on the ground of the authoritative and multiplied sanctions given to it, amounting, he conceived, to an evidence of the judgment and will of the nation; and on the ground of a consistency of this change of opinion with his unchanged opinion, that such a sanction ought to overrule the abstract and private opinions of individuals.

With the exception of the case of the bank thus explained, he has preserved a uniform consistency on the great constitutional questions, the caption, "*We, the people;*" the phrase "common defence and general welfare;" "roads and canals;" the "alien and sedition laws." It might not improperly be added, that he appears to have originated and perseveringly supported the amendments to the Constitution adopted at the first session of the first Congress, as guards against constructive enlargements of the Federal powers. And it nowhere appears that he has ever changed his opinions with regard to them.

If he advocates the constitutionality of a tariff for the encouragement of domestic manufactures, it must be admitted that it is in conformity with his course on that subject at, and ever since, the first Congress under the present Constitution of the United States; that in this opinion he has had the concurrence of Washington and all his successors, and especially of Mr. Jefferson. In the same opinion he has been supported by that of every Congress, from the first to the last.\* It may not be improper to remark, that while he maintains the constitutionality of a protective tariff, he is a friend to the theory of free trade, and in favour of such exceptions only as are consistent with its principle, and as are dictated either by a regard to the public safety or by a fair calculation that a temporary sacrifice of cheapness will be followed by a greater cheapness, permanent as well as independent.†

If he considers decisions of the Supreme Court of the United States, in cases within its constitutional jurisdiction, as paramount to State decisions, it is not the effect of change in his opinion; for the same appears in his original exposition and vindication of the Constitution of the United States. In his letter to Mr. Everett he maintains (does he not prove?) that the controlling authority of the Federal Judiciary is the only defence against nullifying acts of a State through its judiciary organ. It will be as difficult for those who deny the nullifying power

\* See appendix to Mr. Cabell's printed speech in pamphlet form.

† See his letters to Mr. Cabell.

of a State to deny this inference, as for those who assert the doctrine to reconcile it with the text and principles of the Constitution or with the existence of the Union.

Mutius is probably a young man. He certainly possesses talents worthy of literary cultivation. When he shall mingle with political zeal a due portion of the candour which it is hoped belongs to his nature, it may safely be left to his own judgment to decide whether the scanty and hasty notes of Mr. Yates, or inferences from naked votes in the Journal of the Convention, ought to outweigh, in a charge of inconsistency against J. M., the authority of his earliest writings on the subject of the Constitution, his language in the Convention of Virginia when the Constitution was under discussion, and the whole course of his opinions, official and unofficial, down to the latest date.

With the advantage of a cooler temper and maturer reflection, he will be a better judge also of his own consistency, in his eager efforts to discredit that of J. M., while his eulogies and confidence are lavished on others who have passed abruptly from one extreme to its opposite, on subjects vital to the Constitution, the Union, and the happiness of our country.

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TO FRANCIS PAGE.

MONTPELLIER, NOV<sup>r</sup> 7th, 1833.

DR SIR,—I have received your letter inclosing a printed copy of a petition to the General Assembly in behalf of the heirs and representatives of General Nelson, and requesting any information I may be able to give respecting his advances and engagements for the public service at a trying period of the Revolutionary war in Virginia.

I regret that my absence from the State during his meritorious services as a military commander and Governor, deprived me of the opportunity of having any personal knowledge of them. But my general acquaintance with his character, and the impressions left by whatever was of public notoriety, make me

readily confide in the statements of the petition and inspire a sincere wish that it may be favorably received.

My personal acquaintance with General Nelson was limited to a few opportunities at an early stage of the Revolution. But it was sufficient, however, to disclose to me his distinguished worth. He was excelled by no man in the generosity of his nature, in the nobleness of his sentiments, in the purity of his Revolutionary principles, and in an exalted patriotism that ensured every service and sacrifice that his country might need.

With this view of the subject, it could not but accord with my best sympathies that nothing which may be due to the ancestor may be withheld from the heirs to them. I must be allowed to add, that the gratification will be increased by the knowledge that the benefit will be shared by descendants of Governor Page, whose memory will always be classed with that of the most distinguished patriots of the Revolution. Nor was he less endeared to his friends, among whom I had an intimate place, by the interesting accomplishments of his mind and the warmth of his social affections, than he was to his country, by the evidence he gave of devotion to the republicanism of its institutions.

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TO MAJOR H. LEE.

MONTPELLIER, NOV<sup>r</sup> 26, 1833.

I received, sir, on the 9th instant your letter of Sept<sup>r</sup> 15, and inclose copies of such of your father's letters to me as are embraced by your request. They are *entire*, with the exception of one, from which the conclusion had been cut off for an autographic collection.

Finding that my files do not contain copies of my letters to your father, as is the case with his files and his letters to me, I must ask the favor of you to supply the omission as far, at least, as relates to the period of those herewith forwarded.

I thank you for your friendly wishes on the subject of my health. The most that can be expected is, that it will not de-



crease beyond the increase of my years. The two causes taken together produce a state of feebleness and emaciation more than justifying me in declining the task to which you invited me. It may be hoped that truth enough will escape oblivion for future justice to all parties.

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TO G. W. FEATHERSTONHAUGH.

MONTPELLIER, Dec<sup>r</sup> 8, 1833.

DEAR SIR,—I have just received yours of the 6th. I am glad to find the public attention in Virginia at length turning towards the mineral resources of the State, and that you are promoting it by the communications which your science and observations enable you to make. A geological survey, skilfully conducted, seems to be the most obvious and effectual preparation for the discoveries in view, as well in relation to public utility and wealth as to a branch of knowledge becoming every day more and more curious and interesting. With such impressions I may readily be supposed to wish success to all the means that may be employed in so meritorious a work.

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TO FREDERICK PEYSTER.

D<sup>R</sup> SIR,—I received by the last mail your letter of July 19th. The volumes containing "The published collections of the New York Historical Society," to which it refers, arrived a few days ago. I beg you, sir, to tender to the Society my grateful acknowledgments for so valuable a testimony of their regard. I sincerely wish it every success in its laudable undertaking, and that its example may be followed in all the States composing our Union. Such Institutions will afford the best aids in procuring, and preserving, the materials otherwise but too perishable, from which a faithful history of our country must be formed—a history which, if well executed, will be superior to the most distinguished, in the authenticity of its facts,

and inferior to none in the lessons which it is the province of the Historian to convey to posterity.

I thank you, sir, for the friendly sentiments which your letter expresses, and beg you to accept assurances of my esteem and my respectful salutations.

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TO ———.

1833.

[*Majority Governments.*]

DEAR SIR,—You justly take alarm at the new doctrine that a majority government is of all other governments the most oppressive. The doctrine strikes at the root of republicanism, and, if pursued into its consequences, must terminate in absolute monarchy, with a standing military force; such alone being impartial between its subjects, and alone capable of overpowering majorities as well as minorities.

But it is said that a majority government is dangerous only where there is a difference in the interest of the classes or sections composing the community; that this difference will generally be greatest in communities of the greatest extent; and that such is the extent of the United States and the discordance of interests in them, that a majority cannot be trusted with power over a minority.

Formerly, the opinion prevailed that a republican government was in its nature limited to a small sphere; and was in its true character only when the sphere was so small that the people could, in a body, exercise the government over themselves.

The history of the ancient republics, and those of a more modern date, had demonstrated the evils incident to popular assemblages, so quickly formed, so susceptible of contagious passions, so exposed to the misguidance of eloquent and ambitious leaders, and so apt to be tempted by the facility of forming interested majorities, into measures unjust and oppressive to the minor parties.

The introduction of the representative principle into modern

governments, particularly of Great Britain and her colonial offsprings, had shown the practicability of popular governments in a larger sphere, and that the enlargement of the sphere was a cure for many of the evils inseparable from the popular forms in small communities.

It remained for the people of the United States, by combining a federal with a republican organization, to enlarge still more the sphere of representative government, and, by convenient partitions and distributions of power, to provide the better for internal justice and order, while it afforded the best protection against external dangers.

Experience and reflection may be said not only to have exploded the old error, that republican governments could only exist within a small compass, but to have established the important truth, that, as representative governments are necessary substitutes for popular assemblages, so an association of free communities, each possessing a responsible government under a collective authority also responsible, by enlarging the practicable sphere of popular governments, promises a consummation of all the reasonable hopes of the patrons of free government.

It was long since observed by Montesquien, has been often repeated since, and, may it not be added, illustrated within the United States, that in a confederal system, if one of its members happens to stray into pernicious measures, it will be reclaimed by the frowns and the good examples of the others, before the evil example will have infected the others.

But whatever opinions may be formed on the general subjects of confederal systems, or the interpretation of our own, every friend to republican government ought to raise his voice against the sweeping denunciation of majority governments as the most tyrannical and intolerable of all governments.

The patrons of this new heresy will attempt in vain to mask its anti-republicanism under a contrast between the extent and the discordant interests of the Union, and the limited dimensions and sameness of interests within its members. Passing by the great extent of some of the States, and the fact that these cannot be charged with more unjust and oppressive majorities

than the smaller States, it may be observed that the extent of the Union, divided as the powers of government are between it and its members, is found to be within the compass of a successful administration of all the departments of Government, notwithstanding the objections and anticipations founded on its extent when the Constitution was submitted to the people. It is true that the sphere of action has been and will be not a little enlarged by the territories embraced by the Union. But it will not be denied, that the improvements already made in internal navigation by canals and steamboats, and in turnpikes and railroads, have virtually brought the most distant parts of the Union, in its present extent, much closer together than they were at the date of the Federal Constitution. It is not too much to say, that the facility and quickness of intercommunication throughout the Union is greater now than it formerly was between the remote parts of the State of Virginia.

But if majority governments, as such, are so formidable, look at the scope for abuses of their power within the individual States, in their division into creditors and debtors, in the distribution of taxes, in the conflicting interests, whether real or supposed, of different parts of the State, in the case of improving roads, cutting canals, &c., to say nothing of many other sources of discordant interests or of party contests, which exist or would arise if the States were separated from each other. It seems to be forgotten, that the abuses committed within the individual States previous to the present Constitution by interested or misguided majorities were among the prominent causes of its adoption, and particularly led to the provision contained in it which prohibits paper emissions and the violations of contracts, and which gives an appellate supremacy to the judicial department of the United States. Those who framed and ratified the Constitution believed that, as power was less likely to be abused by majorities in representative governments than in democracies, where the people assembled in mass, and less likely in the larger than in the smaller communities under a representative government, inferred also, that by dividing the powers of government, and thereby enlarging the practicable sphere of

government, unjust majorities would be formed with still more difficulty, and be, therefore, the less to be dreaded; and whatever may have been the just complaints of unequal laws and sectional partialities under the majority Government of the United States, it may be confidently observed that the abuses have been less frequent and less palpable than those which disfigured the administrations of the State governments, while all the effective power of sovereignty were separately exercised by them. If bargaining interests and views have created majorities under the federal system, what, it may be asked, was the case in this respect antecedent to this system, and what, but for this, would now be the case in the State governments? It has been said that all government is an evil. It would be more proper to say that the necessity of any government is a misfortune. This necessity, however, exists; and the problem to be solved is, not what form of government is perfect, but which of the forms is least imperfect; and here the general question must be between a republican government, in which the majority rule the minority, and a government in which a lesser number or the least number rule the majority. If the republican form is, as all of us agree, to be preferred, the final question must be, what is the structure of it that will best guard against precipitate counsels and factious combinations for unjust purposes, without a sacrifice of the fundamental principle of republicanism? Those who denounce majority governments altogether because they may have an interest in abusing their power, denounce at the same time all republican government, and must maintain that minority governments would feel less of the bias of interest or the seductions of power.

As a source of discordant interests within particular States, reference may be made to the diversity in the applications of agricultural labour, more or less visible in all of them. Take, for example, Virginia herself. Her products for market are in one district Indian corn and cotton; in another, chiefly tobacco; in another, tobacco and wheat; in another, chiefly wheat, rye, and live stock. This diversity of agricultural interests, though

greater in Virginia than elsewhere, prevails in different degrees within most of the States.

Virginia is a striking example also of a diversity of interests, real or supposed, in the great and agitating subjects of roads and water communications, the improvements of which are little needed in some parts of the State, though of the greatest importance in others; and in the parts needing them much disagreement exists as to the times, modes, and the degrees of the public patronage, leaving room for an abuse of power by majorities, and for majorities made up by affinities of interests, losing sight of the just and general interest.

Even in the great distinctions of interest and of policy generated by the existence of slavery, is it much less between the Eastern and Western districts of Virginia than between the Southern and Northern sections of the Union? If proof were necessary, it would be found in the proceedings of the Virginia Convention of 1829-30, and in the debates of her Legislature in 1830-31. Never were questions more uniformly or more tenaciously decided between the North and the South in Congress, than they were on those occasions between the West and the East of Virginia.

But let us bring this question to the test of the tariff itself [out of which it has grown,] and under the influences of which it has been inculcated, that a permanent incompatibility of interests exists in the regulations of foreign commerce between the agricultural and the manufacturing population, rendering it unsafe for the former to be under a majority power when patronizing the latter.

In all countries, the mass of people become, sooner or later, divided mainly into the class which raises food and raw materials, and the class which provides clothing and the other necessities and conveniences of life. As hands fail of profitable employment in the culture of the earth, they enter into the latter class. Hence, in the Old World, we find the nations everywhere formed into these grand divisions, one or the other being a decided majority of the whole, and the regulations of their rela-

tive interests among the most arduous tasks of the government. Although the mutuality of interest in the interchanges useful to both may, in one view, be a bond of amity and union, yet, when the imposition of taxes, whether internal or external, takes place, as it must do, the difficulty of equalising the burden and adjusting the interests between the two classes is always more or less felt. When imposts on foreign commerce have a protective as well as a revenue object, the task of adjustment assumes a peculiar arduousness.

This view of the subject is exemplified in all its features by the fiscal and protective legislation of Great Britain; and it is worthy of special remark that there the advocates of the protective policy belong to the landed interest, and not, as in the United States, to the manufacturing interest; though, in some particulars, both interests are suitors for protection against foreign competition.

But so far as abuses of power are engendered by a division of a community into the agricultural and manufacturing interests, and by the necessary ascendancy of one or the other, as it may comprise the majority, the question to be decided is, whether the danger of oppression from this source must not soon arise within the several States themselves, and render a majority government as unavoidable an evil in the States individually, as it is represented to be in the States collectively.

That Virginia must soon become manufacturing as well as agricultural, and be divided into these two great interests, is obvious and certain. Manufactures grow out of the labour not needed for agriculture, and labour will cease to be so needed or employed as its products satisfy and satiate the demands for domestic use and for foreign markets. Whatever be the abundance or fertility of the soil, it will not be cultivated when its fruits must perish on hand for want of a market. And is it not manifest that this must be henceforward more and more the case in this State particularly? The earth produces at this time as much as is called for by the home and the foreign markets; while the labouring population, notwithstanding the emigration to the West and the Southwest, is fast increasing. Nor can we shut

our eyes to the fact, that the rapid increase of the exports of flour and tobacco from a new and more fertile soil will be continually lessening the demand on Virginia for her two great staples, and be forcing her, by the inability to pay for imports by exports, to provide within herself substitutes for the former.

Under every aspect of the subject, it is clear that Virginia must be speedily a manufacturing as well as an agricultural State; that the people will be formed into the same great classes here as elsewhere; that the case of the tariff must, of course, among other conflicting cases, real or supposed, be decided by the republican rule of majorities; and, consequently, if majority governments, as such, be the worst of governments, those who think and say so cannot be within the pale of the republican faith. They must either join the avowed disciples of aristocracy, oligarchy, or monarchy, or look for a Utopia exhibiting a perfect homogeneousness of interests, opinions, and feelings nowhere yet found in civilized communities. Into how many parts must Virginia be split before the semblance of such a condition could be found in any of them? In the smallest of the fragments, there would soon be added to previous sources of discord a manufacturing and an agricultural class, with the difficulty experienced in adjusting their relative interests in the regulation of foreign commerce if any, or, if none, in equalising the burden of internal improvement and of taxation within them. On the supposition that these difficulties could be surmounted, how many other sources of discords to be decided by the majority would remain? Let those who doubt it consult the records of corporations of every size, such even as have the greatest apparent simplicity and identity of pursuits and interests.

In reference to the conflicts of interests between the agricultural and manufacturing States, it is a consoling anticipation that, as far as the legislative encouragements to one may not involve an actual or early compensation to the other, it will accelerate a state of things in which the conflict between them will cease and be succeeded by an interchange of the products profitable to both; converting a source of discord among the States into a new cement of the Union, and giving to the coun-



try a supply of its essential wants independent of contingencies and vicissitudes incident to foreign commerce.

It may be objected to majority governments, that the majority, as formed by the Constitution, may be a minority when compared with the popular majority. This is likely to be the case more or less in all elective governments. It is so in many of the States. It will always be so where property is combined with population in the election and apportionment of representation. It must be still more the case with confederacies, in which the members, however unequal in population, have equal votes in the administration of the government. In the compound system of the United States, though much less than in mere confederacies, it also necessarily exists to a certain extent. That this departure from the rule of equality, creating a political and constitutional majority in contradistinction to a numerical majority of the people, may be abused in various degrees oppressive to the majority of the people, is certain; and in modes and degrees so oppressive as to justify ultra or anti-constitutional resorts to adequate relief is equally certain. Still the constitutional majority must be acquiesced in by the constitutional minority, while the Constitution exists. The moment that arrangement is successfully frustrated, the Constitution is at an end. The only remedy, therefore, for the oppressed minority is in the amendment of the Constitution or a subversion of the Constitution. This inference is unavoidable. While the Constitution is in force, the power created by it, whether a popular minority or majority, must be the legitimate power, and obeyed as the only alternative to the dissolution of all government. It is a favourable consideration, in the impossibility of securing in all cases a coincidence of the constitutional and numerical majority, that when the former is the minority, the existence of a numerical majority with justice on its side, and its influence on public opinion, will be a salutary control on the abuse of power by a minority constitutionally possessing it: a control generally of adequate force, where a military force, the disturber of all the ordinary movements of free governments, is not on the side of the minority.

The result of the whole is, that we must refer to the monitory reflection that no government of human device and human administration can be perfect; that that which is the least imperfect is therefore the best government; that the abuses of all other governments have led to the preference of republican government as the best of all governments, because the least imperfect; that the vital principle of republican government is the *lex majoris partis*, the will of the majority; that if the will of a majority cannot be trusted where there are diversified and conflicting interests, it can be trusted nowhere, because such interests exist everywhere; that if the manufacturing and agricultural interests be of all interests the most conflicting in the most important operations of government, and a majority government over them be the most intolerable of all governments, it must be as intolerable within the States as it is represented to be in the United States; and, finally, that the advocates of the doctrine, to be consistent, must reject it in the former as well as in the latter, and seek a refuge under an authority master of both.

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TO "A FRIEND OF UNION AND STATE RIGHTS."

(Confidential.)

1833.

I have received the letter signed "A Friend of Union and State Rights," enclosing two printed essays under the same signature.

It is not usual to answer communications without the proper names to them. But the ability and motives disclosed in the essays induce me to say, in compliance with the wish expressed, that I do not consider the proceedings of Virginia in 1798-99 as countenancing the doctrine that a State may *at will* secede from its constitutional compact with the other States. A rightful secession requires the consent of the others, or an abuse of the compact absolving the seceding party from the obligations imposed by it.

In order to understand the reasoning on one side of a ques-

tion, it is necessary to keep in view the precise state of the question, and the positions and arguments on the other side. This is particularly necessary in questions arising under our novel and compound system of government, and much error and confusion has grown out of a neglect of this precaution.

The case of the alien and sedition laws was a question between the Government of the United States and the constituent body, Virginia making an appeal to the latter against the assumptions of power by the former.

The case of a claim in a State to secede from its union with the others resolves itself into a question among the States themselves as parties to the compact.

In the former case it was asserted against Virginia, that the States had no right to interpose a *legislative* declaration of opinion on a constitutional point; nor a right to interpose at all against a decision of the Supreme Court of the United States, which was to be regarded as a tribunal from which there could be no appeal.

The object of Virginia was to vindicate legislative declarations of opinion; to designate the several constitutional modes of interposition by the States against abuses of power; and to establish the ultimate authority of the States as parties to and creators of the Constitution, to interpose against the decisions of the judicial as well as other branches of the Government, the authority of the judicial being in no sense ultimate out of the purview and forms of the Constitution.

Much use has been made of the term "respective" in the third resolution of Virginia, which asserts the right of the States, in cases of sufficient magnitude, to interpose for maintaining within their respective limits the authorities, &c., appertaining to them, the term "respective" being construed to mean a constitutional right in each State separately to decide on and resist by force encroachments within its limits. But, to say nothing of the distinction between the ordinary and extreme cases, it is observable that in this as in other instances throughout the resolutions, the plural number "States" is used in referring to them; that a concurrence and co operation of all might well be contemplated

in interpositions for effecting the objects within each; and that the language of the closing resolution corresponds with this view of the third. The course of reasoning in the report on the resolutions required the distinction between a State and the States. It surely does not follow from the fact of the States, or, rather, the people imbodyed in them, having, as parties to the compact, no tribunal above them, that, in controverted meanings of the compact, a minority of the parties can rightfully decide against the majority; still less that a single party can decide against the rest; and as little that it can *at will* withdraw itself altogether from its compact with the rest.

The characteristic distinction between free governments and governments not free is, that the former are founded on compact, not between the government and those for whom it acts, but among the parties creating the government. Each of these being equal, neither can have more right to say that the compact has been violated and dissolved, than every other has to deny the fact and to insist on the execution of the bargain. An inference from the doctrine that a single State has a right to secede at its will from the rest, is, that the rest would have an equal right to secede from it; in other words, to turn it against its will out of its union with them. Such a doctrine would not, till of late, have been palatable anywhere, and nowhere less so than where it is now most contended for.

A careless view of the subject might find an analogy between State secession and individual expatriation. But the distinction is obvious and essential. Even in the latter case, whether regarded as a right impliedly reserved in the original social compact, or as a reasonable indulgence, it is not exempt from certain conditions. It must be used without injustice or injury to the community from which the expatriating party separates himself. Assuredly he could not withdraw his portion of territory from the common domain. In the case of a State seceding from the Union, its domain would be dismembered, and other consequences brought on not less obvious than pernicious.

I ought not to omit my regret, that in the remarks on Mr. Jefferson and myself, the names had not been transposed.

Having many reasons for making this letter *confidential*, I must request that its publicity may not be permitted in any mode or through any channel. Among the reasons is the risk of misapprehensions or misconstructions so common without more attention and more development than I could conveniently bestow on what is said.

Wishing to be assured that this letter has not miscarried, a single line acknowledging its receipt will be acceptable.

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TO THOMAS S. GRIMKE.

MONTPELLIER, JAN 6, 1834.

DEAR SIR,—Your letter of the 21st of August last was duly received, and I must leave the delay of this acknowledgment of it to your indulgent explanation. I regret the delay itself less than the scanty supply of autographs requested from me. The truth is, that my files have been so often resorted to on such occasions, within a few years past, that they have become quite barren, especially in the case of names most distinguished. There is a difficulty, also, not readily suggesting itself, in the circumstance that wherever letters do not end on the first or third page, the mere name cannot be cut off without the mutilation of a written page. Another circumstance is, that I have found it convenient to spare my pigeon-holes by tearing off the superscribed parts where they could be separated, so that autographs have been deprived even of that resource.

You wish to be informed of the errors in your pamphlet alluded to in my last. The first related to the proposition of Doctor Franklin in favour of a religious service in the Federal Convention. The proposition was received and treated with the respect due to it; but the lapse of time which had preceded, with considerations growing out of it, had the effect of limiting what was done to a reference of the proposition to a highly respectable committee. This issue of it may be traced in the printed Journal. The Quaker usage, never discontinued in the

State and the place where the Convention held its sittings, might not have been without an influence, as might also the discord of religious opinions within the Convention, as well as among the clergy of the spot. The error into which you had fallen may have been confirmed by a communication in the National Intelligencer some years ago, said to have been received through a respectable channel from a member of the Convention. That the communication was erroneous is certain; whether from misapprehension or misrecollection, uncertain.

The other error lies in the view which your note L for the 18<sup>th</sup> page gives of Mr. Pinckney's draught of a Constitution for the United States, and its conformity to that adopted by the Convention. It appears that the draught laid by Mr. Pinckney before the Convention was, like some other important documents, not among its preserved proceedings. And you are not aware that *insuperable* evidence exists that the draught in the published Journal could not, in a number of instances, material as well as minute, be the same with that laid before the Convention. Take, for an example of the former, the article relating to the House of Representatives, more than any the corner-stone of the fabric. That the election of it by the *people* as proposed by the printed draught in the Journal could not be the mode of election proposed in the lost draught, must be inferred from the face of the Journal itself; for on the 6th of June, but a few days after the lost draught was presented to the Convention, Mr. Pinckney moved to strike the word "*people*" out of Mr. Randolph's proposition, and to "Resolve that the members of the *first branch* of the National Legislature ought to be *elected* by the *Legislatures* of the *several States*." But there is other and most conclusive proof that an election of the House of Representatives by the *people* could not have been the mode proposed by him. There are a number of other points in the published draught, some conforming most *literally* to the adopted Constitution, which, it is *ascertainable*, could not have been the same in the draught laid before the Convention. The conformity, and even identity of the draught in the Journal, with the adopted Constitution, on points and details the result of conflicts

and compromises of opinion apparent in the Journal, have excited an embarrassing curiosity often expressed to myself or in my presence. The subject is in several respects a delicate one; and it is my wish that what is now said of it may be understood as yielded to your earnest request, and as entirely confined to yourself. I knew Mr. Pinckney well, and was always on a footing of friendship with him. But this consideration ought not to weigh against justice to others, as well as against truth on a subject like that of the Constitution of the United States.

The propositions of Mr. Randolph were the result of a consultation among the seven Virginia Deputies, of which he, being at the time Governor of the State, was the organ. The propositions were prepared on the supposition that, considering the prominent agency of Virginia in bringing about the Convention, some initiative step might be expected from that quarter. It was meant that they should sketch a real and adequate Government for the Union, but without committing the parties against a freedom in discussing and deciding on any of them. The Journal shews that they were, in fact, the basis of the deliberations and proceedings of the Convention. And I am persuaded that, although not in a developed and organized form, they sufficiently contemplated it; and, moreover, that they embraced a fuller outline of an adequate system than the plan laid before the Convention, variant as that ascertainably must have been, from the draught now in print.

*Memo.*—No provision in the draught of Mr. P. printed in the Journal for the mode of electing the President of the U. S.

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TO W. C. RIVES.

MONTPELLIER, Feb 15, 1834.

D<sup>R</sup> SIR,—I have received the copy of your speech on the "Removal of the Deposits," kindly forwarded in pamphlet form. It has certainly treated the questions embraced by it with the distinguished ability which was looked for. Whilst I feel a

pleasure in doing it this justice I must not forget, as I presume you are aware, that some of them are not viewed by me in the lights in which your reasoning presents them.

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TO DR. BEN. WATERHOUSE.

MONTPELLIER, Mar. 1, 1834.

D<sup>R</sup> SIR,—I have received your favor of the 20th ult. with a copy of your "Public Lecture." The lecture is a good medicine for the bad habits which it paints in such warning colours. The temperance societies appear to have had a salutary effect in diminishing the use of ardent spirits, the worst of the passions, because it is a moral as well as a physical one. I wish the societies all the success they merit; but I am not in the honorable relation to either of them which you suppose.

I have not yet seen the "History of the Hartford Convention;" and such are the arrears in the reading I have assigned to myself, that I am not sure, if I possessed the book, that I should ever be able, with my waning strength and fading vision, to examine a work filling so many pages. It will be fortunate for historical truth, and for individual as well as political justice, if a chastising notice of its spurious contents should fall within the scope of the masterly pen you refer to.\*

I am glad to find that your penmanship remains so perfect. My greater age, with its rheumatic auxiliary, have so stiffened my fingers as to make writing laborious and clumsy. Hence the resort, you will perceive, to borrowed ones.

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TO MAJOR HENRY LEE.

MONTPELLIER, March 3, 1834.

MAJ<sup>R</sup> H. LEE,—Your letter of November 14th came safely, though tardily, to hand.

I must confess that I perceive no ground on which a doubt

\* J. Q. Adams.



could be applied to the statement of Mr. Jefferson which you cite. Nor can it, I think, be difficult to account for my declining an Executive appointment under Washington and accepting it under Jefferson, without making it a test of my comparative attachment to them, and without looking beyond the posture of things at the two epochs.

The part I had borne in the origin and adoption of the Constitution determined me at the outset of the Government to prefer a seat in the House of Representatives, as least exposing me to the imputation of selfish views; and where, if anywhere, I could be of service in sustaining the Constitution against the party adverse to it. It was known to my friends when making me a candidate for the Senate that my choice was the other branch of the Legislature. Having commenced my legislative career as I did, I thought it most becoming to proceed, under the original impulse, to the end of it; and the rather, as the Constitution, in its progress, was encountering trials of a new sort, in the formation of new parties attaching adverse constructions to it.

The crisis at which I accepted the Executive appointment under Mr. Jefferson is well known. My connexion with it, and the part I had borne in promoting his election to the Chief Magistracy, will explain my yielding to his pressing desire that I should be a member of his Cabinet.

I hope you received the copies of your father's letters to me, which were duly forwarded; and I am not without a hope that you will have been enabled to comply with my request of copies of mine to him.

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TO REV<sup>D</sup> WILLIAM COGSWELL.

MONTPELLIER, March 10, 1834.

DEAR SIR,—Your letter of the 18th ultimo was duly received. You give me a credit to which I have no claim, in calling me "*the* writer of the Constitution of the United States." This was not, like the fabled Goddess of Wisdom, the offspring of a

single brain. It ought to be regarded as the work of many heads and many hands.

Your criticism on the "collocation" [?] of books in the Library of our University may not be without foundation. But the doubtful boundary between some subjects and the mixture of different subjects in the same works, necessarily embarrass the task of classification.

Being now within a few days of my 84th year, with a decaying health and faded vision, and in arrears also of the reading I have assigned to myself, I have not been able sooner to acknowledge your politeness in sending me the two pamphlets. The sermon combats very ably the veteran error of entwining the civil and ecclesiastical polity. Whether it has not left unremoved a fragment of the argumentative root of the combination, is a question which I leave others to decide.

With friendly respects and salutations.

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TO JOHN M. PATTON.

(*Confidential.*)

MARCH 24, 1834.

DEAR SIR,—I have duly received the copy of your speech on the "Virginia Resolutions." Though not permitting myself to enter into a discussion of the several topics embraced by them, for which, indeed, my present condition would unfit me, I will not deny myself the pleasure of saying that you have done great justice to your views of them. I must say, at the same time, that the warmth of your feelings has done infinitely more than justice to any merits that can be claimed for your friend.

Should the controversy on removals from office end in the establishment of a share in the power, as claimed for the Senate, it would materially vary the relations among the component parts of the Government, and disturb the operation of the checks and balances as now understood to exist. If the right of the Senate be, or be made, a constitutional one, it will enable that branch of the Government to force on the Executive de-

partment a continuance in office even of the Cabinet officers, notwithstanding a change from a personal and political harmony with the President, to a state of open hostility towards him. If the right of the Senate be made to depend on the Legislature, it would still be *grantable* in that extent; and even with the exception of the heads of departments and a few other officers, the augmentation of the Senatorial patronage, and the new relation between the Senate directly and the Legislature indirectly, with the Chief Magistrate, would be felt deeply in the general administration of the Government. The innovation, however modified, would more than double the danger of throwing the Executive machinery out of gear, and thus arresting the march of the Government altogether.

The legislative power is of an elastic and Protean character, but too imperfectly susceptible of definitions and landmarks. In its application to tenures of office, a law passed a few years ago, declaring a large class of offices vacant at the end of every four years, and, of course, to be filled by new appointments. Was not this as much a removal as if made individually and in detail? The limitation might have been three, two, or one year, or even from session to session of Congress, which would have been equivalent to a tenure at the pleasure of the Senate.

The light in which the large States would regard any innovation increasing the weight of the Senate, constructed and endowed as it is, may be inferred from the difficulty of reconciling them to that part of the Constitution when it was adopted.

The Constitution of the United States may doubtless disclose, from time to time, faults which call for the pruning or the ingrafting hand. But remedies ought to be applied, not in the paroxysms of party and popular excitements: but with the more leisure and reflection, as the great departments of power according to experience may be successively and alternately in and out of public favour; and as changes hastily accommodated to these vicissitudes would destroy the symmetry and the stability aimed at in our political system. I am making observations, however, very superfluous when addressd to you, and I quit

them, therefore, with a tender of cordial regards and salutations which I pray you to accept.

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TO THE COMMITTEE OF 4TH JULY DEMOCRATIC FESTIVAL, PHILADELPHIA.

I have received, fellow-citizens, your letter inviting me to the Democratic festival to be given on the 4th of July. I beg that the company may be assured of my due respect for so kind a mark of their attention. But the gratification I might feel in being present on an occasion cherishing the constitutional doctrines maintained by Virginia in 1798-9, as an authentic view of the relations between the Government of the Union and the governments of the States, is denied to me by the debility and indisposition under which I continue to labour.

For the friendly and flattering terms in which the committee have conveyed the invitation, they will please to accept my sincere acknowledgments; and for the requested toast I beg leave to offer the memory of "the author of the Declaration of Independence, author of the bill establishing religious freedom in Virginia, and Father of her University."

JUNE 29, 1834.

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TO JOHN P. KENNEDY.

JULY 7th, 1834.

D<sup>R</sup> SIR,—I have received with your letter of June 19th the copy of your discourse on the life and character of William Wirt.

The condition of my eyes, added to my general debility and my continued indisposition, obliging me to read but little, and that little broken by intervals, I have not sooner been able to avail myself of the pleasure afforded by the discourse.

I have ever regarded Mr. Wirt as among the most distinguished ornaments which his country could boast, and though

much admired, to become more so as he should be more known in all the interesting features which characterized him: all his friends, therefore, must be thankful for the biographical tribute to his memory, which groups these features in a portrait not unworthy the pencil of Mr. Wirt himself.

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TO J. Q. ADAMS.

MONTPELLIER, July 30, 1834.

D<sup>R</sup> SIR,—The copy of your intended speech on the "Removal of the Deposits" was received in the due time; but such was and has since been the deterioration of my health, that I could not give it a proper perusal. Being at present somewhat relieved from the supervening malady under which I have been more particularly suffering, I avail myself of this circumstance to thank you for your polite attention. I have found in the pamphlet, as was anticipated, the very able and impressive views which have always distinguished your investigations of important subjects.

I have just received a letter from Mr. George Joy, of London, with whom I observe you are not unacquainted. One of the papers enclosed by him contains an incident in the career of Lafayette, which he seems very anxious should not pass into oblivion, and which, indeed, emphatically marks the indelible affection of that truly admirable man for our country and for liberty. As it is understood that you do not decline the task to which you have been invited, of preparing an obituary tribute to his memory, I have thought it not amiss to give you an opportunity of deciding whether the narrative of Mr. Joy furnishes or suggests anything worthy of a more durable repository than it yet has.

Mr. Joy would, I am sure, be gratified by your perusal of his other communications. I enclose the whole, which may be returned at your leisure.

You are, I presume, not unaware that this gentleman was, during our last contest with G. Britain, a copious and zealous

writer on the depending topics, with views always of the best sort, and presenting often considerations deserving more attention than they received from the British rulers. Some of his private letters to me, relating to the "Orders in Council," whilst known on the spot to be *in ovo*, and expected every moment to burst the shell, are valuable as confirming the grounds on which the embargo was recommended as a safeguard to our commerce and seamen, against the sweeping depredations in wait for them.

On the supposition that you are on a visit to Quiney, I address my letter accordingly. Wherever it may find you, it will faithfully express the high esteem and cordial regard, with the best wishes for a prolonged and happy life.

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TO EDWARD LIVINGSTON.

MONTPELLIER, August 2, 1834.

DEAR SIR,—Your favor of February 8 was duly received, and I regret that it has not been sooner acknowledged. But such was and has since been the decrepit state of my health, that I have been obliged to avoid as much as possible the use of the pen. Being at present partially relieved from a supervening malady under which I have for a considerable time been particularly suffering, I avail myself of the circumstance to tender you the delayed thanks for your kind attention to my letter to Major Lee. Previous to the receipt of your letter, I had taken the liberty of a second intrusion on it, for which I must thank you in advance.

I must particularly thank you also for your outline of the condition of France. It has given me a more distinct view of the actual state of things there than I had derived from all the public accounts put together. The death of General La Fayette will probably not be without an influence on the future game of parties. But at this distance it is not easy to say in what respect it will be most felt. As the head of the Republican party, which is understood to be the predominant one, he gave it its full force. It received at the same time from his prudence

and patriotism a control from the impetuous and misdirected career, which may be stimulated by other leaders, if his mantle should fall on such as will make it a cloak for factious or selfish objects. How far the external prospects of France may be affected by the late results in Portugal and Spain, and the consequent policy of the great powers of the North, is a problem which well may puzzle those with better means for solving it than we can have here. The general conjecture and hope is, that the popular sympathies throughout Europe are becoming an overmatch for the intrigues, combinations, and machinations of Despotism.

Of the present condition of our country I could not, if I were to make the attempt, in my retired situation, give you as intelligible a view as you will obtain from other sources. The scene has been and is so checkered by the new divisions and of parties, that a development of it requires a knowledge of secrets I do not possess. The only thing certain and notorious is, that party spirit rages with all its vigor, and nowhere more than in Virginia, which is among the States where the scales seem most on a poise.

I have the satisfaction of informing you that in the midst of our political agitations, the earth is silently and bountifully making its contributions to our comfort and enjoyment. The wheat harvest has, with but few exceptions, been a good one; and the crops of maize, of cotton, and of tobacco, now in embryo, promise well.

With my best wishes for your health and a prolonged and happy life, I pray you to be assured of my great and cordial esteem, in all which Mrs. M. joins me, as I do her in the offer of respectful and kind remembrances to Mrs. L. and your daughter.

## TO LINN BANKS AND OTHERS, COMMITTEE.

MONTPELLIER, Aug. 18, 1834.

I have received, fellow-citizens, your letter of the 1st instant, inviting me, in the name of a large number of Democratic Republicans of your county, to a public dinner to be given on the 23d to the Honorable John M. Patton, their representative in Congress.

My continued debility from age and sickness not permitting me to accept the invitation, I can only express my grateful acknowledgements for the favorable opinions and friendly feelings which prompted it, with an expression of the high respect in which I hold the talents and patriotism accorded by all to the character of the representative of the district.

Adhering myself to the Resolutions of Virginia in 1798, as expounded and vindicated in the Report of 1799, I derive pleasure from every proof of constancy to them proceeding from respectable portions of my fellow-citizens. The report, too often overlooked in comments on the resolutions, having been deliberately sanctioned by representatives chosen by the people with the resolutions before them, forms the fullest and surest test of the principles and views of the State.

I am particularly happy in being able to say, that the long period during which you refer to me as a witness of the benign operation of our system of government, not only confirmed my belief that the system, in its twofold character of a Government for the Union and a Government for each of the States, was superior to any other system known to us, but that it strengthened, moreover, a confidence that the causes which had been so often fatal to free governments would find in the healing efficacy of the Constitution itself, and in the amending power always residing in its creators, conservative resources adequate to the most trying occasions; and, consequently, that to our country will belong the glory you claim for it, of having solved propitiously for the destinies of man the problem of his capacity for self-government.

I beg the committee, in communicating the acknowledgements



due from me to those whom they represent, to accept for themselves my great respect and best wishes.

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TO MR. ———.

1834.

DEAR SIR,—Having alluded to the Supreme Court of the United States as a constitutional resort in deciding questions of jurisdiction between the United States and the individual States, a few remarks may be proper, showing the sense and degree in which that character is more particularly ascribed to that department of the Government.

As the Legislative, Executive, and Judicial departments of the United States are co-ordinate, and each equally bound to support the Constitution, it follows that each must, in the exercise of its functions, be guided by the text of the Constitution according to its own interpretation of it; and, consequently, that in the event of irreconcilable interpretations, the prevalence of the one or the other department must depend on the nature of the case, as receiving its final decision from the one or the other, and passing from that decision into effect, without involving the functions of any other.

It is certainly due from the functionaries of the several departments to pay much respect to the opinions of each other; and, as far as official independence and obligation will permit, to consult the means of adjusting differences and avoiding practical embarrassments growing out of them, as must be done in like cases between the different co-ordinate branches of the Legislative department.

But notwithstanding this abstract view of the co-ordinate and independent right of the three departments to expound the Constitution, the Judicial department most familiarizes itself to the public attention as the expositor, by the *order* of its functions in relation to the other departments; and attracts most the public confidence by the composition of the tribunal.

It is the Judicial department in which questions of constitu-

tionality, as well as of legality, generally find their ultimate discussion and operative decision: and the public deference to and confidence in the judgment of the body are peculiarly inspired by the qualities implied in its members; by the gravity and deliberation of their proceedings; and by the advantage their plurality gives them over the unity of the Executive department, and their fewness over the multitudinous composition of the Legislative department.

Without losing sight, therefore, of the co-ordinate relations of the three departments to each other, it may always be expected that the judicial bench, when happily filled, will, for the reasons suggested, most engage the respect and reliance of the public as the surest expositor of the Constitution, as well in questions within its cognizance concerning the boundaries between the several departments of the Government as in those between the Union and its members.

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*Power of the President to appoint Public Ministers and Consuls in the recess of the Senate.*

The place of a foreign minister or consul is not an *office* in the constitutional sense of the term.

1. It is not created by the Constitution.
2. It is not created by a law authorized by the Constitution.
3. It cannot, as an office, be created by the mere appointment for it, made by the President and Senate, who are to fill, not create offices. These must be "established by law," and therefore by Congress only.
4. On the supposition even that the appointment could create an office, the office would expire with the expiration of the appointment, and every new appointment would create a new office, not fill an old one. A law reviving an expired law is a new law.

The place of a foreign minister or consul is to be viewed as created by the law of nations, to which the United States, as an independent nation, is a party, and as always open for the

proper functionaries, when sent by the constituted authority of one nation and received by that of another. The Constitution, in providing for the appointment of such functionaries, presupposes this mode of intercourse as a branch of the law of nations.

The question to be decided is, What are the cases in which the President can make appointments without the concurrence of the Senate? and it turns on the construction of the power "to fill up all vacancies that may happen during the recess of the Senate."

The term "all" embraces both foreign and municipal cases; and in examining the power in the foreign, however failing in exact analogy to the municipal, it is not improper to notice the extent of the power in the municipal.

If the text of the Constitution be taken literally, no municipal officer could be appointed by the President alone to a vacancy not *originating* in the recess of the Senate. It appears, however, that under the sanction of the maxim, *qui hæret in litera hæret in cortice*, and of the *argumentum ab inconvenienti*, the power has been understood to extend, in cases of necessity or urgency, to vacancies happening to exist in the recess of the Senate, though not coming into existence in the recess. In the case, for example, of an appointment to a vacancy by the President and Senate of a person dead at the time, but not known to be so till after the adjournment and dispersion of the Senate, it has been deemed within the reason of the constitutional provision that the vacancy should be filled by the President alone, the object of the provision being to prevent a failure in the execution of the laws, which, without such a scope to the power, must very inconveniently happen, more especially in so extensive a country. Other cases of like urgency may occur; such as an appointment by the President and Senate rendered abortive by a refusal to accept it.\*

If it be admissible at all to make the power of the President,

\* It appears that Mr. Wirt had given officially the same construction to the term "happening," though not known to Mr. M.

without the Senate, applicable to vacancies happening unavoidably to exist, though not to originate in the recess of the Senate, and which the public good requires to be filled in the recess, the reasons are far more cogent for considering the sole power of the President as applicable to the appointment of foreign functionaries, inasmuch as the occasions demanding such appointments may not only be far more important, but, on the farther consideration, that, unlike appointments under the municipal law, the calls for them may depend on circumstances altogether under foreign control, and sometimes on the most improbable and sudden emergencies, and requiring, therefore, that a competent authority to meet them should be always in existence. It would be a hard imputation on the framers and ratifiers of the Constitution, that while providing for casualties of inferior magnitude, they should have intended to exclude from the provisions the means usually employed in obviating a threatened war; in putting an end to its calamities; in conciliating the friendship or neutrality of powerful nations; or even in seizing a favourable moment for commercial or other arrangements material to the public interest. And it would surely be a hard rule of construction that would give to the text of the Constitution an operation so injurious, in preference to a construction that would avoid it, and not be more liberal than would be applied to a remedial statute. Nor ought the remark to be omitted, that by rejecting such a construction this important function, unlike some others, would be excluded altogether from our political system, there being no pretension to it in any other department of the General Government, or in any department of the State governments. To regard the power of appointing the highest functionaries employed in foreign missions, though a specific and substantive provision in the Constitution, as incidental merely, in any case, to a subordinate power, that of a provisional negotiation by the President alone, would be a more strained construction of the text than that here given to it.

The view which has been taken of the subject overrules the distinction between missions to foreign courts, to which there had before been appointments and to which there had not been.

Not to speak of diplomatic appointments destined, not for stations at foreign courts, but for special negotiations, no matter where, and to which the distinction would be inapplicable, it cannot bear a rational or practical test in the cases to which it has been applied. An appointment to a foreign court at one time, unlike an appointment to a municipal office always requiring it, is no evidence of a need for the appointment at another time; while an appointment where there had been none before, may, in the recess of the Senate, be of the greatest urgency. The distinction becomes almost ludicrous when it is asked for what length of time the circumstance of a former appointment is to have the effect assigned to it on the power of the President. Can it be seriously alleged, that after the interval of a century, and the political changes incident to such a lapse of time, the original appointment is to authorize a new one without the concurrence of the Senate, while a like appointment to a new court, or even a new nation, however immediately called for, is barred by the circumstance that no previous appointment to it had taken place? The case of diplomatic missions belongs to the law of nations, and the principles and usages on which that is founded are entitled to a certain influence in expounding the provisions of the Constitution which have relation to such missions. The distinction between courts to which there had, and to which there had not been previous missions, is believed to be recorded in none of the oracular works on international law, and to be unknown to the practice of Governments, where no question was involved as to the *de facto* establishment of a Government.

With this exposition the practice of the Government of the United States has corresponded, and with every sanction of reason and public expediency. If in any particular instance the power has been misused, which it is not meant to suggest, that could not invalidate either its legitimacy or its general utility any more than any other power would be invalidated by a like fault in the use of it.

TO N. P. TRIST.

MONTPELLIER, August 25, 1834.

DEAR SIR,—I have received yours of the 20th, and enclose a fair copy of so much of Mr. Jefferson's letter to me as relates to the resolutions of 1798-99. The letter is dated August 23, not 28, but is so identical with the printed letter to W. C. Nicholas as to prove that one of the dates is erroneous. I return the letter of W. C. N., which I found in the letter of Mr. J. I find no letter from Mr. Jefferson to me dated November 26, 1799.

The letter from Mr. Monroe to Mr. Jefferson, of which you enclosed an extract, is important. I have one from Mr. Monroe on the same occasion, more in detail, and not less emphatic in its anti-nullifying language. You may look at it when on your promised visit; when, also, we will examine the file of my correspondence with Col. J. Taylor, which is not of much extent. In his printed argument on the carriage tax, he is explicit as to the judicial supremacy of the United States, though a champion afterward against it.

Have you seen the Journal of the House of Delegates in 1798-99? The closing scenes of the resolutions contain a vote of the minority, expressly denying the right of a State to declare, protest, &c., &c., and crushing the assertion that the right was denied by no one, with the inference that the resolutions must have intended to claim for a State a nullifying interposition.

The paper enclosed in yours has been disposed of as you suggested. We look with pleasure to the visit which your letter promises; in the mean time, accept and communicate the affectionate and joint salutations of Mrs. M. and myself.

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TO EDWARD COLES.

MONTPELLIER, August 29, 1834.

I have received, my dear sir, your favor of the 17th. The motives to it are as precious to me as its object is controvertible.

You have certainly presented your views of the subject with great skill and great force. But you have not sufficiently adverted to the position I have assumed, and which has been accorded, or rather assigned, to me by others, of being withdrawn from party agitations by the debilitating effects of age and disease.

And how could I say that the present exciting questions in which you expect me to engage are not party questions? How could I say that the Senate was not a party, because representing the States, and claiming the support of the people, or that the other House, representing the people and confiding in their support, with the Executive at their head, was less than a party? How could I say that the former is the nation, and the latter but a faction?

What a difference again between my relation to the Resolutions of 98-99, charged on my individual responsibility, and my common relation only to the constitutional questions now agitated! to which might be added the difference of my present condition from what it was at the date of my published exposition of those Resolutions, and the habit now of invalidating opinions emanating from me by a reference to my age and infirmities.

Would not candor and consistency oblige me, in denouncing the heresies of one side, not to pass in silence those of the other? For claims are made by the Senate in opposition to the principles and practice of every Administration, my own included, and varying materially, in some instances, the relations between the great departments of the Government. A want of impartiality in this respect would enlist me into one of the parties, shut the ear of the other, and discredit me with those, if there be now such, who are wavering between them.

How, in justice or in truth, could I join in the charge against the President of claiming a power over the public money, including a right to apply it to whatever purpose he pleased, even to his own? However unwarrantable the removal of the deposits, or culpable the mode of effectuating it, the act has been admitted by some of his leading opponents to have been not a usurpation, as charged, but an abuse only of power. And how-

ever unconstitutional the denial of a legislative power over the custody of the public money as being an Executive prerogative, there is no appearance of a denial to the Legislature of an absolute and exclusive right to appropriate the public money, or of a claim for the Executive of an appropriating power, the charge, nevertheless, pressed with most effect against him. The distinction is so obvious and so essential between a custody and an appropriation, that candour would not permit a condemnation of the wrongful claim of custody without condemning at the same time the wrongful charge of a claim of appropriation.

Candour would require from me also a notice of the disavowal by the President, doubtless real, though informal, of the obnoxious meaning put on some of his acts, particularly his Proclamation; a notice which would detract from my credit with those who carefully keep the disavowal out of view in their strictures on the Proclamation. When I remarked to you my entire condemnation of the Proclamation, I added, "in the sense which it bore, but which it appeared had been disclaimed." In fact, I have in conversations, from which I apprehended *no publicity*, frankly pointed at what I regarded as heretical doctrines on every side, my wish to avoid publicity being prescribed by my professed as well as proper abstraction from the polemic scene. I have accordingly, in my unavoidable answers to dinner invitations received from quarters adverse to each other, but equally expressing the kindest regard for me, endeavored to avoid involving myself in their party views, by confining myself to subjects in which all parties profess to concur, and to the proceedings of Virginia generally referred to in the invitations, and with respect to which my adherence was well known.

You call my attention with much emphasis to the principle openly avowed by the President and his friends, that offices and emoluments were the spoils of victory, the personal property of the successful candidate for the Presidency, to be given as rewards for electioneering services, and in general to be used as the means of rewarding those who support, and of punishing those who do not support, the dispenser of the fund. I fully agree in all the odium you attach to such a rule of action. But



I have not seen any avowal of such a principle by the President, and suspect that few if any of his friends would openly avow it. The first, I believe, who openly proclaimed the right and policy in a successful candidate for the Presidency to reward friends and punish enemies by removals and appointments, is now the most vehement in branding the practice. Indeed, the principle if avowed without the practice, or practised without the avowal, could not fail to degrade any Administration; both together, completely so. The odium itself would be an antidote to the poison of the example, and a security against the permanent danger apprehended from it.

What you dwell on most is, that nullification is more on the decline, and less dangerous, than the popularity of the President with which his unconstitutional doctrines are armed. In this I cannot agree with you. His popularity is evidently and rapidly sinking under the unpopularity of his doctrines. Look at the entire States which have abandoned him; look at the increasing minorities in States where they have not yet become majorities; look at the leading partisans who have abandoned and turned against him; and at the reluctant and qualified support given by many who still profess to adhere to him. It cannot be doubted that the danger and even existence of the parties which have grown up under the auspices of his name will expire with his natural or his official life, if not previously to either.

On the other hand, what more dangerous than nullification, or more evident than the progress it continues to make, either in its original shape or in the disguises it assumes? Nullification has the effect of putting powder under the Constitution and Union, and a match in the hand of every party to blow them up at pleasure; and for its progress, hearken to the tone in which it is now preached; cast your eye on its menacing increasing minorities in most of the Southern States without a decrease in any one of them. Look at Virginia herself, and read in the gazettes, and in the proceedings of popular meetings, the figure which the anarchical principle now makes, in contrast with the scouting reception given to it but a short time ago.

It is not probable that this offspring of the discontents of

South Carolina will ever approach success in a majority of the States. But a susceptibility of the contagion in the Southern States is visible, and the danger is not to be concealed that the sympathies arising from known causes, and the inculcated impression of a permanent incompatibility of interests between the South and the North, may put it in the power of popular leaders aspiring to the highest stations, and despairing of success on the Federal theatre, to unite the South, on some critical occasion, in a course that will end in creating a new theatre of great though inferior extent. In pursuing this course, the first and most obvious step is nullification; the next, secession; and the last, a farewell separation. How near was this course being lately exemplified? and the danger of its recurrence in the same, or some other quarter, may be increased by an increase of restless aspirants, and by the increasing impracticability of retaining in the Union a large and cemented section against its will. It may, indeed, happen that a return of danger from abroad, or a revived apprehension of danger at home, may aid in binding the States in one political system, or that the geographical and commercial ligatures may have that effect; or that the present discord of interests between the North and the South may give way to *a less diversity in the applications of labor*, or to the mutual advantage of a safe and constant interchange of the different products of labor in different sections. All this may happen, and, with the exception of foreign hostilities, is hoped for. But, in the mean time, local prejudices and ambitious leaders may be but too successful in finding or creating occasions for the nullifying experiment of breaking a more beautiful China vase\* than the British Empire ever was, into parts which a miracle only could reunite.

I have thought it due to the affectionate interest you take in what concerns me, to submit the observations here sketched, crude as they are. The field they open for reflection I leave to yours, and to your opportunity, which I hope will be a long one, of witnessing the developments and vicissitudes of the fu-

\* See Franklin's letter to Lord Howe in 1776. [20 July, 1776. Franklin's works. V. 101. Sparks's Ed.]

ture. I need not say that the letter is entirely *confidential*. It would otherwise do what it endeavours to shew I ought not to do, and could not consistently do.

My health has not improved since you left us. Mrs. Madison joins in wishing a continuance of yours, and that of your amiable partner, and all other happiness to you both.

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TO GEORGE JOY.

MONTPELLIER, Sept<sup>r</sup> 9. 1834.

DEAR SIR,—I have received your two letters of June 4th and 11th, with their inclosures. The letter to your brother records a touching incident in the life of Lafayette; a life which, if history does it justice, will fill some of its most conspicuous and interesting pages. Observing that Mr. Adams had been designated by Congress to prepare an obituary memoir of the man so much admired and beloved by our country, I took the liberty of inclosing to him your letter to your brother, that the incident, should Mr. Adams not decline the task assigned him, might have the chance of being better guarded against the oblivion you wish it to escape. And as you were an acquaintance of Mr. Adams, I thought it not amiss to add to it your letter to Sir James Graham, and to both your two letters to me, presuming that the liberty would not be disagreeable to you, nor unacceptable to Mr. Adams. The manner in which he speaks of you, and of the long intimacy between the two families, makes me glad that I did so.

The Orders in Council at which you glance have a relation to our Embargo and to our declaration of war, which gives them a historical importance. They were most certainly the ground of the Embargo. They were printed in an English newspaper in the very words they bore, with an intimation that they would be forthwith promulgated; and the newspaper was lying on the table of the Cabinet when the message recommending the Embargo was prepared. With this authority for their existence

your letters to me were in precise accordance. Yet the spirit of party denied at the time that the Executive had any knowledge of the fact, and there are probably not a few still under that delusion, with a danger that it may gain credit with posterity. Had Congress, by disregarding such a state of things, exposed our whole commerce to the sweeping depredation which awaited it, they would have deserved the reproaches which have been lavished on the Embargo. The duration of it is more open for discussion; but if it failed of success it might be explained by the evasions and obstructions practised in the most commercial quarter of the Union. Had these been apprehended in time, and five or six hundred Marblehead seamen who offered their services been put on board vessels commissioned, and by proper encouragements animated to capture smugglers and carry them into faithful ports, where they would have been condemned, the measure would have had a fair trial, and the issue might have been very different.

In relation to the declaration of war, the Orders in Council had an agency of the most pointed character. Although it could not be unknown that the U. States had made a revocation of the Orders a *sine qua non* of the continuance of peace, the British envoy here, according to instructions, communicated *in extenso*, and for the eye of the President, a dispatch declaring that the Orders in Council would not and could not be revoked, leaving to the U. States no alternative but disgraceful submission or an appeal to the *ultima ratio*. Notwithstanding this communication, not many weeks elapsed before a revocation was produced by the popular distress, but not in time to prevent the war which the categorical refusal had precipitated.

There were circumstances attending the termination of the war not unworthy of recollection. During the negotiation at Ghent, the Chancellor of the Exchequer was called upon to say whether "the war taxes," limited by a ministerial pledge to the continuance of the war, would be prolonged after the peace in Europe by the supervening war with the U. States. Aware that the objects to which the war had been reduced would not reconcile the nation to the obnoxious taxes, the minister made

no reply, the Parliament was prorogued, and in the mean time the treaty at Ghent brought to a conclusion.

It is not improbable that some of the particulars I have referred to may be more accurately preserved in your memory than in mine, and quite certain that you possess more convenient means of verifying and extending them than my situation permits.

I sincerely hope, for the sake of humanity, that you may be right in your anticipation that G. Britain will put an end to her practice of impressment at home, and, for the peace of the world, that it may be accompanied by a relinquishment of her pretensions on the high seas, relating to impressments, blockades, the list of contraband, and some others vexatious if not illegal, not excepting the seizure of enemy goods in friendly vessels, against which she herself courted a *stipulation* from the Dutch when her naval power had a match in that of the Dutch, and for which she is now the sole advocate. In these sacrifices, if so to be called, a facility is afforded to her pride, by the liberalizing spirit of the age, to which she is becoming a party; and it cannot escape her foresight, that without them she will have the maritime world to contend with, the *new* as well as the *old* half. The former presents a rapidity of growth, forcing itself into the calculations of all sagacious statesmen. Judging from the past twenty years, what the effect of the next twenty *will* be in the northern portion of the hemisphere, and *may* be in the southern, and comparing the resources for *building* and *loading* ships on this side of the Atlantic with those on the other, the vanity of an American may be excused for supposing that the Trident itself will at no remote day cross the Atlantic. Nor will such an event be retarded by arbitrary or monopolizing expedients. Navigation is now a favorite object with all nations having an interest in it, and there is no case in which unequal and grasping regulations admit a more simple and effectual reciprocation, especially if the articles to be exchanged should give an advantage to the defensive party.

I cannot doubt that a compilation from your laudable efforts in print and in your private correspondences, first to prevent a

war between G. Britain and the U. States, and next to hasten a close to it, will be acceptable even now to many readers, and a valuable contribution at any time to the annals of the period. But I doubt whether any of the communications from me will merit a place in the work. Of some of my letters copies may not have been retained, in the hurry of an extensive private correspondence incident to my public situation. Those on my files are but few, and if not to be prohibited, not of sufficient moment to be recommended for the public eye.

The last letter from you, previous to the two now acknowledged, introduced a Mr. Fuller. Having been arrested, on his way to Montpelier, by some requisite change in his arrangements, he informed me of it in a letter to which the inclosed was an answer. From the return of it lately, as a dead letter, I infer that he is now in England. If so, please to renew the seal, and let him find that the due attention was given to him.

You express a regret, and almost complaint, at the intermission of my letters. I cannot but feel regret myself at the cause of yours. But I mingle with mine the reflection that yours implies a continuance of the esteem and regard which I have always valued. In the case of a compliment [?] I should have pleas, of which I am in the habit of reminding my friends, and to which I am sure you would be among the last to demur. I am now far advanced into my eighty-fourth year, with a constitution crippled by a tedious and distressing rheumatism, to the effects of which have been added other indispositions, one of which is still hanging on me, and with the further addition that my fingers are so stiffened as to make writing awkward and laborious, and my vision so faded as to make reading a task to me. I sincerely wish that your days may outnumber mine, with an exemption from the infirmities which have beset mine. With this wish accept all other good ones.

The freedom of some of my remarks, and the extravagance, as it may be deemed, of some of my speculations, will sufficiently suggest that my letter is not for the public eye.

TO WILLIAM H. WINDER.

MONTPELLIER, Sep<sup>r</sup> 15, 1834.

DEAR SIR,—I am sensible of the delay in acknowledging your letter of            and regret it. But apart from the crippled condition of my health, which almost forbids the use of the pen, I could not forget that I was to speak of occurrences after a lapse of twenty years, and at an age in its 84th year; circumstances so readily and for the most part justly referred to, as impairing the confidence due to recollections and opinions.

You wish me to express personally “my approval of your father’s character and conduct at the battle of Bladensburg,” on the ground “of my being fully acquainted with everything connected with them, and of an ability to judge of which no man can doubt.”

You appear not to have sufficiently reflected, that having never been engaged in military service, my judgment in the case could not have the weight with others which your partiality assumes for it, but might rather expose me to a charge of presumption in deciding on points purely of a professional description. Nor was I on the field as a spectator till the order of the battle had been formed, and had approached the moment of its commencement.

With respect to the order of the battle, that being known, will speak for itself; and the gallantry, activity, and zeal of your father during the action, had a witness in every observer. If his efforts were not rewarded with success, candour will find an explanation in the peculiarities he had to encounter; especially in the advantage possessed by the veteran troops of the enemy over a militia, which, however brave and patriotic, could not be a match for them in the open field.

I cannot but persuade myself that the evidence on record, and the verdict of the court of enquiry, will outweigh and outlive censorious comments doing injustice to the character and memory of your father. For myself, I have always had a high respect for his many excellent qualities, and am gratified by the assurance you give me of the place I held in his esteem and regard.

TO ISAAC S. LYON.

MONTPELLIER, Sept<sup>r</sup> 20, 1834.

D<sup>R</sup> SIR,—I must apologise for the great delay in acknowledging your letter of Ap<sup>l</sup> 20, by referring (now a common and necessary resort) to the feebleness of age, accompanied by severe and continued inroads on my health.

My respect for your object would make it very agreeable to me to aid it in the way you mention. But in looking into the parcels of pamphlets I possess, I find none that would supply the specified chasm. Of orations, I do not recollect that I ever delivered one that was printed. Of addresses, mine have been but answers to addresses; and if printed, it has been in newspapers, not in pamphlets. My speeches, so far as printed, have been, with scarce an exception, bound up in stenographic volumes. I recollect that my share in the debates in Congress on the Commercial Resolutions, called the Virginia Resolutions, was published in pamphlet form; but it happens that I do not possess more than a single copy, and that not a little mutilated and defaced. It may not be amiss to remark, that the stenographic reports of my speeches, as doubtless of others, those of Lloyd's particularly, are, where they were not revised by the speaker, very defective and often erroneous; and that where revised, I limited myself to the substance, with as much adherence to the language as my memory could effect.

I am sorry that, after so much delay, I have not been able to give a more adequate answer to your letter. I hope the explanation offered will be found not inconsistent with the respect and good wishes which I pray you to accept.

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TO MANN BUTLER.

OCTOBER 11, 1834.

D<sup>R</sup> SIR,—I have received your letter of the 21 ult., in which you wish to obtain my recollection of what passed between Mr. John Brown and me in 1788, on the overture of Gardoqui,



“ that if the people of Kentucky would erect themselves into an independent State, and appoint a proper person to negotiate with him, he had authority for that purpose and would enter into an arrangement with them for the exportation of their produce to New Orleans.”

My recollection, with which references in my manuscript papers accord, leaves no doubt that the overture was communicated to me by Mr. Brown. Nor can I doubt that, as stated by him, I expressed the opinion and apprehension that a knowledge of it in Kentucky might, in the excitements there, be mischievously employed. This view of the subject evidently resulted from the natural and known impatience of the Western people on the waters of the Mississippi for a market for the products of their exuberant soil; from the distrust of the Federal policy produced by the project of surrendering the use of that river for a term of many years; and from a coincidence of the overture, in point of time, with the plan on foot for consolidating the Union by arming it with new powers—an object, to embarrass and defeat which the dismembering aims of Spain would not fail to make the most tempting sacrifices, and to spare no intrigues.

I owe it to Mr. Brown, with whom I was in intimate friendship when we were associates in public life, to observe that I always regarded him, whilst steadily attentive to the interests of his constituents, as duly impressed with the importance of the Union, and anxious for its prosperity.

Of the other particular enquiries in your letter, my great age, now in its 84th year, and with more than the usual infirmities, will, I hope, absolve me from undertaking to speak without more authoritative aids to my memory than I can avail myself of. In what relates to General Wilkinson, official investigations in the archives of the War Department, and the files of Mr. Jefferson, must, of course, be among the important sources of the light you wish for.

It would afford me pleasure to aid the interesting work which occupies your pen by materials worthy of it. But I know not that I could point to any which are not in print or in pub-

lic offices, and which, if not already known to you, are accessible to your researches. I can only, therefore, wish for your historical task all the success which the subject merits, and which is promised by the qualifications ascribed to the author.

I regret the tardiness of this acknowledgment of your letter. My feeble condition and frequent interruptions are the apology, which I pray you to accept with my respects and my cordial salutations.

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TO EDWARD COLES.

OCTOBER 15, 1834.

I have received, my dear sir, your letter of the 15th ultimo. I did not anticipate a complaint that mine was not full enough, being an effort which, in my present condition, I had rarely made. It was not my object to offer either a *plenary* or a *public* review of the agitated topics, but to satisfy a friend that I ought not, in my eighty-fourth year, and with a constitution crippled by disease, to put myself forward on the implied ground that my opinions were to have an effect which I ought not to presume, and which I was well persuaded they would not have. If I did not extend my remarks to every obnoxious doctrine or measure of the Executive, I was under no apprehension of an inference from my silence that I approved them; and there was the less occasion to guard against the inference, as I had, with respect to the omitted cases, freely expressed my views of them in our private conversations.

Notwithstanding your cogent observations on the comparative dangers from the popularity and example of General Jackson, and from the doctrines and example of South Carolina, I must adhere to the opinion that the former are daily losing, and the latter gaining ground; for the proof of which, I renew my appeal to the facts of daily occurrence. And if the declension of his popular influence be such during his official life, and with the *peculiar* hold he has on party feelings, there is little reason to suppose that any succeeding President will attempt a like

career. That a series of them should do so with the support of the people, is a *possibility* opposed to a moral *certainly*.

May I not appeal, also, to facts which will satisfy yourself of the error which supposes that a respect for my opinion, even naked opinion, would control the adverse opinions of others? On the subject of the bank, on that of the tariff, and on that of nullification, three great constitutional questions of the day, my opinions, with the grounds of them, are well known, being in print with my name to them. Yet the bank was, perhaps, never more warmly opposed than at present; the tariff seems to have lost none of its unpopularity; whilst nullification has been for some time, and is at present, notoriously advancing, with some of my best personal, and heretofore political, friends among its advocates.

It must not be thought that I am displeased or disappointed at this result. On the contrary, I honor the independent judgment that decides for itself; and I know well that a spirit of party is not less unyielding.

You observe that the absorbing question of Executive misrule has diverted attention from nullification. This may be true, and it is a reason for not mitigating the danger from it; for it is equally observable, that whilst nullification is, on one hand, taking advantage of the diverted attention, it is, on the other, propagating itself under the name of State rights, by diminishing the importance of questions between the Executive and other departments of the Federal Government, compared with questions between the Federal and State governments, and by inculcating the necessity of nullification as the only safeguard to the latter against the former. In a late speech of the reputed author of the heresy, which has been lauded as worthy of letters of gold, this view of the subject is presented in the form most likely to make converts of the State rights opponents of the tariff and other unpopular measures of the Federal policy.

Your reasoning, ingenious as it is, has not disproved the fairness of the distinction between a claim to the custody of the public money and a claim to the absolute use or appropriation

of it. In inferring abuses of power from particular instances, it is always proper to keep within the range of a certain degree of probability. The distinction in this case is so palpable and so important that the inference from a claim to the custody, however unsound, to a claim of appropriation, is not only disavowed by the partisans of the former, who are, probably, not numerous, but the distinction is triumphantly urged against their adversaries, who disregard it, as a proof of their disingenuous and fallacious purposes.

You are at a loss for the innovating doctrines of the Senate to which I alluded. Permit me to specify the following:

The claim, on *constitutional* ground, to a share in the removal as well as appointment of officers, is in direct opposition to the uniform practice of the Government from its commencement. It is clear that the innovation would not only vary, essentially, the existing balance of power, but expose the Executive, occasionally, to a total inaction, and at all times to delays fatal to the due execution of the laws.

Another innovation brought forward in the Senate, claims for the Legislature a discretionary regulation of the tenure of offices. This, also, would vary the relation of the departments to each other, and leave a wide field for legislative abuses. The power of removal, like that of appointment, ought to be *fixed* by the Constitution, and both, like the right of suffrage and apportionment of Representatives, to be not dependent on the legislative will. In republican governments the organization of the executive department will always be found the most difficult and delicate, particularly in regard to the appointment, and, most of all, to the removal of officers. It may well deserve consideration, how far the present modification of these powers can be *constitutionally* improved. But apart from the distracting and dilatory operation of a veto in the Senate on the removal from office, it is pretty certain that the large States would not invest with that additional prerogative a body constructed like the Senate, and endowed, as it already is, with a share in all the departments of power, Legislative, Executive, and Judiciary.

It is well known that the large States, in both the Federal and State Conventions, regarded the aggregate powers of the Senate as the most objectionable feature in the Constitution.

Another novelty of great practical importance is the alleged limitation of the qualified veto of the President to constitutional objections. That it extends to cases of inexpediency also, and was so understood and so vindicated, (see the *Federalist*,) cannot be doubted. My veto to the bank was *expressly* to the *inexpediency* of its plan, and the validity of the veto was never questioned. As a shield to the Executive department against legislative encroachments, and a general barrier to the Constitution against them, it was doubtless expected to be a valuable provision. But a primary object of the prerogative most assuredly was that of a check to the instability in legislation, which had been found the besetting infirmity of popular governments, and been sufficiently exemplified among ourselves in the Legislatures of the States; and I leave yourself to decide how far, in a reversal of the case, an application of the veto to a defence of the bank against a legislative hostility to it would have been welcomed by those who now denounce it as a usurpation. It should be kept in mind that each of the departments has been alternately in and out of favor, and that changes in the organization of them hastily made, particularly in accordance with the vicissitudes of party ascendancy, would produce a constitutional instability worse than a legislative one.

Another innovation of great practical importance espoused by the Senate, relates to the power of the Executive to make diplomatic and consular appointments in the recess of the Senate. Hitherto it has been the practice to make such appointments to places calling for them, whether the places had or had not before received them. Under no Administration was the distinction more disregarded than under that of Mr. Jefferson, particularly in consular appointments, which rest on the same text of the Constitution with that of public ministers. It is now assumed that the appointments can only be made for occurring vacancies; that is, places which had been previously filled. The

error lies in confounding foreign missions under the law of nations with municipal officers under the local law. If they were officers in the *constitutional* sense, a legislative creation of them being expressly required, they could not be created by the President and Senate. If, indeed, it could be admitted that as offices they would *ipso facto* be created by the appointment from the President and Senate, the office would expire with the appointment, and the next appointment would create a new office, not fill a vacant one. By regarding those missions not as offices, but as stations or agencies, always existing under the law of nations for governments agreeing, the one to send the other to receive the proper functionaries, the case, though not perhaps altogether free from difficulty, is better provided for than by any other construction. The doctrine of the Senate would be as injurious in practice as it is unfounded in authority. It might and probably would be of infinitely greater importance to send a public minister where one had never been sent, than where there had been a previous mission. If regarded as offices, it follows, moreover, that the President would be bound, as in case of other offices, to keep them always filled, whether the occasion required it or not; the opposite extreme of not being permitted to provide for the occasion, however urgent.

The new doctrine involves a difficulty also in providing for treaties, even treaties of peace, on favorable emergencies, the functionaries not being officers in a constitutional sense, nor perhaps ministers to any foreign government. An attempt was, I believe, made by a distinguished individual to derive a power in the President to provide for the case of terminating a war, from his military power to establish a truce. This would have opened a wider door for construction than has yet been contended for.

I might add the claim for the Senate of a right to be consulted by the President, and to give their advice previous to his foreign negotiations; a course of proceeding which I believe was condemned by the result of a direct or analogous experiment, and which it was presumed would not again be revived. That the

secrecy generally essential in such negotiations would be safe in a numerous body, however individually worthy of the usual confidence, would be little short of a miracle.

If you call for proofs of the reality of these claims, by or in behalf of the Senate, I may refer to their equal notoriety with facts on which you rely, and to a greater authenticity than those which you state on hearsay only.

I have thrown together these remarks, as suggested by the one-sided view you have taken of subjects which ought to be viewed on both sides, whatever be the decision on them. It is not improbable that a free and full conversation would bring us much nearer together on the most important points than might be inferred from our correspondence on paper. When or whether at all such a conversation can take place, will depend on the movements on your part, and contingencies on mine.

In the meantime I beg you to regard the present desultory communication in the same confidential light with the former, and to be assured of my constant affection, and my best wishes for the happy life of which you have so flattering a prospect.

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TO EDWARD EVERETT.

MONTPELLIER, October 22d, 1834.

DEAR SIR,—I have received the copy of your eulogy on La Fayette; and though obliged, in my personal condition, to read but little at a time, have gone through it, and with great pleasure, finding a reward in every page as I proceeded. It is a fine picture finally framed, with a likeness faithful to the noble original; the more noble for having renounced the vain title. It cannot fail to be universally admired.

I am reminded by the occasion of unpaid thanks for interesting communications received from your kindness, when I was unable to attend to them. Among them was the speech of Mr. Binney, who appears to have sustained, throughout the session, the high character he brought into it.

Be pleased to accept, with my thanks for your present favor, the arrears referred to; and with both, a reassurance of my cordial esteem and my best wishes.

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TO THE NEW ENGLAND SOCIETY IN NEW YORK.

DEC<sup>r</sup> 20th, 1834.

I have received, fellow-citizens, your letter inviting me, in behalf of the New England Society in New York, to a dinner on the 22d instant, their anniversary celebration of the principles and virtues of their Pilgrim Fathers. The obstacle to my acceptance of the invitation being insuperable, I can only express my acknowledgments for the kindness and politeness which dictated it.

The exalted feelings which determined the Pilgrims to seek in a New World, through the perils and sufferings to be encountered, the liberty, religious and civil, denied them in the old; and the fruits of their heroic virtues, in the multiplied blessings now enjoyed by their expanding posterity, cannot fail to inspire admiration and gratitude.

With an assurance of my cordial sympathy in these sentiments, I tender that of the great respect and good wishes which I pray may also be accepted.

TO SAMUEL A. FOOT,  
WILLIAM BURNS,  
THOMAS FESSENDEN,  
JOSEPH HOXIE,  
J. M. CATLIN,

SAMUEL F. TISDALE,  
EDMUND S. GOULD,  
SHEPHERD KNAPP,  
JOHN CLEAVELAND,

*Committee of Arrangements.*

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TO DOCTOR DANIEL DRAKE.

MONTPELLIER, Jan<sup>y</sup> 12, 1835.

DEAR SIR,—The copy of your discourse on the "History, character, and prospects of the West," was duly received; and



I have read, with pleasure, the instructive views taken of its interesting and comprehensive theme. Should the youth addressed, and their successors, follow your advice, and their example be elsewhere imitated in noting from period to period the progress and changes of our country under the aspects adverted to, the materials added to the supplies of the decennial census, improved as that may be, will form a treasure of incalculable value to the Philosopher, the Law-giver, and the Political Economist. Our history, short as it is, has already disclosed great errors sanctioned by great names, in political science, and it may be expected to throw new lights on problems still to be decided.

The "note" at the end of the discourse, in which the geographical relations of the States are delineated, merits particular attention. Hitherto hasty observers, and unfriendly prophets, have regarded the Union as too frail to last, and to be split at no distant day into the two great divisions of East and West. It is gratifying to find that the ties of interest are now felt by the latter not less than the former; ties that are daily strengthened by the improvements made by art in the facilities of beneficial intercourse. The positive advantages of the Union would alone endear it to those embraced by it; but it ought to be still more endeared by the consequences of disunion; in the jealousies and collisions of commerce; in the border wars, pregnant with others, and soon to be engendered by animosities between the slaveholding and other States; in the higher toned Governments, especially in the Executive branch; in the military establishments provided against external danger, but convertible also into instruments of domestic usurpation; in the augmentations of expense, and the abridgment, almost to the exclusion, of taxes on consumption (the least unacceptable to the people) by the facility of smuggling among communities locally related, as would be the case. Add to all these the prospect of entangling alliances with foreign powers multiplying the evils of internal origin. But I am rambling into observations, with proof in the "Discourse" before me, that, however just, they cannot be needed.

With the thanks, sir, which I owe to your politeness in favoring me with it, I tender my respectful and cordial salutations.

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TO HENRY CLAY.

31 JANUARY, 1835.

Perceiving that I am indebted to you for a copy of your Report on our Relations with France, I beg you to accept this return of my thanks for it. The document is as able in its execution, as it is laudable in its object of avoiding war without incurring dishonor.

It must be the wish of all that the issue may correspond with the object. But may not a danger of rupture lurk under the conflicting grounds taken on the two sides—that taken by the Message and by the Report, also, in a softened tone, that the Treaty is binding on France, and is in no event to be touched; and the ground taken or likely to be taken by France, with feelings roused by the peremptory alternative of compliance or self-redress, that the Treaty is not binding on her, appealing for the fact to the structure of her government, which all nations treating with her are presumed and bound to understand.

It may be well for both parties if France should have yielded before the arrival of the Message, or not decided before that of the Report, or, at least, should not be inflexible in rejecting the terms of the Treaty. A war between the two nations, which may cost them many millions for a stake not exceeding a few, would be an occurrence peculiarly unpropitious to the cause of popular representation, in the present crisis of the political world.

War is the more to be avoided, if it can be done without in admissible sacrifices, as a maritime war to which the United States should be a party, and Great Britain neutral, has no aspect which is not of an ominous cast. Enforce the belligerent rights of search and seizure against British ships, and it would be a miracle if serious collisions did not ensue. Allow the rule

of "free ships, free goods," and the flag covers the property [of] France and enables her to employ all her naval resources against us. The tendency of the new rules in favor of the neutral flag is, to displace the mercantile marine of nations at war by neutral substitutes; and to confine the war on water, as on land, to the regular force; a revolution friendly to humanity as lessening the temptations to war and the severity of its operations, but giving an advantage to the nations which keep up large navies in time of peace over nations dispensing with them, or compelling the latter to follow the burdensome example. France has at present this advantage over us in the extent of her public ships now or that may be immediately brought into service, whilst the privilege of the neutral flag would deprive us of the cheap and efficient aid of privateers.

I do not relinquish the hope, however, that these views of the subject will be obviated by amicable and honorable adjustment.

Should the course of your movements at any time approach Montpelier, I need not express the pleasure which a call from you would give to Mrs. Madison and myself.

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TO C. J. INGERSOLL.

FEBRUARY 12, 1835.

DEAR SIR,—I have received your favor inclosing a copy of your "View of the Committee powers of Congress."

Without entering into questions which may grow out of the twofold character of the Senate of the United States as a Legislative and a Judicial body, your observations suggest a fuller investigation and more accurate definition of the privileges and authorities of the several departments and branches of our Republican Governments than have yet been bestowed on them. The task would be well worthy the most skilful hands.

With my thanks, sir, for your communication, I tender my friendly salutations and good wishes.

TO M. VAN BUREN.

J. Madison, with his respectful compliments to Mr. Van Buren, returns his thanks for the copy of Mr. Adams's Oration on the "Life and character of La Fayette." It is a signal illustration of the powers and resources of the Orator, and will deservedly aid in making more known a character which will be the more admired the more it is known.

MONTPELLIER, Feb<sup>r</sup> 18, 1835.

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TO JOHN TRUMBULL.

MARCH 1, 1835.

DEAR SIR,—Your late letter in the "New York Commercial Advertiser" having referred to my recollection of what passed between us as to the Revolutionary subjects for the paintings provided for by Congress, it may be a satisfaction to yourself for me to say, that you justly inferred from it that the omission of the battle of Bunker Hill in the final selection did not proceed from the circumstance that it was not, in the ordinary sense, a victory.

The general impression I retain of what occurred in making the selection is, that in my first communication with those officially around me, the battle of Bunker's Hill first presented itself for consideration, being the first in order of time, and known to have given an inspiring pledge of what might be expected from the bravery and patriotism of the American people in the impending struggle for their liberties. But as the resolution of Congress limited the number of paintings to four, and the Declaration of Independence, with the events at Saratoga and York, stood forth with irresistible claims, that at Bunker's Hill was yielded to Washington's resignation of his commission as a spectacle too peculiarly interesting, whether as a contrast to the military usurpations so conspicuous in history, or as a lesson and example to leaders of victorious armies who aspire to true glory; and it was a circumstance agreeable to us all that

the subjects finally adopted had been the choice of the artist himself, whose pencil had been chosen for the execution of them.

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TO A. G. GANO AND A. N. RIDDLE, COMMITTEE.

MONTPELLIER, March 25, 1835.

I have received, fellow-citizens, your letter of the 13th instant inviting me "to a celebration by the native citizens of Ohio of the anniversary of her first settlement in 1788."

Having now reached my 85<sup>th</sup> year, and being otherwise enfeebled by much indisposition, I am necessarily deprived of the pleasure of accepting the invitation. I am not the less sensible, however, of what I owe to the kind spirit and flattering terms in which it is offered. Under circumstances permitting me to join in the festive scene, I should, besides the gratification of making my acknowledgments in person, have that, also, of visiting a highly interesting portion of our country which would be new to me, and of witnessing the natural, social, and political advantages which are attracting so much admiration. Taking into view the enterprise which planted the germ of a flourishing State in a savage wilderness; the rapidity of its growth under the nurturing protection of the Federal Councils; the variety and value of the improvements already spread over it at the age of less than half a century, and the prospect of an expanding prosperity, of which it has sufficient pledges, Ohio may be justly regarded, with every congratulation, as a monument of the happy agency of the free institutions which characterize the political system of the United States.

I pray you to accept, with my cordial respects, the assurance of my best wishes.

TO W. A. DUER.

MONTPELLIER, June 5th, 1835.

DEAR SIR,—I have received your letter of April 25th, and with the aid of a friend and amanuensis, have made out the following answer :

On the subject of Mr. Pinckney's proposed plan of a Constitution, it is to be observed that the plan printed in the Journal was not the document actually presented by him to the Convention. That document was no otherwise noticed in the proceedings of the Convention than by a reference of it, with Mr. Randolph's plan, to a committee of the whole, and afterwards to a committee of detail, with others; and not being found among the papers left with President Washington, and finally deposited in the Department of State, Mr. Adams, charged with the publication of them, obtained from Mr. Pinckney the document in the printed Journals as a copy supplying the place of the missing one. In this there must be error, there being sufficient evidence, even on the face of the Journals, that the copy sent to Mr. Adams could not be the same with the document laid before the Convention. Take, for example, the article constituting the House of Representatives the corner-stone of the fabric, the identity, even verbal, of which, with the adopted Constitution, has attracted so much notice. In the first place, the details and phraseology of the Constitution appear to have been anticipated. In the next place, it appears that within a few days after Mr. Pinckney presented his plan to the Convention, he moved to strike out from the resolution of Mr. Randolph the provision for the election of the House of Representatives by the people, and to refer the choice of that House to the Legislatures of the States, and to this preference it appears he adhered in the subsequent proceedings of the Convention. Other discrepancies will be found in a source also within your reach, in a pamphlet\* published by Mr. Pinckney soon after the close

\* Observations on the plan of Government submitted to the Federal Convention on the 28th of May, 1787, by C. Pinckney, &c. See Select Tracts, vol. 2, in the Library of the Historical Society of New York.

of the Convention, in which he refers to parts of his plan which are at variance with the document in the printed Journal. A friend who had examined and compared the two documents has pointed out the discrepancies noted below.\* Further evidence†

\* Discrepancies noted between the plan of Mr. C. Pinckney as furnished by him to Mr. Adams, and the plan presented to the Convention as described in his pamphlet.

The pamphlet refers to the following provisions which are not found in the plan furnished to Mr. Adams as forming a part of the plan presented to the Convention: 1. The Executive term of service 7 years. 2. A council of revision. 3. A power to convene and prorogue the Legislature. 4. For the junction or division of States. 5. For enforcing the attendance of members of the Legislature. 6. For securing exclusive right of authors and discoverers.

The plan, according to the pamphlet, provided for the appointment of all officers, except judges and ministers, by the Executive, omitting the consent of the Senate required in the plan sent to Mr. Adams. Article numbered 9, according to the pamphlet, refers the decision of disputes between the States to the mode prescribed under the Confederation. Article numbered 7, in the plan sent to Mr. Adams, gives to the Senate the regulating of the mode. There is no numerical correspondence between the articles as placed in the plan sent to Mr. Adams, and as noted in the pamphlet, and the latter refers numerically to more than are contained in the former.

It is remarkable, that although the plan furnished to Mr. Adams enumerates, with such close resemblance to the language of the Constitution as adopted, the following provisions, and among them the fundamental article relating to the constitution of the House of Representatives, they are unnoticed in his observations on the plan of Government submitted by him to the Convention, while minor provisions, as that enforcing the attendance of members of the Legislature, are commented on. I cite the following, though others might be added: 3. To subdue a rebellion in any State on application of its Legislature. 2. To provide such dock-yards and arsenals, and erect such fortifications, as may be necessary for the U. States, and to exercise exclusive jurisdiction therein. 4. To establish post and military roads. 5. To declare the punishment of treason, which shall consist only in levying war against the United States, or any of them, or in adhering to their enemies. No person shall be convicted of treason but by the testimony of two witnesses. 6. No tax shall be laid on articles exported from the States.

(a) 1. Election by the people of the House of Representatives.

2. The Executive veto on the laws. See the succeeding numbers as above.

† Alluding particularly to the debates in the Convention and the letter of Mr. Pinckney of March 28th, 1789, to Mr. Madison. [This note not included in the letter sent to Mr. Duer.]

(a) Not improbably unnoticed, because the plan presented by him to the Convention contained his favourite mode of electing the House of Representatives by the State Legislatures, so essentially different from that of an election by the people, as in the Constitution recommended for adoption.

on this subject, not within your own reach, must await a future, perhaps a posthumous disclosure.

One conjecture explaining the phenomenon has been, that Mr. Pinckney interwove with the draught sent to Mr. Adams passages as agreed to in the Convention in the progress of the work, and which, after a lapse of more than thirty years, were not separated by his recollection.

The resolutions of Mr. Randolph, the basis on which the deliberations of the Convention proceeded, were the result of a consultation among the Virginia Deputies, who thought it possible that, as Virginia had taken so leading a part\* in reference to the Federal Convention, some initiative propositions might be expected from them. They were understood not to commit any of the members absolutely or definitively on the tenor of them. The resolutions will be seen to present the characteristic provisions and features of a Government as complete (in some respects, perhaps, more so) as the plan of Mr. Pinckney, though without being thrown into a formal shape. The moment, indeed, a real Constitution was looked for as a substitute for the Confederacy, the distribution of the Government into the usual departments became a matter of course with all who speculated on the prospective change, and the form of general resolutions was adopted as the most convenient for discussion. It may be observed, that in reference to the powers to be given to the General Government the resolutions comprehended as well the powers contained in the articles of Confederation, without enumerating them, as others not overlooked in the resolutions, but left to be developed and defined by the Convention.

With regard to the plan proposed by Mr. Hamilton, I may say to you, that a Constitution such as you describe was never proposed in the Convention, but was communicated to me by him at the close of it. It corresponds with the outline published in the Journal. The original draught being in possession of his

\* Virginia proposed, in 1786, the Convention at Annapolis, which recommended the Convention at Philadelphia, of 1787, and was the first of the States that acted on, and complied with, the recommendation from Annapolis. [This note not included in the letter sent to Mr. Duer.]



family and their property, I have considered any publicity of it as lying with them.

Mr. Yates's notes, as you observe, are very inaccurate; they are, also, in some respects, grossly erroneous. The desultory manner in which he took them, catching sometimes but half the language, may, in part, account for it. Though said to be a respectable and honorable man, he brought with him to the Convention the strongest prejudices against the existence and object of the body, in which he was strengthened by the course taken in its deliberations. He left the Convention, also, long before the opinions and views of many members were finally developed into their practical application. The passion and prejudice of Mr. L. Martin betrayed in his published letter could not fail to discolour his representations. He also left the Convention before the completion of their work. I have heard, but will not vouch for the fact, that he became sensible of, and admitted his error. Certain it is, that he joined the party who favored the Constitution in its most liberal construction.

I can add little to what I have already said in relation to the agency of your father in the adoption of the Federal Constitution. My only correspondence with him was a short one, introduced by a letter from him written during the Convention of New York, at the request of Mr. Hamilton, who was too busy to write himself, giving and requesting information as to the progress of the Constitution in New York and Virginia. Of my letter or letters to him I retain no copy. The two letters from him being short, copies of them will be sent if not on his files, and if desired. They furnish an additional proof that he was an ardent friend of the depending Constitution.

I have marked this letter "confidential," and wish it to be considered for yourself only. In my present condition, enfeebled by age and crippled by disease, I may well be excused for wishing not to be in any way brought to public view on subjects involving considerations of a delicate nature. I thank you, sir, for your kind sentiments and good wishes, and pray you to accept a sincere return of them.

TO W. CRANCH, FIRST VICE PRESIDENT WASHINGTON NATIONAL  
MONUMENT SOCIETY, WASHINGTON CITY.

JULY 25th, 1835.

D<sup>R</sup> SIR,—I have received your letter of the 20th, informing me that I have been unanimously elected President of the Washington National Monument Society, in the place of its late lamented President, Chief Justice Marshall.

I am very sensible of the distinction conferred by the relations in which the Society has placed me, and feeling, like my illustrious predecessor, a deep interest in the object of the Association, I cannot withhold, as an evidence of it, the acceptance of the appointment, though aware that in my actual condition it cannot be more than honorary, and that under no circumstances it could supply the loss which the Society has sustained.

A monument worthy of the memory of Washington, reared by the means proposed, will commemorate at the same time a virtue, a patriotism, and a gratitude truly national, with which the friends of liberty everywhere will sympathize, and of which our country may always be proud.

I tender to the Society the acknowledgments due from me, and to yourself the assurance of my high and cordial esteem.

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TO HUBBARD TAYLOR.

MONTPELLIER, Aug. 15, 1835.

D<sup>R</sup> SIR,—Your letter of July—was duly received. The recollections it so kindly expresses are very gratifying, coming from one whose friendship I have always valued, and to whom I have been often indebted for attentions useful to me.

I join in all your good wishes for more tranquillity and harmony in our public affairs, which will always be best promoted by a course avoiding the extremes to which party excitements are liable. But a sickly countenance occasionally is not inconsistent with the self-healing capacity of a constitution such as I hope ours is, and still less with the medical resources in the

hands of a people such as I hope ours will prove to be. As long as the parts composing our Union are faithful to it, despair ought never to be indulged, and that pledge for the propitious destinies of our country may be relied on as long as the consequences of disunion are sufficiently anticipated. There are ills with which such a catastrophe is pregnant, that cannot escape the most short-sighted, and there are doubtless others beyond the reach of the most prophetic sagacity.

I am glad to learn that you enjoy so much vigor of health, at the entrance of your 76th year. You have erred in supposing me in my 84th; I am now considerably advanced in my 85th; to the infirmities belonging to which are added inroads on my health, which, among other effects, have so crippled my fingers as to oblige me to avail myself of borrowed ones. I am, however, freed from the most painful stages of the rheumatic cause, for which, as for other blessings, I ought to be thankful.

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TO RICHARD D. CUTTS.

MONTPELLIER, Sept<sup>r</sup> 12, 1835.

DEAR RICHARD,—I have received your letter of the 5th instant, in which you request my advice on the choice of a profession.

Observing your decided bias in favor of the law, and not dissenting from it, I need only express the pleasure with which I find you so determined to aim at success by distinguished qualifications for it. You will be apprized by better counsellors than I am, that you will have so much *to learn* after your arrival at the bar, that you cannot diminish it too much by the stock you will carry with you. This, at all times commendable, is particularly enforced by the present condition and prospects of our country. The great and increasing number of our universities, colleges, and academies, and other seminaries, are already throwing out crops of educated youth beyond the demand for them in the professions and pursuits requiring such preparations. [This] is likely to be more and more the case, giving to the few

only who distinguish themselves the expected rewards. I hope you are duly sensible of the value of the studies through which you have just passed, and of the expediency of keeping them alive by a collateral and incidental cultivation of them. Philosophy and literature are always a recreation and improvement grateful to an unvitiated mind; and it may be repeated, with the oracular sanction of Cicero, that there is no branch of knowledge which may not be involved in legal questions, or made to illustrate or embellish forensic discussions.

Allow me to close this brief answer to your letter, dictated in the crippled state of my health, with the affectionate wish that your career in life, whatever it may be, will in every respect be such as to render it the harbinger of a better.

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TO PRESIDENT JACKSON.

MONTPELLIER, October 11th, 1835.

DEAR SIR,—I have duly received your favor of the 7th, with the letter and medal from Mr. Goddard which you were good enough to forward under your cover.

The use made of our expressed opinion on the temperance subject denotes the peculiar zeal with which its patrons are inspired. Should ardent spirits be everywhere banished from the list of drinks, it will be a revolution not the least remarkable in this revolutionary age, and our country will have its full share in that as in other merits.

I thank you, sir, for the kind interest you express in my health. It has been for a considerable time much broken by chronic complaints, which, added to my great age, have reduced me to a state of much debility, particularly in my limbs.

I observed with pleasure that you had returned from your periodical trip to the Rip-Raps with the salubrious advantage promised by it.

Mrs. Madison joins me in a return of your good wishes, and we pray you to be assured of the sincerity and high respect with which it is offered.

TO CHARLES FRANCIS ADAMS.

MONTPELLIER, October 13, 1835.

DEAR SIR,—I have received your letter of September 30, with a copy of "An Appeal" from the new to the old Whigs. The pamphlet contains very able and interesting views of its subject.

The claims for the Senate of a share in the removal from office, and for the legislature an authority to regulate its tenure, have had powerful advocates. I must still think, however, that the text of the Constitution is best interpreted by reference to the tripartite theory of government to which practice has conformed, and which so long and uniform a practice would seem to have established.

The face of the Constitution and the journalized proceedings of the Convention strongly indicate a partiality to that theory, then at its zenith of favor among the most distinguished commentators on the organizations of political power.

The right of suffrage, the rule of apportioning representation, and the mode of appointing to and removing from office, are fundamentals in a free government, and ought to be fixed by the Constitution. If alterable by the legislature, the Government might become the creator of the Constitution of which it is itself but the creature; and if the large States could be reconciled to an augmentation of power in the Senate, constructed and endowed as that branch of the Government is, a veto on removals from office would at all times be worse than inconvenient in its operation, and in party times might, by throwing the executive machinery out of gear, produce a calamitous interregnum.

In making these remarks I am not unaware that in a country wide and expanding as ours is, and in the anxiety to convey information to the door of every citizen, an unforeseen multiplication of offices may add a weight to the executive scale, disturbing the equilibrium of the Government. I should therefore see with pleasure a guard against the evil, by whatever regulations having that effect may be within the scope of legislative power; or, if necessary, even by an amendment of the Constitu-

tion when a lucid interval of party excitement shall invite the experiment.

With my thanks for your friendly communication and for the interest you express in my health, which is much broken by chronic complaints added to my great age, I pray you to accept the assurance of my respect and good wishes.

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TO CHARLES J. INGERSOLL.

MONTPELLIER, Nov<sup>r</sup> 8.

D<sup>r</sup> SIR,—I thank you as a friend for the printed copy of your discourse kindly sent me, and I thank you still more as a citizen for such an offering to the free institutions of our country. In testing the tree of liberty by its fruits you have shewn how precious it ought to be held by those who enjoy the blessing. I wish the discourse could be translated and circulated wherever the blessing is not enjoyed. Were the truths it contains in possession of every adult in Europe, the portentous league against the rights and happiness of the human race would be formidable only to its authors and abettors.

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TO ROBERT H. GOLDSBOROUGH.

MONTPELLIER, Dec<sup>r</sup> 21, 1835.

D<sup>r</sup> SIR,—I have received your letter of the 15th, with the tobacco seed it refers to. I tender the thanks due respectively to Mr. Vaughan and yourself for the obliging attention to which I am indebted, and will take measures for turning the seed to the best account.

I was favored many years ago by Col. G. Mason with a sample of the like seed, and had hills enough planted from it to test its character in our climate. It was found to retain, though not entirely, its characteristic fragrance; but it was so inferior

in size and weight, that, with the idea of its anticipated degeneracy, and my general absence from home, the experiment was not continued. It certainly merits the fuller one which is now promised by the several hands into which the seed will be committed; especially as seed from the Island can be occasionally obtained in the event of a progressive degeneracy. It is not unworthy of consideration that the extending culture of the ordinary tobacco in the West will rapidly glut the market for that of Virginia and Maryland, and that the Cuba tobacco may succeed better in these States than in the Western soils. I have been informed by a gentleman who has resided in Cuba, and took notice of the tobacco crop, that it there requires a particular soil; and, as is said of your finest Maryland tobacco, that it is not every plant or even every leaf of the same plant that will possess the distinguished quality.

I pray you, sir, to accept for yourself, and to convey to Mr. Vaughan, with my best respects, a cordial return of the friendly sentiments and good wishes which your letter expresses on the part of both.

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TO CHARLES J. INGERSOLL.

MONTPELLIER, Decr 30th, 1835.

DEAR SIR,—I thank you, though at a late day, for the pamphlet comprising your address at New York.

The address is distinguished by some very important views of an important subject.

The absolutists on the "Let alone theory" overlook the two essential pre-requisites to a perfect freedom of external commerce—1. That it be universal among nations. 2. That peace be perpetual among them.

A perfect freedom of international commerce, manifestly requires that it be *universal*. If not so, a nation departing from the theory might regulate the commerce of a nation adhering to it, in subserviency to its own interest, and disadvantageously to the latter. In the case of navigation, so necessary under

different aspects, nothing is more clear than that a discrimination by one nation in favor of its own vessels, without an equivalent discrimination on the side of another, must at once banish from the intercourse the navigation of the latter. This was verified by our own ante-Constitution experience, as the remedy for it has been by the post-Constitution experience.

But to a perfect freedom of commerce, universality is not the only condition; perpetual peace is another. War, so often occurring, and so liable to occur, is a disturbing incident entering into the calculations by which a nation ought to regulate its foreign commerce. It may well happen to a nation adhering strictly to the rule of buying cheap, that the rise of prices in nations at war may exceed the cost of a protective policy in time of peace; so that, taking the two periods together, protection would be cheapness. On this point, also, an appeal may be made to our own experience. The champions for the "Let alone policy" forget that theories are the offspring of the closet; exceptions and qualifications the lessons of experience.

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TO THOMAS GILMER AND OTHERS OF THE COMMITTEE.

I have received, fellow-citizens, your letter inviting me, in behalf of a number of citizens of Albemarle, to partake of a public dinner on the approaching 4th of July.

For this mark of their kind attention, I can only offer an expression of my grateful sensibility; the debility of age, with a continuance of much indisposition, rendering it impossible for me to join them on the occasion.

However conscious of the extent in which the partiality of my friends has overvalued my public career, I may be allowed to say that they have done but justice in supposing that, though abstracted from a participation in public affairs, I have not ceased to feel a deep interest in the purity and permanence of our free and Republican institutions, characterized, as they are, first, by a division of the powers of Government between the States in their united and in their individual capacities; 2<sup>d</sup>, by



defined relations between the several departments and branches of Government. Having witnessed the defects in the first organization of the Union sufficiently evinced during the war of the Revolution, and still further developed in the interval between its termination and the substitution of the present Constitution; having witnessed, also, the happy fruits of the latter, presenting in so many important respects a contrast to the preceding state of things; no one can be more anxious than I am that its permanent success be ensured by a faithful adherence to its principles and objects.

The Committee, in making the respectful acknowledgments due from me for the favorable and affectionate sentiments communicated in their letter, will please to accept for themselves an assurance of my high esteem and cordial regards.

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TO THE COMMITTEE—PEYTON, GRYMES, AND OTHERS.

I have received, friends and fellow-citizens, your letter of ———inviting me, in behalf of a portion of the Republican citizens of this District, to a public dinner to be given to John M. Patton, its Representative in the Congress of the United States.

Gratified as I should be in meeting so many of my neighbours and friends, among them the able and highly respected Representative of the District, the opportunity is rendered of no avail to me by a continuance, and of late increase of the causes which have long confined me to my home, and at this time confines me for the most part to a sick chamber.

The favorable views which my friends have taken of my public and private life justly demand my grateful and affectionate acknowledgments. Such a testimony from those whom I know to be sincere, and to whom I am best known, is very precious to me. If it gives me a credit far beyond my claims, which I am very conscious that it does, I cannot be insensible to the partiality which commits the error.

Though withdrawn from the theatre of public affairs, and from the excitements incident to them, I may be permitted to

say to my friends that I join them most cordially in their devotion to the great and fundamental principles of Republicanism, to which Virginia has been constant; and that I am not less persuaded than they are of the dependence of our prosperity on those principles, and of the ultimate connexion of both with the preservation of the Union in its integrity, and of the Constitution in its purity. The value of the Union will be most felt by those who look with most forecast into the consequences of disunion. Nor will the Constitution, with its wise provisions for its improvement under the lights of experience, be undervalued by any who compare the distracted and ominous condition from which it rescued the country, with the security and prosperity so long enjoyed under it, with the bright prospects which it has opened on the civilized world. It is a proud reflection for the people of the United States, proud for the cause of liberty, that history furnishes no example of a Government producing like blessings in an equal degree, and for the same period, as the modification of political power in the compound Government of the U. States, of which the vital principle pervading the whole and all its parts is the elective and responsible principle of Republicanism. May not *esto perpetua* express the hopes as well as the prayer of every citizen who loves liberty and loves his country?

I pray the committee, in communicating my thanks to the meeting for the kind invitation conveyed to me, to accept for themselves my cordial respects and best wishes.

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*Sovereignty.*

1835.

It has hitherto been understood that the supreme power, that is, the sovereignty of the people of the States, was in its nature divisible, and was, in fact, divided, according to the Constitution of the United States, between the States in their united and the States in their individual capacities, and so viewed by the Convention in transmitting the Constitution to the Congress of

the Confederation; so viewed and called in official, in controversial, and in popular language; that as the States, in their highest sovereign character, were competent to surrender the whole sovereignty and form themselves into a consolidated State, so they might surrender a part and retain, as they have done, the other part, forming a mixed Government, with a division of its attributes as marked out in the Constitution.

Of late, another doctrine has occurred, which supposes that sovereignty is in its nature indivisible; that the societies denominated States, in forming the constitutional compact of the United States, acted as indivisible sovereignties, and, consequently, that the sovereignty of each remains as absolute and entire as it was then, or could be at any time; and it is contended by some that it renders the States individually the paramount expositors of the true meaning of the Constitution itself.

This discord of opinions arises from a propensity in many to prefer the use of theoretical guides and technical language to the division and depositories of political power, as laid down in the constitutional charter, which expressly assigns certain powers of Government, which are the attributes of sovereignty to the United States, and even declares a practical supremacy of them over the powers reserved to the States, a supremacy essentially involving that of exposition as well as of execution; for a law could not be supreme in one depository of power if the final exposition of it belonged to another.

In settling the question between these rival claims of power, it is proper to keep in mind that all power in just and free governments is derived from compact; that when the parties to the compact are competent to make it, and when the compact creates a government, and arms it not only with a moral power, but the physical means of executing it, it is immaterial by what name it is called. Its real character is to be decided by the compact itself; by the nature and extent of the powers it specifies, and the obligations imposed on the parties to it.

As a ground of compromise, let, then, the advocates of State rights acknowledge this rule of measuring the Federal share of sovereign power under the constitutional compact; and let it be

conceded, on the other hand, that the States are not deprived by it of that corporate existence and political unity which would, in the event of a dissolution, voluntary or violent, of the Constitution, replace them in the condition of separate communities, that being the condition in which they entered into the compact. (See letter to Mr. Webster, March 15, 1833.)

At the period of our Revolution it was supposed by some that it dissolved the social compact within the Colonies, and produced a State of nature which required a naturalization of those who had not participated in the Revolution. The question was brought before Congress at its first session by Doctor Ramsay, who contested the election of William Smith; who, though born in South Carolina, had been absent at the date of independence. The decision was, that his birth in the Colony made him a member of the society in its new as well as its original state.

To go to the bottom of the subject, let us consult the theory which contemplates a certain number of individuals as meeting and agreeing to form one political society, in order that the rights, the safety, and the interest of each may be under the safeguard of the whole.

The first supposition is, that each individual being previously independent of the others, the compact which is to make them one society must result from the free consent of *every* individual.

But as the objects in view could not be attained if every measure conducive to them required the consent of every member of the society, the theory farther supposes, either that it was a part of the original compact, that the will of the majority was to be deemed the will of the whole, or that this was a law of nature, resulting from the nature of political society itself, the offspring of the natural wants of man.

Whatever be the hypothesis of the origin of the *lex majoris partis*, it is evident that it operates as a plenary substitute of the will of the majority of the society for the will of the whole society; and that the sovereignty of the society, as vested in and exercisable by the majority, may do anything that could be rightfully done by the unanimous concurrence of the members;

the reserved rights of individuals (conscience, for example) in becoming parties to the original compact being beyond the legitimate reach of sovereignty, wherever vested or however viewed.

The question then presents itself, how far the will of a majority of the society, by virtue of its identity with the will of the society, can divide, modify, or dispose of the sovereignty of the society; and quitting the theoretic guide, a more satisfactory one will perhaps be found—1, In what a majority of a society has done, and been universally regarded as having had a right to do; 2, What it is universally admitted that a majority, by virtue of its sovereignty, might do, if it chose to do.

1. The majority has not only naturalized, admitted into social compact again, but has divided the sovereignty of the society by actually dividing the society itself into distinct societies equally sovereign. Of this operation we have before us examples in the separation of Kentucky from Virginia and of Maine from Massachusetts; events which were never supposed to require a unanimous consent of the individuals concerned.

In the case of naturalization, a new member is added to the social compact, not only without a unanimous consent of the members, but by a majority of the governing body, deriving its powers from a majority of the individual parties to the social compact.

2. As, in those cases just mentioned, one sovereignty was divided into two by dividing one State into two States; so it will not be denied that two States equally sovereign might be incorporated into one by the voluntary and joint act of majorities only in each. The Constitution of the United States has itself provided for such a contingency. And if two States could thus incorporate themselves into one by a mutual surrender of the entire sovereignty of each, why might not a partial incorporation, by a partial surrender of sovereignty, be equally practicable if equally eligible? and if this could be done by two States, why not by twenty or more?

A division of sovereignty is in fact illustrated by the exchange of sovereign rights often involved in treaties between independ-

ent nations, and still more in the several confederacies which have existed, and particularly in that which preceded the present Constitution of the United States.

Certain it is that the constitutional compact of the United States has allotted the supreme power of government partly to the United States by special grants, partly to the individual States by general reservations; and if sovereignty be in its nature divisible, the true question to be decided is, whether the allotment has been made by the competent authority; and this question is answered by the fact that it was an act of the *majority* of the people in each State in their highest sovereign capacity, equipollent to a *unanimous* act of the people composing the State in that capacity.

It is so difficult to argue intelligibly concerning the compound system of government in the United States, without admitting the divisibility of sovereignty, that the idea of sovereignty, as divided between the Union and the members composing the Union, forces itself into the view, and even into the language of those most strenuously contending for the unity and indivisibility of the *moral being* created by the social compact. "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*. That of the State and that of the Union are each a moral person, and in that respect precisely equal." These are the words in a speech which, more than any other, has analyzed and elaborated this particular subject, and they express the view of it finally taken by the speaker,\* notwithstanding the previous one in which he says, "the States, while the Constitution of the United States was forming, were not shorn of *any* of their sovereign power by that process."†

\* Mr. Rowan, of Kentucky.

† See U. S. Telegraph, March 22, 23, 1830, and in the Richmond Enquirer of April 13, 16, 20, 23, 1830.

That a sovereignty would be lost and converted into a vasalage if subjected to a foreign sovereignty over which it had no control and in which it had no participation, is clear and certain; but far otherwise is a surrender of portions of sovereignty by compacts among sovereign communities, making the surrenders equal and reciprocal, and of course giving to each as much as is taken from it.

Of all free governments compact is the basis and the essence, and it is fortunate that the powers of government, supreme as well as subordinate, can be so moulded and distributed, so compounded and divided by those on whom they are to operate, as will be most suitable to their conditions, will best guard their freedom, and best provide for their safety and happiness.

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*On Nullification.*

1835-'6.

Although the Legislature of Virginia declared, at a late session, almost unanimously, that South Carolina was not supported in her doctrine of nullification by the resolutions of 1798, it appears that those resolutions are still appealed to as expressly or constructively favoring the doctrine.

That the doctrine of nullification may be clearly understood, it must be taken as laid down in the report of a special committee of the House of Representatives of South Carolina in the year 1828. In that document it is asserted that a single State has a constitutional right to arrest the execution of a law of the United States within its limits; that the arrest is to be presumed right and valid, and is to remain in force, unless three-fourths of the States, in a convention, should otherwise decide.

The forbidding aspect of a naked creed, according to which a process instituted by a single State is to terminate in the ascendancy of a minority of seven over a majority of seventeen, has led its partisans to disguise its deformity under the position that a single State may rightfully resist an unconstitutional and tyrannical law of the United States; keeping out of view the

essential distinction between a constitutional right and the natural and universal right of resisting intolerable oppression. But the true question is, whether a single State has a constitutional right to annul or suspend the operation of a law of the United States within its limits, the State remaining a member of the Union, and admitting the Constitution to be in force.

With a like policy the nullifiers pass over the state of things at the date of the proceedings of Virginia, and the particular doctrines and arguments to which they were opposed, without an attention to which the proceedings in this, as in other cases, may be insecure against perverted construction.

It must be remarked, also, that the champions of nullification attach themselves exclusively to the third resolution, averting their attention from the seventh resolution, which ought to be coupled with it, and from the report, also, which comments on both, and gives a full view of the object of the Legislature on the occasion.

Recurring to the epoch of the proceedings, the facts of the case are, that Congress had passed certain acts bearing the name of the alien and sedition laws, which Virginia and some of the other States regarded as not only dangerous in their tendency but unconstitutional in their text, and as calling for a remedial interposition of the States. It was found, also, that not only was the constitutionality of the acts vindicated by a predominant party, but that the principle was asserted at the same time that a sanction to the acts given by the supreme judicial authority of the United States was a bar to any interposition whatever on the part of the States, even in the form of a legislative declaration that the acts in question were unconstitutional.

Under these circumstances the subject was taken up by Virginia in her resolutions, and pursued at the ensuing session of the Legislature in a comment explaining and justifying them, her main and immediate object evidently being to produce a conviction everywhere that the Constitution had been violated by the obnoxious acts, and to produce a concurrence and co-operation of the other States in effectuating a repeal of the acts. She accordingly asserted, and offered her proofs at great length,



that the acts were unconstitutional. She asserted, moreover, and offered her proofs, that the States had a right in such cases to interpose, first in their constituent character, to which the Government of the United States was responsible, and otherwise as specially provided by the Constitution; and farther, that the States, in their capacity of parties to and creators of the Constitution, had an ulterior right to interpose, notwithstanding any decision of a constituted authority, which, however it might be the *last resort* under the forms of the Constitution in cases falling within the scope of its functions, could not preclude an interposition of the States as the parties which made the Constitution, and as such possessed an authority paramount to it.

In this view of the subject there is nothing which excludes a natural right in the States individually, more than in any portion of an individual State suffering under palpable and insupportable wrongs, from seeking relief by resistance and revolution.

But it follows from no view of the subject that a nullification of a law of the United States can, as is now contended, belong rightfully to a single State as one of the parties to the Constitution, the State not ceasing to avow its adherence to the Constitution. A plainer contradiction in terms, or a more fatal inlet to anarchy, cannot be imagined.

And what is the text in the proceedings of Virginia which this spurious doctrine of nullification claims for its patronage? It is found in the third of the resolutions of 1798, which is in the following words :

“That in case of a deliberate, a palpable, and dangerous exercise of powers not granted by the [constitutional] compact, the *States* who are parties thereto have a right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them.”

Now is there anything here from which a *single* State can infer a right to arrest or annul an act of the General Government which it may deem unconstitutional? So far from it, that the obvious and proper inference precludes such a right on the part

of a single State, the *plural* number being used in every application of the term.

In the next place, the course and scope of the reasoning requires that by the rightful authority to interpose in the cases and for the purposes referred to, was meant not the authority of the States *singly* and *separately*, but their authority as the *parties* to the Constitution; the authority which, in fact, made the Constitution; the authority which, being paramount to the Constitution, was paramount to the authorities constituted by it; to the judiciary as well as the other authorities. The resolution derives the asserted right of interposition for arresting the progress of usurpations by the Federal Government from the fact that its powers were limited to the grant made by the States; a grant certainly not made by a *single* party to the grant, but by the *parties* to the compact containing the grant. The mode of their interposition, in extraordinary cases, is left by the resolution to the parties themselves, as the mode of interposition lies with the parties to other constitutions, in the event of usurpations of power not remediable in the forms and by the means provided by the Constitution. If it be asked why a claim by a single party to the constitutional compact to arrest a law, deemed by it a breach of the compact, was not expressly guarded against, the simple answer is sufficient, that a pretension so novel, so anomalous, and so anarchical, was not and could not be anticipated.

In the third place, the nullifying claim for a single State is probably irreconcilable with *the effect* contemplated by the interposition claimed by the resolution for the parties to the Constitution, namely, that of "maintaining within the respective limits of the States the authorities, rights, and liberties appertaining to them." Nothing can be more clear than that these authorities, &c., &c., of the States—in other words, the authority and laws of the United States—must be the same in all; or this cannot continue to be the case if there be a right in each to annul or suspend within itself the operation of the laws and authority of the whole. There cannot be different laws in different States on subjects within the compact, without subverting

its fundamental principles and rendering it as abortive in practice as it would be incongruous in theory. A concurrence and co-operation of the States in favour of each would have the effect of preserving the necessary uniformity in all, which the Constitution so carefully and so specifically provided for in cases where the rule might be in most danger of being violated. Thus the citizens of every State are to enjoy reciprocally the privileges of citizens in every other State. Direct taxes are to be apportioned on all according to a fixed rule. Judicial taxes are to be the same in all the States. The duties on imports are to be uniform. No preference is to be given to the ports of one State over those of another. Can it be believed, with these provisions of the Constitution illustrating its vital principles fully in view of the Legislature of Virginia, that its members could, in the resolution quoted, intend to countenance a right in a single State to distinguish itself from its co-States, by avoiding the burdens or restrictions borne by them, or indirectly giving the law to them?

These startling consequences from the nullifying doctrine have driven its partisans to the extravagant presumption that no State would ever be so unreasonable, unjust, and impolitic, as to avail itself of its right in any case not so palpably just and fair as to ensure a concurrence of the others, or, at least, the requisite proportion of them.

Omitting the obvious remark, that in such a case the law would never have been passed or immediately repealed, and the surprise that such a defence of the nullifying right should come from South Carolina, in the teeth and at the time of her own example, the presumption of such a forbearance in each of the States, or such a pliability in all, among twenty or thirty independent sovereignties, must be regarded as a mockery by those who reflect for a moment on the human character, or consult the lessons of experience; not the experience only of other countries and times, but that among ourselves; and not only under the former defective Confederation, but since the improved system took place of it. Examples of differences, persevering differences among the States on the constitutionality of Federal acts,

will readily occur to every one; and which would, ere this, have defaced and demolished the Union, had the nullifying claim of South Carolina been indiscriminately exercisable. In some of the States the carriage tax would have been collected; in others, unpaid. In some, the tariff on imports would be collected; in others, openly resisted. In some, light-houses would be established; in others, denounced. In some States there might be war with a foreign power; in others, peace and commerce. Finally, the appellate authority of the Supreme Court of the United States would give effect to the Federal laws in some States, while in others they would be rendered nullities by the State judiciaries. In a word, the nullifying claims, if reduced to practice, instead of being the conservative principle of the Constitution, would necessarily, and, it may be said, obviously be a deadly poison.

Thus, from the third resolution itself, whether regard be had to the employment of the term *States* in the plural number, or the argumentative use of it, or to the object, namely, the "maintaining the authority and rights of each," which must be the same in all as in each, it is manifest that the adequate interposition to which it relates must be, not a single, but a concurrent interposition.

If we pass from the third to the seventh resolution, which, though it repeats and re-enforces the third, and which is always skipped over by the nullifying commentators, the fallacy of their claim will at once be seen. The resolution is in the following words: "That the good people of the Commonwealth having ever felt and continuing to feel the most sincere affection to their brethren of the other States, the truest anxiety for establishing and perpetuating the union of all, and the most scrupulous fidelity to that Constitution which is the pledge of mutual friendship and the instrument of mutual happiness, the General Assembly doth solemnly appeal to the like dispositions in the other States, in confidence that they will concur with this Commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional, and that the necessary and proper measures will be taken by each for co-operating with

this State in maintaining, unimpaired, the authorities, rights, and liberties reserved to the States respectively or to the people." Here it distinctly appears, as in the third resolution, that the course contemplated by the Legislature for "maintaining the authorities, rights, and liberties reserved to the States respectively," was not a *solitary* or *separate* interposition, but a *co-operation* in the means necessary and proper for the purpose.

If a farther elucidation of the view of the Legislature could be needed, it happens to be found in its recorded proceedings. In the seventh resolution, as originally proposed, the term "*un-constitutional*" was followed by "null, void, &c." These added words being considered by some as giving pretext for some disorganizing misconstruction, were unanimously stricken out, or, rather, withdrawn by the mover of the resolutions.

An attempt has been made, by ascribing to the words stricken out a nullifying signification, to fix on the reputed draughtsman of the resolution the character of a nullifier. Could this have been effected, it would only have vindicated the Legislature the more effectually from the imputation of favouring the doctrine of South Carolina. The unanimous erasure of nullifying expressions was a protest by the House of Delegates in the most emphatic form against it.

But let us turn to the report which explained and vindicated the resolutions, and observe the light in which it placed first the third and then the seventh.

It must be recollected that this document proceeded from representatives chosen by the people some months after the resolutions had been before them, with a longer period for manifesting their sentiments before the report was adopted, and without any evidence of disapprobation in the constituent body. On the contrary, it is known to have been received by the Republican party, a decided majority of the people, with the most entire approbation. The report, therefore, must be regarded as the most authoritative evidence of the meaning attached by the State to the resolutions. This consideration makes it the more extraordinary, and, let it be added, the more inexcusable in those who, in their zeal to extract a particular meaning from

a particular resolution, not only shut their eyes to another resolution, but to an authentic exposition of both.

And what is the comment of the report on that particular resolution, namely, the third?

In the first place, it conforms to the resolution in using the term which expresses the interposing authority of the States, in the *plural* number *States*, not in the singular number *State*. It is, indeed, impossible not to perceive that the entire current and complexion of the observations explaining and vindicating the resolutions imply necessarily, that by the interposition of the States for arresting the evil of usurpation was meant a concurring authority, not that of a single State; while the collective meaning of the term gives consistency and effect to the reasoning and the object.

But besides this general evidence that the report, in the invariable use of the plural term *States*, withheld from a single State the right expressed in the resolution, a still more precise and decisive inference, to the same effect, is afforded by several passages in the document.

Thus the report observes: "The States then being the parties to the constitutional compact, and in their highest sovereign capacity, it follows, of necessity, that there can be no tribunal above *their* authority to decide in the *last* resort whether the compact made by them be violated; and, consequently, that, as the parties to it, they must *themselves* decide in the last resort such questions as may be of sufficient magnitude to require their interposition."

Now apart from the palpable insufficiency of an interposition by a single State to effect the declared object of the interposition, namely, to maintain authorities and rights which must be the same in all the States, it is not true that there would be no tribunal above the authority of a State as a single party; the aggregate authority of the parties being a tribunal above it to decide in the *last* resort.

Again the language of the report is, "If the deliberate exercise of dangerous powers, palpably withheld by the Constitution, could not justify the parties to it in interposing even so

far as to arrest the progress of the evil, and thereby preserve the Constitution itself, as well as to provide for the safety of the parties to it, there would be an end to all relief from usurped power." Apply here the interposing power of a single State, and it would not be true that there would be no relief from usurped power. A sure and adequate relief would exist in the interposition of the *States*, as the *co-parties* to the Constitution, with a power paramount to the Constitution itself.

It has been said that the right of interposition asserted for the States by the proceedings of Virginia could not be meant a right for them in their collective character of parties to and creators of the Constitution, because that was a right by none denied. But as a simple truth or truism, its assertion might not be out of place when applied, as in the resolution, especially in an avowed recurrence to fundamental principles, as in duty called for by the occasion. What is a portion of the Declaration of Independence but a series of simple and undeniable truths or truisms? what but the same composed a great part of the Declarations of Rights prefixed to the State constitutions? It appears, however, from the report itself, which explains the resolutions, that the last *resort* claimed for the Supreme Court of the United States, in the case of the alien and sedition laws, was understood to require a recurrence to the ulterior resort in the authority from which that of the court was derived. The language of the report is, "But it is objected\* [by the advocates of the alien and sedition acts] that the judicial authority is to be regarded as the sole expositor of the Constitution in the *last resort*; and it may be asked for what reason the declaration by the General Assembly, supposing it to be theoretically true, could be required at the present day and in so solemn a manner." It was, as we have seen, in answering this objection, that the report observes, "That however true it may be that the judicial department, in all questions submitted to it by the forms of the Constitution, is to decide

\* There is direct proof that the authority of the Supreme Court of the United States was understood by the Legislature of Virginia to have been an asserted bar to an interposition by the States against the alien and sedition laws.

in the *last* resort, this resort must necessarily be deemed not the *last* in relation to the rights of the parties to the constitutional compact, from which the judicial, as well as the other departments, hold their delegated trusts. On any other hypothesis, the delegation of judicial power would annul the authority delegating it, and the concurrence of this department with the others in usurped powers might subject forever, and beyond the possible reach of any rightful remedy, the very Constitution which all were instituted to preserve." Again, observes the report, "The truth declared in the resolution being established, the expediency of making the declaration at the present day may safely be left to the temperate consideration and candid judgment of the American public. It will be remembered that a frequent recurrence to fundamental principles is solemnly enjoined by most of the State constitutions, and particularly by our own, as a necessary safeguard against the danger of degeneracy, to which Republics are liable as well as other Governments, though in a less degree than others. And a fair comparison of the political doctrines, not unfrequent at the present day, with those which characterized the epoch of our Revolution, and which form the basis of our Republican constitutions, will best determine whether the declaratory recurrence here made to those principles ought to be viewed as unreasonable and improper, or as a vigilant discharge of an important duty. The authority of constitutions over governments, and of the sovereignty of the people over constitutions, are truths which are at all times necessary to be kept in mind; and at no time, perhaps, more necessary than at present."

Who can avoid seeing the necessity of understanding by the "*parties*" to the constitutional compact the authority which made the compact, and from which all the departments held their delegated trusts? These trusts were certainly not delegated by a *single* party. By regarding the term *parties* in its plural, not individual meaning, the answer to the objection is clear and satisfactory. Take the term as meaning a *party*, and not the *parties*, and there is neither truth nor argument in the answer. But farther, on the hypothesis that the rights of the *parties*



meant the rights of *a party*, it would not be true, as affirmed by the report, that "the delegation of judicial power would annul the authority delegating it, and that the concurrence of this department with others in usurped power might subvert forever and beyond the reach of any rightful remedy the very Constitution which all were instituted to preserve." However deficient a remedial right in a *single State* might be to preserve the Constitution against usurped power, an ultimate and adequate remedy would always exist in the rights of the *parties* to the Constitution, in whose hands the Constitution is at all times but clay in the hands of the potter, and who could apply a remedy by explaining, amending, or remaking it, as the one or the other mode might be the most proper remedy.

Such being the comment of the report on the third resolution, it fully demonstrates the meaning attached to it by Virginia when passing it, and rescues it from the nullifying misconstruction into which the resolution has been distorted.

Let it next be seen how far the comment of the report on the seventh resolution above inserted accords with that on the third; and that this may the more conveniently be scanned by every eye, the comment is subjoined at full length.

"The fairness and regularity of the course of proceedings here pursued have not protected it against objections even from sources too respectable to be disregarded.

"It has been said that it belongs to the judiciary of the United States, and not to the State legislatures, to declare the meaning of the Federal Constitution.

"But a declaration that proceedings of the Federal Government are not warranted by the Constitution, is a novelty neither among the citizens nor among the legislatures of the States, nor are the citizens or the Legislature of Virginia singular in the example of it.

"Nor can the declarations of either, whether affirming or denying the constitutionality of measures of the Federal Government, or whether made before or after judicial decisions thereon, be deemed, in any point of view, an assumption of the office of the judge. The declarations in such cases are expressions of

opinions, unaccompanied with any other effect than what they may produce on opinion by exciting reflection. The expositions of the judiciary, on the other hand, are carried into immediate effect by force. The former may lead to a change in the legislative expressions of the general will, possibly to a change in the opinion of the judiciary; the latter enforces the general will, while that will and that opinion continue unchanged.

“And if there be no impropriety in declaring the unconstitutionality of proceedings in the Federal Government, where can be the impropriety of communicating the declaration to other States, and inviting their concurrence in a like declaration? What is allowable for one must be allowable for all; and a free communication among the States, where the Constitution imposes no restraint, is as allowable among the State governments as among other public bodies or private citizens. This consideration derives a weight that cannot be denied to it, from the relation of the State legislatures to the Federal Legislature, as the immediate constituents of one of its branches.

“The legislatures of the States have a right also to originate amendments to the Constitution, by a concurrence of two-thirds of the whole number, in applications to Congress for the purpose. When new States are to be formed by a junction of two or more States or parts of States, the legislatures of the States concerned are, as well as Congress, to concur in the measure. The States have a right also to enter into agreements or compacts, with the consent of Congress. In all such cases a communication among them results from the object which is common to them.

“It is lastly to be seen whether the confidence expressed by the resolution, that the *necessary and proper measures* would be taken by the other States for co-operating with Virginia in maintaining the rights reserved to the States or to the people, be in any degree liable to the objections which have been raised against it.

“If it be liable to objection, it must be because either the object or the means are objectionable.

“The object being to maintain what the Constitution has ordered, is in itself a laudable object.

“The means are expressed in the terms ‘the necessary and proper measures.’ A proper object was to be pursued by means both necessary and proper.

“To find an objection, then, it must be shown that some meaning was annexed to these general terms which was not proper; and for this purpose either that the means used by the General Assembly were an example of improper means, or that there were no proper means to which the term could refer.

“In the example given by the State, of declaring the alien and sedition acts to be unconstitutional, and of communicating the declaration to the other States, no trace of improper means has appeared. And if the other States had concurred in making a like declaration, supported, too, by the numerous applications flowing immediately from the people, it can scarcely be doubted that these simple means would have been as sufficient as they are unexceptionable.

“It is no less certain that other means might have been employed which are strictly within the limits of the Constitution. The legislatures of the States might have made a direct representation to Congress, with a view to obtain a rescinding of the two offensive acts; or they might have represented to their respective senators in Congress their wish that two-thirds thereof would propose an explanatory amendment to the Constitution; or two-thirds of themselves, if such had been their option, might, by an application to Congress, have obtained a convention for the same object.

“These several means, though not equally eligible in themselves, nor probably to the States, were all constitutionally open for consideration. And if the General Assembly, after declaring the two acts to be unconstitutional, the first and most obvious proceeding on the subject, did not undertake to point out to the other States a choice among the farther means that might become necessary and proper, the reserve will not be misconstrued by liberal minds into any culpable imputation.

“These observations appear to form a satisfactory reply to every objection which is not founded on a misconception of the terms employed in the resolutions. There is one other, how-

ever, which may be of too much importance not to be added. It cannot be forgotten, that among the arguments addressed to those who apprehended danger to liberty from the establishment of the General Government over so great a country, the appeal was emphatically made to the intermediate existence of the State governments between the people and that Government, to the vigilance with which they would descry the first symptoms of usurpation, and to the promptitude with which they would sound the alarm to the public. This argument was probably not without its effect; and if it was a proper one then to recommend the establishment of the Constitution, it must be a proper one now to assist in its interpretation.

“The only part of the two concluding resolutions that remains to be noticed, is the repetition in the first of that warm affection to the Union and its members, and of that scrupulous fidelity to the Constitution, which have been invariably felt by the people of this State. As the proceedings were introduced with these sentiments, they could not be more properly closed than in the same manner. Should there be any so far misled as to call in question the sincerity of these professions, whatever regret may be excited by the error, the General Assembly cannot descend into a discussion of it. Those who have listened to the suggestion can only be left to their own recollection of the part which this State has borne in the establishment of our national independence, in the establishment of our national Constitution, and in maintaining under it the authority and laws of the Union, without a single exception of internal resistance or commotion. By recurring to these facts they will be able to convince themselves that the representations of the people of Virginia must be above the necessity of opposing any other shield to attacks on their national patriotism than their own consciousness and the justice of an enlightened public, who will perceive in the resolutions themselves the strongest evidence of attachment both to the Constitution and to the Union, since it is only by maintaining the different governments and departments within their respective limits that the blessings of either can be perpetuated.”

Here is certainly not a shadow of countenance to the doctrine of nullification. Under every aspect, it enforces the arguments and authority against such an apocryphal version of the text.

From this view of the subject those who will duly attend to the tenor of the proceedings of Virginia and to the circumstances of the period when they took place will concur in the fairness of disclaiming the inference from the undeniableness of a truth, that it could not be the truth meant to be asserted in the resolution. The employment of the truth asserted, and the reasons for it, are too striking to be denied or misunderstood. More than this, the remark is obvious, that those who resolve the nullifying claim into the *natural* right to resist intolerable oppression, are precluded from inferring that to be the right meant by the resolution, since that is as little denied as the paramountship of the authority creating a Constitution over an authority derived from it.

The true question therefore is, whether there be a *constitutional* right in a single State to nullify a law of the United States. We have seen the absurdity of such a claim in its naked and suicidal form. Let us turn to it as modified by South Carolina, into a right in every State to resist within itself the execution of a Federal law deemed by it to be unconstitutional, and to demand a convention of the States to decide the question of constitutionality; the annulment of the law to continue in the mean time, and to be permanent unless three-fourths of the States concur in overruling the annulment.

Thus, during the temporary nullification of the law, the results would be the same from [as?] those proceeding from an unqualified nullification, and the result of a convention might be that seven out of twenty-four States might make the temporary results permanent. It follows, that any State which could obtain the concurrence of six others might abrogate any law of the United States, constructively, whatever, and give to the Constitution any shape they please, in opposition to the construction and will of the other seventeen, each of the seventeen having an equal right and authority with each of the seven. Every feature in the Constitution might thus be successively changed;

and after a scene of unexampled confusion and distraction, what had been unanimously agreed to as a whole, would not, as a whole, be agreed to by a single party. The amount of this modified right of nullification is, that a single State may arrest the operation of a law of the United States, and institute a process which is to terminate in the ascendancy of a minority over a large majority in a republican system, the characteristic rule of which is, that the major will is the ruling will. And this new-fangled theory is attempted to be fathered on Mr. Jefferson, the apostle of republicanism, and whose own words declare that "acquiescence in the decision of the majority is the vital principle of it." [See his Inaugural Address.]

Well might Virginia declare, as her Legislature did by a resolution of 1833, that the resolutions of 1798-99 gave no support to the nullifying doctrine of South Carolina. And well may the friends of Mr. Jefferson disclaim any sanction to it or to any *constitutional* right of nullification from his opinions. His meaning is fortunately rescued from such imputations by the very document procured from his files and so triumphantly appealed to by the nullifying partisans of every description. In this document the remedial right of nullification is expressly called a *natural* right, and, consequently, not a right derived from the Constitution, but from abuses or usurpations, releasing the parties to it from their obligation.\*

\* No example of the inconsistency of party zeal can be greater than is seen in the value allowed to Mr. Jefferson's authority by the nullifying party, while they disregard his repeated assertions of the Federal authority, even under the Articles of Confederation, to stop the commerce of a refractory State; while they abhor his opinions and propositions on the subject of slavery, and overlook his declaration that in a Republic it is a vital principle that the minority must yield to the majority. They seize on an expression of Mr. Jefferson, that nullification is the rightful remedy, as the Shibboleth of their party, and almost a sanctification of their cause. But in *addition* to their inconsistency, their zeal is guilty of the subterfuge of dropping a part of the language of Mr. Jefferson, which shows his meaning to be entirely at variance with the nullifying construction. His words in the document appealed to as the infallible test of his opinions are:

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Thus the right of nullification meant by Mr. Jefferson is the natural right, which all admit to be a remedy against insupportable oppression. It cannot be sup-

It is said that in several instances the authority and laws of the United States have been successfully nullified by the particular States. This may have occurred possibly in urgent cases, and in confidence that it would not be at variance with the construction of the Federal Government; or in cases where, operating within the nullifying State alone, it might be conceived as a lesser evil than a resort to force; or in cases not falling within the Federal jurisdiction; or, finally, in cases deemed by the States subversive of *their essential rights*, and justified, therefore; by the *natural* right of self-preservation. Be all this as it may, examples of nullification, though passing off without any immediate disturbance of the public order, are to be deplored, as weakening the common Government, and as undermining the Union. One thing seems to be certain, that the States which have exposed themselves to the charge of nulli-

posed for a moment that Mr. Jefferson would not revolt at the doctrine of South Carolina, that a single State could constitutionally resist a law of the Union while remaining within it; and, with the accession of a small minority of the others, overrule the will of a great majority of the whole, and constitutionally annul the law everywhere.

If the right of nullification meant by him had not been thus guarded against a perversion of it, let him be his own interpreter in his letter to Mr. Giles in December, 1826, in which he makes the rightful remedy of a State in an extreme case to be a separation from the Union, not a resistance to its authority while remaining in it. (a) The authority of Mr. Jefferson, therefore, belongs not, but is directly opposed, to the nullifying party who have so unwarrantably availed themselves of it.

(a) The following extract of a letter from Thomas Jefferson to James Madison, August 23, 1799, (MS.,) in which the last paragraph adds to what is said in his letter of September 5, 1799, to W. C. Nicholas, a proof that the right of a State, as a party to the contract, was not a right of a single one to resist or nullify the authority of the Union while a member, but a natural right to sever itself therefrom when subverting its essential and reserved right of self-government: "But determined were we to be disappointed in this, to sever ourselves from that Union we so much value, rather than give up the rights of self-government, which we have reserved, and in which alone we see liberty, safety, and happiness."

\* The asterisks on the preceding page are supposed to represent the following passage, from a paper purporting to be Mr. Jefferson's original draught of the Kentucky Resolutions, republished in the "Democratic Text Book of '98 and '99," (Philadelphia, 1834,) p. 29:

"That in cases of the abuse of the delegated power, the members of the General Government being chosen by the people, a change by the people would be the constitutional remedy; but where powers are assumed, which have not been delegated, a nullification of the act is the rightful remedy: that every State has a natural right in cases not within the compact [casus non federis] to nullify, of their own authority, all assumptions of power by others within their limits; that, without this right, they would be under the dominion, absolute and unlimited, of whomsoever might exercise this right of judgment for them; &c." [See Richmond Enquirer, March 13, 1-3.; U. S. Weekly Telegraph, vol. 5, p. 781, April 12, 1832; a letter from T. Jefferson Randolph to Warren R. Davis, of March 2, 1832, U. S. W. T., vol. 5, p. 519, March 19, 1832; and letters from Mr. Madison to Mr. Trist, June 3 and September 23, 1830; and to Mr. Everett, August 20 and September 16, 1830; ante, pp. 87, 110, 106, 109.]

fication, have, with the exception of South Carolina, disclaimed it as a *constitutional* right, and have, moreover, protested against it as *modified* by the process of South Carolina.

The conduct of Pennsylvania, and the opinions of Judges M'Kean and Tilghman, have been particularly dwelt on by the nullifiers. But the final acquiescence of the State in the authority of the Federal judiciary transfers their authority to the other scale, and it is believed that the opinions of the two judges have been superseded by those of their brethren, which have been since, and at the present time are, opposed to them.

Attempts have been made to show that the resolutions of Virginia contemplated a forcible resistance to the alien and sedition laws; and as evidence of it, the laws relating to the armory, and a *habeas corpus* for the protection of members of her Legislature, have been brought into view. It happens, however, as has been ascertained by the recorded dates, that the first of these laws was enacted prior to the alien and sedition laws. As to the last, it appears that it was a general law, providing for other emergencies as well as Federal arrests, and its applicability never tested by any occurrence under the alien and sedition laws. The law did not necessarily preclude an acquiescence in the supervising decision of the Federal judiciary, should that not sustain the *habeas corpus*, which, it might be calculated, would be sustained. And all must agree, that cases might arise of such violations of the security and privileges of representatives of the people as would justify the States in a resort to the *natural* law of self-preservation. The extent of the privileges of the Federal and State representatives of the people against criminal charges by the two authorities, reciprocally involves delicate questions, which it may be better to leave for those who are to decide on them, than unnecessarily to discuss them in advance. The moderate views of Virginia on the critical occasion of the alien and sedition laws are illustrated by the terms of the seventh resolution, with an eye to which the third resolution ought always to be expounded, by the unanimous erasure of the terms "null, void," &c., from the seventh article as it stood; and by the condemnation and im-



prisonment of Callender under the law, without the slightest opposition on the part of the State. So far was the State from countenancing the nullifying doctrine, that the occasion was viewed as a proper one for exemplifying its devotion to public order, and acquiescence in laws which it deemed unconstitutional, while those laws were not constitutionally repealed. The language of the Governor, in a letter to a friend, will best attest the principles and feelings which dictated the course pursued on the occasion.\*

It is sometimes asked in what mode the States could interpose in their collective character as parties to the Constitution against usurped power. It was not necessary for the object and reasoning of the resolutions and report, that the mode should be pointed out. It was sufficient to show that the authority to interpose existed, and was a resort beyond that of the Supreme Court of the United States, or any authority derived from the Constitution. The authority being plenary, the mode was of its own choice; and it is obvious that, if employed by the States as co-parties to and creators of the Constitution, it might either so explain the Constitution or so amend it as to

\* Extract of a letter from J. Monroe to J. Madison, dated Albemarle, May 15, 1800: "Besides, I think there is cause to suspect the sedition law will be carried into effect in this State at the approaching Federal court, and I ought to be there [Richmond] to aid in preventing trouble. A camp is formed of about 400 men at Warwick, four miles below Richmond, and no motive for it assigned except to proceed to Harper's Ferry to sow cabbage-seed. But the gardening season is passing, and this camp remains. I think it possible an idea may be entertained of opposition, and by means whereof the fair prospect of the Republican party may be overcast. But in this they are deceived, as certain characters in Richmond and some neighbouring counties are already warned of their danger, so that an attempt to excite a hot-water insurrection will fail."

Extract from another letter from J. Monroe to J. M., dated Richmond, June 4, 1800: "The conduct of the people on this occasion was exemplary, and does them the highest honour. They seemed aware the crisis demanded of them a proof of their respect for law and order, and resolved to show they were equal to it. I am satisfied a different conduct was expected from them, for everything that could was done to provoke it. It only remains that this business be closed on the part of the people, as it has been so far acted; that the judge, after finishing his career, go off in peace, without experiencing the slightest insult from any one; and that this will be the case I have no doubt."

provide a more satisfactory mode within the Constitution itself for guarding it against constructive or other violations.

It remains, however, for the nullifying expositors to specify the right and mode of interposition which the resolution meant to assign to the States *individually*. They cannot say it was a natural right to resist intolerable oppression; for that was a right not less admitted by all than the collective right of the States as parties to the Constitution, the non-denial of which was urged as a proof that it could not be meant by the resolutions.

They cannot say that the right meant was a constitutional right to resist the constitutional authority; for that is a contradiction in terms, as much as a legal right to resist a law.

They can find no middle ground between a natural and a constitutional right, on which a right of nullifying interposition can be placed; and it is curious to observe the awkwardness of the attempt by the most ingenious advocates [Upshur and Berrien.]

They will not rest the claim as modified by South Carolina, for that has scarce an advocate out of the State, and owes the remnant of its popularity there to the disguise under which it is now kept alive; some of the leaders of the party admitting its indefensibility in its naked shape.

The result is, that the nullifiers, instead of proving that the resolution meant nullification, would prove that it was altogether without meaning.

It appears from this review, that the right asserted and exercised by the Legislature, to *declare* an act of Congress unconstitutional, had been denied by the defenders of the alien and sedition acts as an interference with the judicial authority; and, consequently, that the reasonings employed by the Legislature were called for by the doctrines and inferences drawn from that authority, and were not an idle display of what no one denied.

It appears still farther, that the efficacious interposition contemplated by the Legislature was a concurring and co-operating interposition of the States, not that of a single State.

It appears that the Legislature expressly disclaimed the idea

that a declaration of a State that a law of the United States was unconstitutional, had the effect of *annulling* the law.

It appears that the object to be attained by the invited co-operation with Virginia was, as expressed in the third and seventh resolutions, to maintain within the several States their respective authorities, rights, and liberties, which could not be constitutionally different in different States, nor inconsistent with a sameness in the authority and laws of the United States in all and in each.

It appears that the means contemplated by the Legislature for attaining the object, were measures recognised and designated by the Constitution itself.

Lastly, it may be remarked that the concurring measures of the States, without any nullifying interposition whatever, did attain the contemplated object; a triumph over the obnoxious acts, and an apparent abandonment of them forever.

It has been said or insinuated that the proceedings of Virginia in 1798-99 had not the influence ascribed to them in bringing about that result. Whether the influence was or was not such as has been claimed for them, is a question that does not affect the meaning and intention of the proceedings. But as a question of fact the decision may be safely left to the recollection of those who were contemporary with the crisis, and to the researches of those who were not, taking for their guides the reception given to the proceedings by the Republican party everywhere, and the pains taken by it in multiplying republications of them in newspapers and in other forms.

What the effect might have been if Virginia had remained patient and silent, and still more if she had sided with South Carolina in favour of the alien and sedition acts, can be but a matter of conjecture.

What would have been thought of her if she had recommended the nullifying project of South Carolina, may be estimated by the reception given to it under all the factitious gloss, and in the midst of the peculiar excitement of which advantage has been taken by the partisans of that anomalous conceit.

It has been sufficiently shown, from the language of the report,

as has been seen, that the right in the States to interpose declarations and protests against unconstitutional acts of Congress had been denied; and that the reasoning in the resolutions was called for by that denial. But the triumphant tone with which it is affirmed and reiterated that the resolutions must have been directed against what no one denied, unless they were meant to assert the right of a single State to arrest and annul the acts of the Federal Legislature, makes it proper to adduce a proof of the fact that the declaratory right was denied, which, if it does not silence the advocate of nullification, must render every candid ear indignant at the repetition of the untruth.

The proof is found in the recorded votes of a large and respectable portion of the House of Delegates, at the time of passing the report.

A motion [see the journal] offered at the closing scene affirms "that protests made by the Legislature of this or any other State against particular acts of Congress as unconstitutional, accompanied by invitations to other States to join in such protests, are improper and unauthorized assumptions of power, not permitted nor intended to be permitted to the State legislatures. And inasmuch as *correspondent sentiments with the present* have been expressed by those of our sister States who have acted on the resolutions [of 1798,] Resolved, therefore, that the present General Assembly, convinced of the impropriety of the resolutions of the last Assembly, deem it inexpedient farther to act on the said resolutions."

On this resolution the votes, according to the yeas and nays, were fifty-seven of the former, ninety-eight of the latter.

Here, then, within the House of Delegates itself, more than one-third of the whole number *denied* the right of the State Legislature to proceed by acts merely declaratory against the constitutionality of acts of Congress, and affirmed, moreover, that the States who had acted on the resolutions of Virginia entertained the same sentiments. It is remarkable that the minority, who denied the right of the legislatures even to protest, admitted the right of the *States* in the capacity of *parties*, without claiming it for a single State.

With this testimony under the eye, it may surely be expected that it will never again be said that such a right had never been denied, nor the pretext again resorted to, that, without such a denial, the nullifying doctrine alone could satisfy the true meaning of the Legislature.\*

It has been asked whether every right has not its remedy; and what other remedy exists, under the Government of the United States, against usurpations of power, but a right in the States individually to annul and resist them.

The plain answer is, that the remedy is the same under the Government of the United States as under all other governments, established and organized on free principles. The first remedy is in the checks provided among the constituted authorities; that failing, the next is in the influence of the ballot-boxes and hustings; that again failing, the appeal lies to the power that made the Constitution, and can explain, amend, or remake it. Should this resort also fail, and the power usurped be sustained in its oppressive exercise on a minority by a majority, the final course to be pursued by the minority must be a subject of calculation, in which the degree of oppression, the means of resistance, the consequences of its failure, and the consequences of its success, must be the elements.

Does not this view of the case equally belong to every one of the States, Virginia for example?

Should the constituted authority of the State unite in usurping oppressive powers; should the constituent body fail to arrest the progress of the evil through the elective process, according to the forms of the Constitution; and should the authority which is above that of the Constitution, the majority of the people, inflexibly support the oppression inflicted on the minority, nothing would remain for the minority but to rally to its reserved rights, (for every citizen has his reserved rights, as exemplified

\* See the instructions to the members of Congress passed at the same session, which do not squint at the nullifying idea; see also the protest of the minority in the Virginia Legislature, and the report of the committee of Congress on the proceedings of Virginia.

in declarations prefixed to most of the State constitutions,) and to decide between acquiescence and resistance, according to the calculation above stated.

Those who question the analogy in this respect between the two cases, however different they may be in some other respects, must say, as some of them, with a boldness truly astonishing, do say, that the Constitution of the United States, which, as such, and under that name, was presented to and accepted by those who ratified it; which has been so deemed and so called by those living under it for nearly half a century; and, as such, sworn to by every officer, State as well as Federal, is yet no Constitution, but a treaty or league, or, at most, a Confederacy among nations, as independent and sovereign in relation to each other as before the charter which calls itself a Constitution was formed.

The same zealots must again say, as they do with a like boldness and incongruity, that the Government of the United States, which has been so deemed and so called from its birth to the present time; which is organized in the regular forms of representative governments, and, like them, operates directly on the individuals represented, and whose laws are declared to be the supreme law of the land, with a physical force in the Government for executing them, is yet no Government, but a mere agency, a power of attorney, revocable at the will of any of the parties granting it.

Strange as it must appear, there are some who maintain these doctrines and hold this language; and, what is stranger still, denounce those as heretics and apostates who adhere to the language and tenets of their fathers; and this is done with an exulting question, whether every right has not its remedy; and what remedy can be found against Federal usurpations other than that of a right in every State to nullify and resist the Federal acts at its pleasure?

Yet it may be safely admitted that every right has its remedy, as it must be admitted that the remedy under the Constitution lies where it has been marked out by the Constitution; and that no appeal can be consistently made from that remedy

by those who were and still profess to be parties to it, but the appeal to the parties themselves, having an authority above the Constitution, or to the law of nature and of nature's God.

It is painful to be obliged to notice such a sophism as that by which this inference is assailed. Because an unconstitutional law is no law, it is alleged that it may be constitutionally disobeyed by all who think it unconstitutional. The fallacy is so obvious that it can impose on none but the most biased or heedless observers. It makes no distinction, where the distinction is obvious and *essential*, between the case of a law *confessedly* unconstitutional and a case turning on a *doubt* and a *divided opinion* as to the meaning of the Constitution; on a question, not whether the Constitution ought or ought not to be obeyed, but on the question, what is the Constitution? And can it be seriously and deliberately maintained, that every individual, or every subordinate authority, or every party to the compact, has a right to take for granted that its construction is the infallible one, and to act upon it against the construction of all others, having an equal right to expound the instrument, nay, against regular expositions of the constituted authorities, with the tacit sanction of the community? Such a doctrine must be seen at once to be subversive of all constitutions, all laws, and all compacts. The provision made by a Constitution for its own exposition, through its own authorities and forms, must prevail while the Constitution is left to itself by those who made it, or until cases arise which justify a resort to the ultra-constitutional interpositions.

The main pillar of nullification is the assumption that sovereignty is a unit at once indivisible and unalienable; that the States, therefore, individually retain it entire as they originally held it; and, consequently, that no portion of it can belong to the United States.

But is not the Constitution itself necessarily the offspring of a sovereign authority? What but the highest political authority, a sovereign authority, could make such a Constitution? a Constitution which makes a Government; a Government which makes laws; laws which operate like the laws of all other Gov-

ernments, by a penal and physical force, on the individuals subject to the laws; and, finally, laws declared to be the supreme law of the land, anything in the Constitution or laws of the individual States notwithstanding.

And where does the sovereignty which makes such a Constitution reside? It resides, not in a single State, but in the people of each of the several States, uniting with those of the others in the express and solemn compact which forms the Constitution. To the extent of that compact or Constitution, therefore, the people of the several States must be a sovereign as they are a united people.

In like manner the constitutions of the States, made by the people as separated into States, were made by a sovereign authority, by a sovereignty residing in each of the States, to the extent of the objects embraced by their respective constitutions. And if the States be thus sovereign, though shorn of so many of the essential attributes of sovereignty, the United States, by virtue of the sovereign attributes with which they are endowed, may to that extent be sovereign, though destitute of the attributes of which the States are not shorn.

Such is the political system of the United States, *de jure* and *de facto*; and however it may be obscured by the ingenuity and technicalities of controversial commentators, its true character will be sustained by an appeal to the law and the testimony of the fundamental charter.

The more the political system of the United States is fairly examined, the more necessary it will be found to abandon the abstract and technical modes of expounding and designating its character; and to view it as laid down in the charter which constitutes it, as a system hitherto without a model, as neither a simple nor a consolidated Government, nor a Government altogether confederate, and, therefore, not to be explained so as to make it either, but to be explained and designated according to the actual division and distribution of political power on the face of the instrument.

A just inference from a survey of this political system is, that it is a division and distribution of political power nowhere else



to be found; a nondescript, to be tested and explained by itself alone; and that it happily illustrates the diversified modifications of which the representative principle of republicanism is susceptible, with a view to the conditions, opinions, and habits of particular communities.

That a sovereignty should have even been denied to the States in their united character, may well excite wonder when it is recollected that the Constitution which now unites them was announced by the Convention which formed it as dividing sovereignty between the Union and the States;\* that it was presented under that view by contemporary expositions recommending it to the ratifying authorities;† that it is proved to have been so understood by the language which has been applied to it constantly and notoriously; that this has been the doctrine and language, until a very late date, even by those who now take the lead in making a denial of it the basis of the novel notion of nullification.‡ So familiar is sovereignty in the United States to the thoughts, views, and opinions even of its polemic adversaries, that Mr. Rowan, in his elaborate speech in support of the indivisibility of sovereignty, relapsed, before the conclusion of his argument, into the idea that sovereignty was partly in the Union, partly in the States.§ Other champions of the rights of the States, among them Mr. Jefferson, might be appealed to as bearing testimony to the sovereignty of the United States. If Burr had been convicted of acts defined to be treason, which it is allowed can be committed only against a sovereign authority, who would then have pleaded the want of sovereignty in the United States? Quere: If there be no sovereignty in the United States, whether the crime denominated treason might not be committed without falling within the jurisdiction of the States, and, consequently, with impunity?

What seems to be an obvious and indefeasible proof that the

\* See the letter of the President of the Convention [Washington] to the old Congress.

† See *Federalist* and other proofs.

‡ See the report to the Legislature of South Carolina in 1828.

§ See his speech in the *Richmond Enquirer* of —.

people of the individual States, as composing the United States, must possess a sovereignty, at least in relation to foreign sovereignties, is, that on that supposition only, foreign governments would be willing or expected to maintain international relations with the United States. Let it be understood that the Government at Washington was not a National Government, representing a sovereign authority; and that the sovereignty resided absolutely and exclusively in the several States, as the only sovereigns and nations in our political system, and the diplomatic functionaries at the seat of the Federal Government would be obliged to close their communications with the Secretary of State, and with new commissions repair to Columbia, in South Carolina, and other seats of the State governments. They could no longer, as the representatives of a sovereign authority, hold intercourse with a functionary who was but the agent of a self-called government, which was itself but an agent representing no sovereign authority; nor of the States as separate sovereignties, nor a sovereignty in the United States which had no existence. For a like reason, the plenipotentiaries of the United States at foreign courts would be obliged to return home unless commissioned by the individual States. With respect to foreign nations, the confederacy of the States was held *de facto* to be a nation, or other nations would not have held national relations with it.

There is one view of the subject which ought to have its influence on those who espouse doctrines which strike at the authoritative origin and efficacious operation of the Government of the United States. The Government of the United States, like all governments free in their principles, rests on compact; a compact, not between the government and the parties who formed and live under it, but among the parties themselves; and the strongest of governments are those in which the compacts were most fairly formed and most faithfully executed.

Now all must agree that the compact in the case of the United States was duly formed, and by a competent authority. It was formed, in fact, by the people of the several States in their highest sovereign authority; an authority which could have

made the compact a mere league, or a consolidation of all entirely into one community. Such was their authority if such had been their will. It was their will to prefer to either the constitutional Government now existing; and this being undeniably established by a competent and even the highest human authority, it follows that the obligation to give it all the effect to which any government could be entitled, whatever the mode of its formation, is equally undeniable. Had it been formed by the people of the United States as one society, the authority could not have been more competent than that which did form it, nor would a consolidation of the people of the States into one people be different in validity or operation, if made by the aggregate authority of the people of the States, than if made by the plenary sanction given concurrently, as it was in their highest sovereign capacity. The government, whatever it be, resulting from either of these processes, would rest on an authority equally competent, and be equally obligatory and operative on those over whom it was established. Nor would it be in any respect less responsible, theoretically and practically, to the constituent body, in the one hypothesis than in the other, or less subject in extreme cases to be overthrown. The faith pledged in the compact being the vital principle of all free government, that is the true text by which political right and wrong are to be decided, and the resort to physical force justified, whether applied to the enforcement or the subversion of political power.

Whatever be the *mode* in which the *essential* authority established the Constitution, the structure of this, the power of this, the rules of exposition, the means of execution, must be the same; the tendency to consolidation or dissolution the same. The question whether "we the people" means the people in their aggregate capacity, acting by a numerical majority of the whole, or by a majority in each of all the States, the authority being equally valid and binding, the question is interesting but as an historical fact of merely speculative curiosity.

Whether the centripetal or centrifugal tendency be greatest, is a problem which experience is to decide; but it depends not

on the mode of the grant, but the extent and effect of the powers granted. The only distinctive circumstance is in the effect of a dissolution of the system on the resultum [?] of the parties, which, in the case of a system formed by the people, as that of the United States was, would replace the States in the character of separate communities, whereas a system founded by the people, as one community, would, on its dissolution, throw the people into a state of nature.\*

In conclusion, those who deny the possibility of a political system, with a divided sovereignty like that of the United States, must choose between a government purely consolidated and an association of governments purely federal. All republics of the former character, ancient or modern, have been found inefficient for order and justice within, and for security without. They have been either a prey to internal convulsions or to foreign invasions. In like manner all confederacies, ancient or modern, have been either dissolved by the inadequacy of their cohesion, or, as in the modern examples, continue to be monuments of the frailty of such forms. Instructed by these monitory lessons, and by the failure of an experiment of their own, (an experiment which, while it proved the frailty of mere federalism, proved also the frailties of republicanism without the control of a federal organization,) the United States have adopted a modification of political power, which aims at such a distribution of it as might avoid as well the evils of consolidation as the defects of federation, and obtain the advantages of both. Thus far, throughout a period of nearly half a century, the new and compound system has been successful beyond any of the forms of government, ancient or modern, with which it may be compared, having as yet discovered no defects which do not admit remedies

\* See letter of J. M. to D. Webster, of March 15, 1833. *Ante*, 293.

† The known existence of this control has a silent influence, which is not sufficiently adverted to in our political discussions, and which has doubtless prevented collisions in cases which might otherwise have threatened the fabric of the Union. Another preventive resource is in the fact noted by Montesquien, that if one member of a union become diseased, it is cured by the examples and the frowns of the others, before the contagion can spread.

compatible with its vital principles and characteristic features. It becomes all, therefore, who are friends of a government based on free principles, to reflect, that by denying the possibility of a system partly federal and partly consolidated, and who would convert ours into one either wholly federal or wholly consolidated, in neither of which forms have individual rights, public order, and external safety been all duly maintained, they aim a deadly blow at the last hope of true liberty on the face of the earth. Its enlightened votaries must perceive the necessity of such a modification of power as will not only divide it between the whole and the parts, but provide for occurring questions as well between the whole and the parts as between the parts themselves. A political system which does not contain an effective provision for a peaceable decision of all controversies arising within itself, would be a government in name only. Such a provision is obviously essential; and it is equally obvious that it cannot be either peaceable or effective by making every part an authoritative empire. The final appeal in such cases must be to the authority of the whole, not to that of the parts separately and independently. This was the view taken of the subject while the Constitution was under the consideration of the people.\* It was this view of it which dictated the clause declaring that the Constitution and laws of the United States should be the supreme law of the land, anything in the constitution or laws of any of the States to the contrary notwithstanding.† It was the same view which specially prohibited certain powers and acts to the States, among them any laws violating the obligation of contracts, and which dictated the appellate provision in the judicial act passed by the first Congress under the Constitution.‡ And it may be confidently foretold, that notwithstanding the clouds which a patriotic jealousy or other causes have at times thrown over the subject, it is the view which will be permanently taken of it, with a surprise hereafter that any other should ever have been contended for.

\* See Federalist, No. xxxix.

† See Article vi.

‡ See Article i.

TO WILLIAM C. RIVES.

JAN<sup>y</sup> 26. 1836.

DEAR SIR,—I return with thanks the papers you kindly favored me with an opportunity of perusing. They are not without interest, though superseded by the mass of information now before the public. I am sorry to find from this that so much uncertainty still clouds the issue of the controversy with France. Should it fail of an amicable adjustment by the parties themselves, it is quite possible that Great Britain may see in some of the consequences of a war between them, injuries overbalancing the incidental advantages accruing to herself, and successfully interpose her friendly offices. The spectacle in that case would be as marvellous as the state of things which led to it.

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TO CALEB CUSHING.

MONTPELLIER, Feb<sup>y</sup> 9, 1836.

DEAR SIR,—I have received your letter of the 3d instant, in closing a copy of your speech on the right of petition, &c., which certainly contains very able and interesting views of the subject. I do not wonder at your difficulty in understanding the import of the passage cited from my speech in the first Congress under the present Constitution, being myself at a loss for its precise meaning, obscured as it is by the vagueness of some of its language and the omission, which my memory cannot supply, of the “critical review” of the subject referred to, which, if not omitted, would probably have removed the obscurity.

Whilst I am fully aware that in the commendations bestowed on the career of my political life, you have done me far more than justice, I cannot be insensible to the kind partiality from which it proceeded; with my recognition of which I pray you to accept assurances of my cordial respects and good wishes.

## TO COMMITTEE OF CINCINNATI.

FEBRUARY 20, 1836.

I have received, fellow-citizens, your letter inviting me to a public dinner at Cincinnati on the 4th of March, to celebrate the expiration, on the preceding day, of the charter of the United States Bank; and requesting from me, if unable to attend, an appropriate sentiment to be given in my name by the company.

Retaining, as I do, my conviction, heretofore officially and otherwise expressed, that in expounding the Constitution in the case of the Bank, the decision of the nation had been sufficiently manifested to overrule individual opinions, and to sanction the power exercised in establishing such an institution, I cannot fail to be excused for declining to participate in a protest against it, as destitute of constitutional authority.

For the favourable and friendly sentiments expressed in your letter, I tender you my acknowledgments, with assurances of my great respect and good wishes.

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TO JOSEPH WOOD.FEB<sup>y</sup> 27, 1836.

I have received, sir, your letter of the 16th instant, requesting such information as I might be able to give pertaining to a biography of your father-in-law, the late Chief Justice Ellsworth.

My acquaintance with him was limited to the periods of our cotemporary services in public life, and to the occasional intercourse incident to it. As we happened to be thrown but little into the familiar situations which develop the features of personal and social character, I can say nothing particular as to either—certainly nothing that would be unfavorable. Of his public character I may say, that I always regarded his talents as of a high order, and that they were generally so regarded. As a speaker his reasoning was clear and close, and delivered

in a style and tone which rendered it emphatic and impressive. In the Convention which framed the Constitution of the U. States he bore an interesting part, and signed the instrument in its final shape, with the cordiality verified by the support he gave to its ratification. Whilst we were cotemporaries in the early sessions of Congress, he in the Senate and I in the House of Representatives, it was well understood that he was an able and operative member. It may be taken for certain, I believe, that the bill organizing the Judicial Department originated in his draft, and that it was not materially changed in its passage into a law. The journals of the session may be properly consulted on this as on other subjects in which he participated. Of his legal and judicial capacities, the proper test must be in the record and reports of the proceedings of the Supreme Court, whilst he presided in it. With these I have never had occasion to make myself particularly acquainted.

No epistolary correspondence having ever passed between us, my files of course contain nothing of that sort, nor is there among my papers a single manuscript from him, of any sort.

I am very sensible, sir, that these brief remarks must be considered rather as a proof of my respect for the object of your request than as a satisfactory compliance with it. Such as they are I tender them, with a confidence that your resort to other sources of aid to your undertaking will be of more avail to you.

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TO ———.

MARCH, 1836.

DEAR SIR,—The letter of Mr. Leigh to the General Assembly presents some interesting views of its important subject, and furnishes an excuse for reflections not inapposite to the present juncture.

The precise obligation imposed on a representative by the instructions of his constituents still divides the opinions of distinguished statesmen. This is the case in Great Britain, where such topics have been most discussed. It is also now the case,



more or less, here, and was so at the first Congress under the present Constitution, as appears from the register of debates, imperfectly as they were reported.

It being agreed by all, that whether an instruction be obeyed or disobeyed, the act of the representative is equally valid and operative, the question is a moral one between the representative and his constituents. If satisfied that the instruction expresses the will of his constituents, it must be with the representative to decide whether he will conform to an instruction opposed to his judgment, or will incur their displeasure by disobeying it; with them to decide in what mode they will manifest their displeasure. In a case necessarily appealing to the conscience of the representative, its paramount dictates must, of course, be his guide.

It is well known that the equality of the States in the Federal Senate was a compromise between the larger and the smaller States, the former claiming a proportional representation in both branches of the Legislature, as due to their superior population; the latter an equality in both, as a safeguard to the reserved sovereignty of the States, an object which obtained the concurrence of members from the larger States. But it is equally true, though but little adverted to as an instance of miscalculating speculation, that, as soon as the smaller States had secured more than a proportional share in the proposed Government, they became favourable to augmentations of its powers, and that, under the administration of the Government, they have generally, in contests between it and the State governments, leaned to the former. Whether the direct effect of instructions which would make the Senators dependent on the pleasure of their constituents, or the indirect effect inferred from such a tenure by Mr. Leigh, would be most favourable to the General Government or the State governments, is a question which, not being tested by practice, is left to individual opinions. My anticipations, I confess, do not accord with that in the letter.

Nothing is more certain than that the tenure of the Senate was meant as an obstacle to the instability, which not only history, but the experience of our country, had shown to be the

besetting infirmity of popular governments. Innovations, therefore, impairing the stability afforded by that tenure, without some compensating remodification of the powers of the Government, must affect the balance contemplated by the Constitution.

My prolonged life has made me a witness of the alternate popularity and unpopularity of each of the great branches of the Federal Government. I have witnessed, also, the vicissitudes, in the apparent tendencies in the Federal and State governments to encroach each on the authorities of the other, without being able to infer with certainty what would be the final operation of the causes as heretofore existing; while it is far more difficult to calculate the mingled and checkered influences on the future from an expanding territorial domain; from the multiplication of the parties to the Union; from the great and growing power of not a few of them; from the absence of external danger; from combinations of States in some quarters and collisions in others, and from questions incident to a refusal of unsuccessful parties to abide by the issue of controversies judicially decided. To these uncertainties may be added the effects of a dense population, and the multiplication and the varying relations of the classes composing it. I am far, however, from desponding of the great political experiment in the hands of the American people. Much has already been gained in its favour by the continued prosperity accompanying it through a period of so many years. Much may be expected from the progress and diffusion of political science in dissipating errors, opposed to the sound principles which harmonize different interests; from the geographical, commercial, and social ligaments, strengthened as they are by mechanical improvements, giving so much advantage to time over space; and, above all, by the obvious and inevitable consequences of the wreck of an ark, bearing, as we have flattered ourselves, the happiness of our country and the hope of the world. Nor is it unworthy of consideration, that the four great religious sects, running through all the States, will oppose an event placing parts of each under separate governments.

It cannot be denied that there are, in the aspect our country presents, phenomena of an ill omen; but it would seem that they proceed from a coincidence of causes, some transitory, others fortuitous, rarely if ever likely to recur; that, of the causes more durable, some can be greatly mitigated, if not removed, by the legislative authority; and such as may require and be worthy the "*intersit*"\* of a higher power can be provided for whenever, if ever, the public mind may be calm and cool enough for that resort.

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TO C. FENIMORE WILLISTON.

MARCH 19, 1836.

I have received, sir, your letter of the 9th, and am sorry that I cannot give you the information it requests; nor can I refer you to the source from which it may be most conveniently and successfully sought. I do not possess a copy of the printed correspondence between Mr. Jeremy Bentham and myself on the subject of his proposed "Codification for the U. States," nor even the original transcript of my part of it, for which I am at a loss to account. His letter to me covers 21 folio pages, closely written. That the correspondence "with others relating to the subject of American Codification" was printed in England in a Tract entitled "—————" appears from Mr. Bentham's Address in eight letters "to the citizens of the several U. States," in which it is mentioned, also, that the tract was forwarded to the Governors of the States, and that Mr. J. Q. Adams had taken charge of the whole. The archives of the States seem, therefore, the resort first presenting itself.

\* *Nec Deus intersit, nisi dignus vindice nodus  
Inciderit. Horat. Ep. ad Pis., 191.*

MONTPELLIER, April 19,\*1836.

DEAR SIR,—I have received the copy of your speech on the 28th of March. It is the only one I have read on the subject. It contains strong points, strongly sustained. I cannot but think, however, that the preservation of the original journals of the Legislature is undervalued; printed copies of transitory proceedings being generally neglected by the possessors—the more so, the greater the number of them circulated—and when not lost, always so dispersed as to be often inaccessible; while an original record known to exist in a central repository can always be consulted for public or private purposes; an advantage improvable by adding other repositories, selected as safeguards against casualties, and for a more convenient resort.

In the late republication of the journals of the House of Delegates, much difficulty and delay was experienced in collecting printed copies, and I believe that the journals of one session were never obtained. The case was far worse with the journals of the Senate, of which republication was not attempted.

The increasing pressure of my infirmities obliges me to dictate this acknowledgment of your kind attention to another pen, instead of employing my own, in the clumsy state of my fingers.

Mrs. Madison joins me in respectful salutations to yourself and Mrs. Rives, who we understand is now with you, and in assurances of our cordial regards and best wishes for you both.

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TO B. W. LEIGH.

MONTPELLIER, May 1. 1836.

DEAR SIR,—I have received a copy of your speech on the 4th and 5th of April, and on the supposition that I may be indebted for it to your politeness, I tender you my acknowledgments accordingly.

\* At this date, it is deemed proper to notice a letter, signed, "JAMES MADISON," copied from Ruffin's "Farmer's Register" into *Niles's Weekly Register* for July 2, 1836, [Vol. 50, p 298.] and, in the Index (p vi.) to that volume, attributed to *Ex-President* Madison. The letter is dated "Richmond, March 23<sup>d</sup>, 1836.

Its diction is sufficiently in contrast with the terse and graceful English, which was habitual with the *Ex-President*, both in writing and in conversation, to disprove the hasty and inadvertent supposition that the letter was his. To this

The increasing pressure of my infirmities has of late rendered my attention to the public proceedings very superficial. To the expunging question I have paid very little. The views taken in your speech of some, at least, of its branches appear "*sans replique.*" It is clear, I think, that a preservation of the original journals derives, from their legal authenticity and constant accessibility at a known spot for public or private purposes, a peculiar value; the liability of printed copies to dispersion, if not entire loss, being inconvenient for research, if to be found at all. The late republication of the Legislative journals of Virginia furnishes examples of both. Those of one session were left a blank, and it was not without much difficulty and delay that the imperfect set was finally obtained.

I pray you, sir, to accept, with the assurance of my esteem, my best wishes.

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TO C. FENIMORE WILLISTON.

MAY 13, 1836.

I have received, sir, your letter of the 6th. I know of no propositions to codify the laws of the United States, or of any particular State, on the plan of Mr. Bentham, other than those made by Mr. B. himself. Most of the States have doubtless revised their laws, with a view to their general improvement, and adaptation of them to the change of Government by the Declaration of Independence. Such were the objects of Virginia in her revised code, prepared immediately after that event. The work has been long out of print and perhaps may not easily be found. The particular task executed by Mr. Livingston on the subject of penal laws is probably not unknown to you. In my very feeble condition, in the 86th year of my age, and with serious inroads on my health, I must be pardoned for referring you to other sources for answers to your enquiries. At Washington there are individuals from every State who can readily answer such.

internal evidence, of itself conclusive, may be added the ascertained fact, that at the date of the letter he was at his home in Orange County, Va., to which he had long been confined by bodily infirmities, attended by great suffering, and where he constantly remained till his death on the 28<sup>th</sup> of June, 1836.

TO C. J. INGERSOLL.

MONTPELLIER, May 14, 1836.

SIR,—Mr. Madison being at present too much indisposed to use his own pen, desires me to acknowledge the receipt of your letter of the 9th instant, and to thank you for your friendly solicitude on the subject of his health. I am sorry to say that the change in it since you left Montpelier has not been favorable. You need not be assured of the pleasure he always feels in the society of his friends, especially the most intelligent and enlightened of them, when his condition permits him to enjoy it.

No favorable moment, he thinks, ought to be omitted to press on G. Britain a settlement of the great questions of free goods and free sailors in the neutral vessels, blockades, contraband of war, &c. He recollects that a letter to you some years ago sketched the grounds on which the principle, "free ships free goods," might even then claim, as *de jure*, to be a law of nations; and in the present state of the world, with the prospect of an American navy which will equal hers in a few years, she can no longer hope to continue mistress of the seas. The Trident, if there be one, must pass to this hemisphere, where it may be hoped it will be less abused than it has been on the other. The effects of a due reform of belligerent claims on the ocean will change essentially the relations between them and neutrals, and make the latter, not the former, the gainers in time of war. On the subject of Blockades, a communication of the British Government brought by Mr. Merry came fully up to our demands. It resulted from our protest against a spurious blockade of the Islands of Martinique and Guadalupe, by Admiral Duckworth. The case merits a resort for an explanation of it to the records and files in the Department of State. Mrs. Madison, with her niece and son, beg to be united in the expression of all the good wishes felt at Montpelier for yourself and Miss Ingersoll.

J. C. PAYNE.

TO JOHN ROBERTSON.

J. Madison, with his best respects to Mr. Robertson, thanks him for the copy of his speech delivered in the House of Representatives on the 5th and 6th of April.

In his present condition, the combined effect of his very advanced age, and of indisposition much increased within a short period, he has been able to make himself but slightly acquainted with some of the subjects embraced in the speech. He may safely say that it is characterized by much ability in the views taken of many of them; and the aspect presented by some is deeply interesting to the career of our political system. On the distribution of the proceeds of the public lands the speech appears to be entirely successful in shewing that the bill in its present form encounters no insuperable difficulties, and that the fund is rightfully owned by the people of the Union unless it be without an owner.

MONTPELLIER, May 23d, 1836.

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TO GEORGE TUCKER.

JUNE 27, 1836.

MY DEAR SIR,—I have received your letter of June 17th, with the paper enclosed in it.

Apart from the value put on such a mark of respect from you in a dedication of your "Life of Mr. Jefferson" to me, I could only be governed in accepting it by my confidence in your capacity to do justice to a character so interesting to his country and to the world; and, I may be permitted to add, with whose principles of liberty and political career mine have been so extensively congenial.

It could not escape me that a feeling of personal friendship has mingled itself greatly with the credit you allow to my public services. I am, at the same time, justified by my consciousness in saying, that an ardent zeal was always felt to make up for deficiencies in them by a sincere and steadfast co-operation in

promoting such a reconstruction of our political system as would provide for the permanent liberty and happiness of the United States; and that of the many good fruits it has produced which have well rewarded the efforts and anxieties that led to it, no one has been a more rejoicing witness than myself.

With cordial salutations on the near approach to the end of your undertaking, &c.



MISCELLANEOUS WRITINGS.



## ADVICE TO MY COUNTRY.

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As this advice, if it ever see the light, will not do so till I am no more, it may be considered as issuing from the tomb, where truth alone can be respected, and the happiness of man alone consulted. It will be entitled, therefore, to whatever weight can be derived from good intentions, and from the experience of one who has served his Country in various stations through a period of forty years; who espoused in his youth, and adhered through his life, to the cause of its liberty; and who has borne a part in most of the great transactions which will constitute epochs of its destiny.

The advice nearest to my heart and deepest in my convictions is, THAT THE UNION OF THE STATES BE CHERISHED AND PERPETUATED. LET THE OPEN ENEMY TO IT BE REGARDED AS A PANDORA WITH HER BOX OPENED, AND THE DISGUISED ONE AS THE SERPENT CREEPING WITH HIS DEADLY WILES INTO PARADISE.



## APPENDIX II.

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### INSTRUCTIONS TO DR. FRANKLIN AND MR. JAY CONCERNING THE FREE NAVIGATION OF THE MISSISSIPPI, &C.

On the 4th of October, 1780, Congress unanimously resolved that Mr. Jay should adhere to his former instructions respecting the right to the free navigation of the Mississippi river; and to the boundaries of the United States as already fixed by Congress. On the 6th of October Mr. Madison, Mr. Sullivan, and Mr. Duane were appointed a committee "to draft a letter to the Ministers of the United States at the Courts of Versailles and Madrid to enforce the instructions given to Mr. Jay on the 4th instant, and to explain the reasons and principles on which the same are founded, that they may respectively be enabled to satisfy those Courts of the justice and equity of the intentions of Congress." On the 17th of October the committee reported a draft, written by Mr. MADISON, which was agreed to as follows:

SIR,—Congress having, in their instructions of the 4th instant, directed you to adhere strictly to their former instructions relating to the boundaries of the United States, to insist on the navigation of the Mississippi for the citizens of the United States in common with the subjects of his Catholic Majesty, as, also, on a free port or ports below the northern limit of West Florida, and accessible to merchant ships for the use of the former, and being sensible of the influence which these claims on the part of the United States may have on your negotiations with the Court of Madrid, have thought it expedient to explain the reasons and principles on which the same are founded, that you may be enabled to satisfy that Court of the equity and justice of their intentions.

With respect to the first of these articles, by which the river Mississippi is fixed as the boundary between the Spanish settlements and the United States, it is unnecessary to take notice of any pretensions founded on a priority of discovery, of occupancy, or on conquest. It is sufficient that by the definitive treaty of Paris, of 1763, article seventh, all the territory now claimed by the United States was expressly and irrevocably ceded to the King of Great Britain; and that the United States are, in consequence of the revolution in their Government, entitled to the benefits of that cession.

The first of these positions is proved by the treaty itself. To prove the last, it must be observed, that it is a fundamental principle in all lawful Governments, and particularly in the constitution of the British empire, that all the rights of sovereignty are intended for the benefit of those from whom they are

derived, and over whom they are exercised. It is known, also, to have been held for an inviolable principle by the United States while they remained a part of the British empire, that the sovereignty of the King of England, with all the rights and powers included in it, did not extend to them in virtue of his being acknowledged and obeyed as King by the people of England, or of any other part of the empire, but in virtue of his being acknowledged and obeyed as King of [by ?] the people of America themselves; and that this principle was the basis, first of their opposition to, and finally of their abolition of, his authority over them. From these principles it results, that all the territory lying within the limits of the States, as fixed by the sovereign himself, was held by him for their particular benefits, and must, equally with his other rights and claims in quality of their sovereign, be considered as having devolved on them, in consequence of their resumption of the sovereignty to themselves.

In support of this position it may be further observed, that all the territorial rights of the King of Great Britain within the limits of the United States accrued to him from the enterprises, the risks, the sacrifices, the expense in blood and treasure, of the present inhabitants and their progenitors. If in latter times expenses and exertions have been borne by any other part of the empire, in their immediate defence, it need only be recollected that the ultimate object of them was the general security and advantage of the empire; that a proportional share was borne by the States themselves; and that if this had not been the case, the benefits resulting from an exclusive enjoyment of their trade [would] have been an abundant compensation. Equity and justice, therefore, perfectly coincide in the present instance with political and constitutional principles.

No objection can be pretended against what is here said, except that the King of Great Britain was, at the time of the rupture with his Catholic Majesty, possessed of certain parts of the territory in question, and, consequently, that his Catholic Majesty had, and still has, a right to regard them as lawful objects of conquest. In answer to this objection, it is to be considered: 1. That these possessions are few in number and confined to small spots. 2. That a right founded on conquest being only coextensive with the objects of conquest, cannot comprehend the circumjacent territory. 3. That if a right to the said territory depended on the conquests of the British posts within it, the United States have already a more extensive claim to it than Spain can acquire, having, by the success of their arms, obtained possession of all the important posts and settlements on the Illinois and Wabash, rescued the inhabitants from British domination, and established civil Government in its proper form over them. They have, moreover, established a post on a strong and commanding situation near the mouth of the Ohio; whereas, Spain has a claim by conquest to no post above the northern bounds of West Florida, except that of the Natchez, nor are there any other British posts below the mouth of the Ohio for their arms to be employed against. 4. That whatever extent ought to be as-

cribed to the right of conquest, it must be admitted to have limitations which, in the present case, exclude the pretensions of his Catholic Majesty. If the occupation by the King of Great Britain of posts within the limits of the United States, as defined by charters derived from the said King when constitutionally authorized to grant them, makes them lawful objects of conquest to any other power than the United States, it follows that every other part of the United States that now is or may hereafter fall into the hands of the enemy is equally an object of conquest. Not only New York, Long Island, and the other islands in its vicinity, but almost the entire States of South Carolina and Georgia, might, by the interposition of a foreign Power at war with their enemy, be forever severed from the American Confederacy, and subjected to a foreign yoke. But is such a doctrine consonant to the rights of nations or the sentiments of humanity? Does it breathe that spirit of concord and amity which is the aim of the proposed alliance with Spain? Would it be admitted by Spain herself, if it affected her own dominions? Were, for example, a British armament by a sudden enterprise to get possession of a sea-port, a trading town, or maritime province in Spain, and another Power at war with Britain should, before it could be reconquered by Spain, wrest it from the hands of Britain, would Spain herself consider it as an extinguishment of her just pretensions? or would any impartial nation consider it in that light? As to the proclamation of the King of Great Britain of 1763, forbidding his Governors in North America to grant lands westward of the sources of the rivers falling into the Atlantic ocean, it can by no rule of construction militate against the present claims of the United States. That proclamation, as is clear both from the title and tenor of it, was intended merely to prevent disputes with the Indians, and an irregular appropriation of vacant land to individuals; and by no means either to renounce any parts of the cessions made in the treaty of Paris, or to affect the boundaries established by ancient charters. On the contrary, it is expressly declared that the lands and territory prohibited to be granted were within the sovereignty and dominion of that crown, notwithstanding the reservation of them to the use of the Indians.

The right of the United States to western territory as far as the Mississippi having been shown, there are sufficient reasons for them to insist on that right, as well as for Spain not to wish a relinquishment of it.

In the first place, the river Mississippi will be a more natural, more distinguishable, and more precise boundary than any other that can be drawn eastward of it; and, consequently, will be less liable to become a source of those disputes which too often proceed from uncertain boundaries between nations.

Secondly, it ought not to be concealed, that although the vacant territory adjacent to the Mississippi should be relinquished by the United States to Spain, yet the fertility of its soil and its convenient situation for trade might be productive of intrusions by the citizens of the former, which their great distance would render it difficult to restrain, and which might lead to an inter-

ruption of that harmony which it is so much the interest and wish of both should be perpetual.

Thirdly, as this territory lies within the charter limits of particular States, and is considered by them as no less their property than any other territory within their limits, Congress could not relinquish it without exciting discussions between themselves and those States, concerning their respective rights and powers, which might greatly embarrass the public councils of the United States, and give advantage to the common enemy.

Fourthly, the territory in question contains a number of inhabitants, who are at present under the protection of the United States, and have sworn allegiance to them. These could not by voluntary transfer be subjected to a foreign jurisdiction, without manifest violation of the common rights of mankind, and of the genius and principles of the American governments.

Fifthly, in case the obstinacy and pride of Great Britain should for any length of time continue an obstacle to peace, a cession of this territory, rendered of so much value to the United States by its particular situation, would deprive them of one of the material funds on which they rely for pursuing the war against her. On the part of Spain, this territorial fund is not needed for, and, perhaps, could not be applied to, the purposes of the war, and from its situation is otherwise of much less value to her than to the United States.

Congress have the greater hopes that the pretensions of his Catholic Majesty on this subject will not be so far urged as to prove an insuperable obstacle to an alliance with the United States, because they conceive such pretensions to be incompatible with the treaties subsisting between France and them, which are to be the basis and substance of it. By article eleventh of the treaty of alliance, eventual and defensive, the possessions of the United States are guaranteed to them by his most Christian Majesty. By article twelfth of the same treaty, intended to fix more precisely the sense and application of the preceding article, it is declared, that this guaranty shall have its full force and effect the moment a rupture shall take place between France and England. All the possessions, therefore, belonging to the United States at the time of that rupture, which being prior to the rupture between Spain and England, must be prior to all claims of conquest by the former, are guaranteed to them by his most Christian Majesty.

Now, that in the possessions thus guaranteed was meant, by the contracting parties, to be included all the territory within the limits assigned to the United States by the treaty of Paris, may be inferred from the fifth article of the treaty above mentioned, which declares, that if the United States should think fit to attempt the reduction of the British power remaining in the northern parts of America, or the Islands of Bermudas, &c., those countries shall, in case of success, be confederated with, or dependent upon, the United States. For, if it had been understood by the parties that the western territory in question, known to be of so great importance to the United States, and a reduction



of it so likely to be attempted by them, was not included in the general guaranty, can it be supposed that no notice would have been taken of it, when the parties extended their views, not only to Canada, but to the remote and unimportant Island of Bermudas? It is true, that these acts between France and the United States are in no respects obligatory on his Catholic Majesty, unless he shall think fit to accede to them. Yet, as they show the sense of his most Christian Majesty on this subject, with whom his Catholic Majesty is intimately allied; as it is in pursuance of an express reservation to his Catholic Majesty in a secret act subjoined to the treaties aforesaid of a power to accede to those treaties, that the present overtures are made on the part of the United States; and as it is particularly stated in that act, that any conditions which his Catholic Majesty shall think fit to add are to be analogous to the principal aim of the alliance, and conformable to the rules of equality, reciprocity, and friendship, Congress entertain too high an opinion of the equity, moderation, and wisdom of his Catholic Majesty not to suppose, that when joined to these considerations, they will prevail against any mistaken views of interest that may be suggested to him.

The next object of the instructions is the free navigation of the Mississippi for the citizens of the United States, in common with the subjects of his Catholic Majesty.

On this subject, the same inference may be made from article seventh of the treaty of Paris, which stipulates this right in the amplest manner to the King of Great Britain; and the devolution of it to the United States, as was applied to the territorial claims of the latter. Nor can Congress hesitate to believe, even if no such right could be inferred from that treaty, that the generosity of his Catholic Majesty would not suffer the inhabitants of these States to be put into a worse condition, in this respect, by the alliance with him in the character of a sovereign people, than they were in when subjects of a power who was always ready to turn their force against his Majesty; especially as one of the great objects of the proposed alliance is to give greater effect to the common exertions for disarming that power of the faculty of disturbing others. Besides, as the United States have an indisputable right to the possession of the east bank of the Mississippi for a very great distance, and the navigation of that river will essentially tend to the prosperity and advantage of the citizens of the United States that may reside on the Mississippi or the waters running into it, it is conceived that the circumstances of Spain's being in possession of the banks on both sides near its mouth, cannot be deemed a natural or equitable bar to the free use of the river. Such a principle would authorize a nation disposed to take advantage of circumstances to contravene the clear indications of nature and Providence, and the general good of mankind.

The usage of nations accordingly seems, in such cases, to have given to those holding the mouth or lower parts of a river no right against those above

them, except the right of imposing a moderate toll, and that on the equitable supposition, that such toll is due for the expense and trouble the former may have been put to. "An innocent passage (says Vattel) is due to all nations with whom a State is at peace; and this duty comprehends troops equally with individuals." If a right to a passage by land through other countries may be claimed for troops, which are employed in the destruction of mankind, how much more may a passage by water be claimed for commerce, which is beneficial to all nations?

Here, again, it ought not to be concealed that the inconveniences which must be felt by the inhabitants on the waters running westwardly, under an exclusion from the free use of the Mississippi, would be a constant and increasing source of disquietude on their part, of more vigorous precautions on the part of Spain, and of an irritation on both parts, which it is equally the interest and duty of both to guard against.

But notwithstanding the equitable claim of the United States to the free navigation of the Mississippi, and its great importance to them, Congress have so strong a disposition to conform to the desires of his Catholic Majesty, that they have agreed that such equitable regulations may be entered into as may be a requisite security against contraband; provided, the point of right be not relinquished, and a free port or ports below the thirty first degree of north latitude, and accessible to merchant ships, be stipulated to them.

The reason why a port or ports, as thus described, was required, must be obvious. Without such a stipulation the free use of the Mississippi would, in fact, amount to no more than a free intercourse with New Orleans and other ports of Louisiana. From the rapid current of this river, it is well known that it must be navigated by vessels of a peculiar construction, and which will be unfit to go to sea. Unless, therefore, some place be assigned to the United States where the produce carried down the river, and the merchandise arriving from abroad, may be deposited till they can be respectively taken away by the proper vessels, there can be no such thing as a foreign trade.

There is a remaining consideration respecting the navigation of the Mississippi which deeply concerns the maritime Powers in general, but more particularly their most Christian and Catholic Majesties. The country watered by the Ohio, with its large branches, having their sources near the lakes on one side, and those running northwestward and falling into it on the other side, will appear from a single glance on a map to be of vast extent. The circumstance of its being so finely watered, added to the singular fertility of its soil, and other advantages presented by a new country, will occasion a rapidity of population not easy to be conceived. The spirit of emigration has already shown itself in a very strong degree, notwithstanding the many impediments which discourage it. The principal of these impediments is the war with Britain, which cannot spare a force sufficient to protect the emigrants against the incursions of the savages. In a very few years after peace shall take place,

this country will certainly be overspread with inhabitants. In like manner as in all new settlements, agriculture, not manufactures, will be their employment. They will raise wheat, corn, beef, pork, tobacco, hemp, flax, and in the Southern parts, perhaps, rice and indigo, in great quantities. On the other hand, their consumption of foreign manufactures will be in proportion, if they can be exchanged for the produce of their soil. There are but two channels through which such commerce can be carried on; the first is down the river Mississippi; the other is up the rivers having their sources near the lakes, thence by short portages to the lakes, or the rivers falling into them, and thence through the lakes and down the St. Lawrence. The first of these channels is manifestly the most natural, and by far the most advantageous. Should it, however, be obstructed, the second will be found far from impracticable. If no obstructions should be thrown in its course down the Mississippi, the exports from this immense tract of country will not only supply an abundance of all necessaries for the West India Islands, but serve for a valuable basis of general trade, of which the rising spirit of commerce in France and Spain will no doubt particularly avail itself. The imports will be proportionally extensive; and from the climate, as well as from other causes, will consist of the manufactures of the same countries. On the other hand, should obstructions in the Mississippi force this trade into a contrary direction through Canada, France, and Spain, the other maritime Powers will not only lose the immediate benefit of it themselves, but they will also suffer by the advantage it will give to Great Britain. So fair a prospect could not escape the commercial sagacity of this nation. She would embrace it with avidity. She would cherish it with the most studious care. And should she succeed in fixing it in that channel, the loss of her exclusive possession of the trade of the United States might prove a much less decisive blow to her maritime pre-eminence and tyranny than has been calculated.

The last clause of the instructions respecting the navigation of the waters running out of Georgia through West Florida, not being included in the ultimatum, nor claimed on a footing of right, requires nothing to be added to what it speaks itself.

The utility of the privileges asked to the State of Georgia, and, consequently, to the Union, is apparent from the geographical representation of the country. The motives for Spain to grant it must be found in her equity, generosity, and disposition to cultivate our friendship and intercourse.

These observations, you will readily discern, are not communicated in order to be urged at all events, and as they here stand in support of the claims to which they relate. They are intended for your private information and use, and are to be urged so far and in such forms only as will best suit the temper and sentiments of the Court at which you reside, and best fulfil the objects of them.

## ADDRESS OF CONGRESS TO THE STATES.

On the 18th of April, 1783, Congress passed resolutions recommending, as necessary for restoring the public credit, and for paying the principal and interest of the public debt, that Congress should be invested with the power to lay certain specific duties; that the States themselves should levy a revenue to furnish their respective quotas of a yearly aggregate of one million five hundred thousand dollars for paying the interest of the public debt; and that they should make liberal cessions to the Union of their territorial claims. A committee, consisting of Mr. Madison, Mr. Ellsworth, and Mr. Hamilton, was appointed to prepare an address to the States, to accompany the resolutions. On the 26th of April, the committee reported a draft (written by Mr. MADISON) of the address, which was agreed to, as follows:

*Address to the States, by the United States in Congress assembled.*

The prospect which has for some time existed, and which is now happily realized, of a successful termination of the war, together with the critical exigencies of public affairs, have made it the duty of Congress to review and provide for the debts which the war has left upon the United States, and to look forward to the means of obviating dangers which may interrupt the harmony and tranquillity of the Confederacy. The result of their mature and solemn deliberations on these great objects is contained in their several recommendations of the 18th instant herewith transmitted. Although these recommendations speak themselves the principles on which they are founded, as well as the ends which they propose, it will not be improper to enter into a few explanations and remarks, in order to place in a stronger view the necessity of complying with them.

The first measure recommended is, effectual provision for the debts of the United States. The amount of these debts, as far as they can now be ascertained, is 42,000,375 dollars, as will appear by the schedule No. 1. To discharge the principal of this aggregate debt at once, or in any short period, is evidently not within the compass of our resources; and even if it could be accomplished, the ease of the community would require that the debt itself should be left to a course of gradual extinguishment, and certain funds be provided for paying, in the mean time, the annual interest. The amount of the annual interest, as will appear by the paper last referred to, is computed to be 2,415,956 dollars. Funds, therefore, which will certainly and punctually produce this annual sum, at least, must be provided.

In devising these funds, Congress did not overlook the mode of supplying the common treasury, provided by the Articles of Confederation; but after the most respectful consideration of that mode, they were constrained to regard it as inadequate and inapplicable to the form into which the public debt must be thrown. The delays and uncertainties incident to a revenue to be established

and collected, from time to time, by thirteen independent authorities, is, at first view, irreconcilable with the punctuality essential in the discharge of the interest of a national debt. Our own experience, after making every allowance for transient impediments, has been a sufficient illustration of this truth. Some departure, therefore, in the recommendations of Congress, from the Federal Constitution, was unavoidable; but it will be found to be as small as could be reconciled with the object in view, and to be supported besides by solid considerations of interest and sound policy.

The fund which first presented itself on this, as it did on a former occasion, was a tax on imports. The reasons which recommended this branch of revenue have heretofore been stated in an act, of which a copy, No. 2, is now forwarded, and need not be here repeated. It will suffice to recapitulate, that taxes on consumption are always least burthensome, because they are least felt, and are borne, too, by those who are both willing and able to pay them; that, of all taxes on consumption, those on foreign commerce are most compatible with the genius and policy of free States; that from the relative positions of some of the more commercial States, it will be impossible to bring this essential resource into use without a concerted uniformity; that this uniformity cannot be concerted through any channel so properly as through Congress, nor for any purpose so aptly as for paying the debts of a revolution, from which an unbounded freedom has accrued to commerce.

In renewing this proposition to the States, we have not been unmindful of the objections which heretofore frustrated the unanimous adoption of it. We have limited the duration of the revenue to the term of 25 years; and we have left to the States themselves the appointment of the officers who are to collect it. If the strict maxims of national credit alone were to be consulted, the revenue ought manifestly to be co-existent with the object of it, and the collection placed in every respect under that authority which is to dispense the former, and is responsible for the latter. These relaxations will, we trust, be regarded, on one hand, as the effect of a disposition in Congress to attend at all times to the sentiments of those whom they serve, and, on the other hand, as a proof of their anxious desire that provision may be made in some way or other for an honorable and just fulfilment of the engagements which they have formed.

To render this fund as productive as possible, and at the same time to narrow the room for collusions and frauds, it has been judged an improvement of the plan to recommend a liberal duty on such articles as are most susceptible of a tax according to their quantity, and are of most equal and general consumption; leaving all other articles, as heretofore proposed, to be taxed according to their value.

The amount of this fund is computed to be 915,956 dollars. The estimates on which the computation is made are detailed in paper No. 3. Accuracy in the first essay on so complex and fluctuating a subject is not to be expected.

It is presumed to be as near the truth as the defect of proper materials would admit.

The residue of the computed interest is 1,500,000 dollars, and is referred to the States to be provided for by such funds as they may judge most convenient. Here again the strict maxims of public credit gave way to the desire of Congress to conform to the sentiments of their constituents. It ought not to be omitted, however, with respect to this portion of the revenue, that the mode in which it is to be supplied varies so little from that pointed out in the Articles of Confederation, and the variations are so conducive to the great object proposed, that a ready and unqualified compliance on the part of the States may be more justly expected. In fixing the quotas of this sum, Congress, as may be well imagined, were guided by very imperfect lights, and some inequalities may consequently have ensued. These, however, can be but temporary, and, as far as they may exist at all, will be redressed by a retrospective adjustment, as soon as a constitutional rule can be applied.

The necessity of making the two foregoing provisions one indivisible and irrevocable act, is apparent. Without the first quality, partial provision only might be made where complete provision is essential; nay, as some States might prefer and adopt one of the funds only, and the other States the other fund only, it might happen that no provision at all would be made; without the second, a single State out of the thirteen might at any time involve the nation in bankruptcy, the mere practicability of which would be a fatal bar to the establishment of national credit. Instead of enlarging on these topics, two observations are submitted to the justice and wisdom of the Legislatures. First: The present creditors, or rather the domestic part of them, having either made their loans for a period which has expired, or having become creditors in the first instance involuntarily, are entitled, on the clear principles of justice and good faith, to demand the principal of their credits, instead of accepting the annual interest. It is necessary, therefore, as the principal cannot be paid to them on demand, that the interest should be so effectually and satisfactorily secured as to enable them, if they incline, to transfer their stock at its full value. Secondly, if the funds be so firmly constituted as to inspire a thorough and universal confidence, may it not be hoped that the capital of the domestic debt, which bears the high interest of six per cent., may be cancelled by other loans obtained at a more moderate interest? The saving by such an operation would be a clear one, and might be a considerable one. As a proof of the necessity of substantial funds for the support of our credit abroad, we refer to paper No. 4.

Thus much for the interest of the national debt; for the discharge of the principal within the term limited, we rely on the natural increase of the revenue from commerce, on requisitions to be made, from time to time, for that purpose, as circumstances may dictate, and on the prospect of vacant territory. If these resources should prove inadequate, it will be necessary, at the expira-

tion of 25 years, to continue the funds now recommended, or to establish such others as may then be found more convenient.

With a view to the resource last mentioned, as well as to obviate disagreeable controversies and confusions, Congress have included in their present recommendations a renewal of those of the 6th day of September, and of the 10th day of October, 1780. In both those respects, a liberal and final accommodation of all interfering claims of vacant territory is an object which cannot be pressed with too much solicitude.

The last object recommended is, a constitutional change of the rule by which a partition of the common burthens is to be made. The expediency, and even necessity of such a change, has been sufficiently enforced by the local injustice and discontents which have proceeded from valuations of the soil in every State where the experiment has been made. But how infinitely must these evils be increased, on a comparison of such valuation among the States themselves! On whatever side indeed this rule be surveyed, the execution of it must be attended with the most serious difficulties. If the valuations be referred to the authorities of the several States, a general satisfaction is not to be hoped for; if they be executed by officers of the United States traversing the country for that purpose, besides the inequalities against which this mode would be no security, the expense would be both enormous and obnoxious; if the mode taken in the act of the 17th day of February last, which was deemed on the whole least objectionable, be adhered to, still the insufficiency of the data to the purpose to which they are to be applied must greatly impair, if not utterly destroy, all confidence in the accuracy of the result; not to mention that, as far as the result can be at all a just one, it will be indebted for the advantage to the principle on which the rule proposed to be substituted is founded. This rule, although not free from objections, is liable to fewer than any other that could be devised. The only material difficulty which attended it in the deliberations of Congress, was to fix the proper difference between the labour and industry of free inhabitants and of all other inhabitants. The ratio ultimately agreed on was the effect of mutual concessions; and if it should be supposed not to correspond precisely with the fact, no doubt ought to be entertained that an equal spirit of accommodation among the several Legislatures will prevail against little inequalities which may be calculated on one side or on the other. But notwithstanding the confidence of Congress as to the success of this proposition, it is their duty to recollect that the event may possibly disappoint them, and to request that measures may still be pursued for obtaining and transmitting the information called for in the act of the 17th of February last, which in such event will be essential.

The plan thus communicated and explained by Congress must now receive its fate from their constituents. All the objects comprised in it are conceived to be of great importance to the happiness of this confederated Republic—are necessary to render the fruits of the Revolution a full reward for the blood, the

toils, the cares, and the calamities which have purchased it. But the object of which the necessity will be peculiarly felt, and which it is peculiarly the duty of Congress to inculcate, is the provision recommended for the national debt. Although this debt is greater than could have been wished, it is still less, on the whole, than could have been expected; and when referred to the cause in which it has been incurred, and compared with the burdens which wars of ambition and of vain glory have entailed on other nations, ought to be borne not only with cheerfulness but with pride. But the magnitude of the debt makes no part of the question. It is sufficient that the debt has been fairly contracted, and that justice and good faith demand that it should be fully discharged. Congress had no option but between different modes of discharging it. The same option is the only one that can exist with the States. The mode which has, after long and elaborate discussion, been preferred, is, we are persuaded, the least objectionable of any that would have been equal to the purpose. Under this persuasion, we call upon the justice and plighted faith of the several States to give it its proper effect, to reflect on the consequences of rejecting it, and to remember that Congress will not be answerable for them.

If other motives than that of justice could be requisite on this occasion, no nation could ever feel stronger; for to whom are the debts to be paid?

TO AN ALLY, in the first place, who to the exertion of his arms in support of our cause has added the succours of his treasure; who to his important loans has added liberal donations, and whose loans themselves carry the impression of his magnanimity and friendship. For more exact information on this point we refer to paper No. 5.

To *individuals in a foreign country*, in the next place, who were the first to give so precious a token of their confidence in our justice, and of their friendship for our cause, and who are members of a republic which was second in espousing our rank among nations. For the claims and expectations of this class of creditors we refer to paper No. 6.

Another class of creditors is *that illustrious and patriotic band of fellow-citizens*, whose blood and whose bravery have defended the liberties of their country; who have patiently borne, among other distresses, the privation of their stipends, whilst the distresses of their country disabled it from bestowing them; and who, even now, ask for no more than such a portion of their dues as will enable them to retire from the field of victory and glory into the bosom of peace and private citizenship, and for such effectual security for the residue of their claims as their country is now unquestionably able to provide. For a full view of their sentiments and wishes on this subject, we transmit the paper No. 7; and as a fresh and lively instance of their superiority to every species of seduction from the paths of virtue and honor, we add the paper No. 8.

The remaining class of creditors is composed partly of such of our fellow-citizens as originally lent to the public the use of their funds, or have since



manifested most confidence in their country, by receiving transfers from the lenders; and partly of those whose property has been either advanced or assumed for the public service. To discriminate the merits of these several descriptions of creditors, would be a task equally unnecessary and invidious. If the voice of humanity plead more loudly in favour of some than of others, the voice of policy, no less than of justice, pleads in favour of all. A wise nation will never permit those who relieve the wants of their country, or who rely most on its faith, its firmness, and its resources, when either of them is distrusted, to suffer by the event.

Let it be remembered, finally, that it has ever been the pride and boast of America, that the rights for which she contended were the rights of human nature. By the blessing of the Author of these rights on the means exerted for their defence, they have prevailed against all opposition, and form the basis of thirteen independent States. No instance has heretofore occurred, nor can any instance be expected hereafter to occur, in which the unadulterated forms of republican Government can pretend to so fair an opportunity of justifying themselves by their fruits. In this view the citizens of the United States are responsible for the greatest trust ever confided to a political society. If justice, good faith, honor, gratitude, and all the other qualities which ennoble the character of a nation, and fulfil the ends of government, be the fruits of our establishments, the cause of liberty will acquire a dignity and lustre which it has never yet enjoyed; and an example will be set which cannot but have the most favourable influence on the rights of mankind. If, on the other side, our governments should be unfortunately blotted with the reverse of these cardinal and essential virtues, the great cause which we have engaged to vindicate will be dishonored and betrayed; the last and fairest experiment in favour of the rights of human nature will be turned against them; and their patrons and friends exposed to be insulted and silenced by the votaries of tyranny and usurpation.

By order of the United States in Congress assembled.

## ESSAYS, ETC.

## I. POPULATION AND EMIGRATION.

Both in the vegetable and animal kingdoms every species derives from nature a reproductive faculty beyond the demand for merely keeping up its stock; the seed of a single plant is sufficient to multiply it one hundred or a thousand fold. The animal offspring is never limited to the number of its parents.\*

This ordinance of Nature is calculated, in both instances, for a double purpose. In both it insures the life of the species, which, if the generative principle had not a multiplying energy, would be reduced in number by every premature destruction of individuals, and by degrees would be extinguished altogether. In vegetable species the surplus answers, moreover, the essential purpose of sustaining the herbivorous tribes of animals, as in the animal the surplus serves the like purpose of sustenance to the carnivorous tribes. A crop of wheat may be reproduced by one-tenth of itself. The remaining nine-tenths can be spared for the animals which feed on it. A flock of sheep may be continued by a certain proportion of its annual increase. The residue is the bounty of Nature to the animals which prey on that species.

Man, who preys both on the vegetable and animal species, is himself a prey to neither. He too possesses the reproductive principle far beyond the degree requisite for the bare continuance of his species. What becomes of the surplus of human life to which this principle is competent?

It is either, 1st, destroyed by infanticide, as among the Chinese and Lacedemonians; or, 2d, it is stifled or starved, as among other nations whose population is [not?] commensurate to its food; or, 3d, it is consumed by wars and endemic diseases; or, 4th, it overflows, by emigration, to places where a surplus of food is attainable. What may be the greatest ratio of increase of which the human species is susceptible, is a problem difficult to be solved, as well because precise experiments have never been made, as because the result would vary with the circumstances distinguishing different situations. It has been computed that under the most favorable circumstances possible, a given number would double itself in ten years. What has actually happened in this country is a

\*The multiplying power in some instances, animal as well as vegetable, is astonishing. An annual plant of two seeds produces in 20 years 1,043,576, and there are plants which bear more than 40,000 seeds. The roe of a codfish is said to contain a million of eggs; mites will multiply to a thousand in a day; and there are viviparous flies which produce 2,000 at once. See Stillingfleet and Bradley's Philosophical Account of Nature.

proof that Nature would require for the purpose a less period than twenty years. We shall be safe in averaging the surplus at five per cent.\*

According to this computation, Great Britain and Ireland, which contain about ten millions of people, are capable of producing annually for emigration no less than five hundred thousand; France, whose population amounts to twenty-five millions, no less than one million two hundred and fifty thousand; and all Europe, stating its numbers at one hundred and fifty millions, no less than seven and a half millions.

It is not meant that such a surplus could, under any revolution of circumstances, suddenly take place; yet no reason occurs why an annual supply of human as well as other animal life, to any amount not exceeding the multiplying faculty, would not be produced in one country by a regular and commensurate demand of another. Nor is it meant that if such a redundancy of population were to happen in any particular country, an influx of it beyond a certain degree ought to be desired by any other, though within that degree it ought to be invited by a country greatly deficient in its population. The calculation may serve, nevertheless, by placing an important principle in a striking view, to prepare the way for the following positions and remarks:

First. Every country whose population is full may annually spare a portion of its inhabitants, like a hive of bees its swarm, without any diminution of its number; nay, a certain portion must necessarily be either spared, or destroyed, or kept out of existence.†

Secondly. It follows, moreover, from this multiplying faculty of human nature, that in a nation sparing or losing more than its proper surplus, the level must soon be restored by the internal resources of life.

Thirdly. Emigrations may even augment the population of the country permitting them. The commercial nations of Europe, parting with emigrants to America, are examples. The articles of consumption demanded from the former have created employment for an additional number of manufacturers. The produce remitted from the latter, in the form of raw materials, has had the same effect; whilst the imports and exports of every kind have multiplied European merchants and mariners. Where the settlers have doubled every twenty or twenty-five years, as in the United States, the increase of products

\* Emigrants from Europe, enjoying freedom in a climate similar to their own, increase at the rate of five per cent. a year. Among Africans suffering, or (in the language of some) enjoying slavery in a climate similar to their own, human life has been consumed in an equal ratio. Under all the mitigations latterly applied in the British West Indies, it is admitted that an annual decrease of one per cent. has taken place. What a comment on the African trade!

† The most remarkable instances of the swarms of people that have been spared without diminishing the parent stock, are the colonies and colonies of colonies among the ancient Greeks. Mile-tum, which was itself a colony, is reported by Pliny to have established no less than eighty colonies, on the Hellespont, the Propontis, and the Euxine. Other facts of a like kind are to be found in the Greek historians.

and consumption in the new country, and consequently of employment and people in the old, has had a corresponding rapidity.

Of the people of the United States, nearly three millions are of British descent.\* The British population has, notwithstanding, increased within the period of our establishment. It was the opinion of the famous Sir Josiah Child, that every man in the British colonies found employment, and, of course, subsistence for four persons at home. According to this estimate, as more than half a million of the adult males in the United States equally contribute employment at this time to British subjects, there must at this time be more than two millions of British subjects subsisting on the fruits of British emigrations. This result, however, seems to be beyond the real proportion. Let us attempt a less vague calculation.

The value of British imports into the United States, including British freight, may be stated at about fifteen millions of dollars. Deduct two millions for foreign articles coming through British hands, there remain thirteen millions. About half our exports, valued at ten millions of dollars, are remitted to that nation. From the nature of the articles, the freight cannot be less than three millions of dollars; of which about one-fifth,† being the share of the United States, there is to be added to the former remainder two million four hundred thousand. The profit accruing from the articles as materials or auxiliaries for manufactures, is probably at least fifty per cent., or five millions of dollars.‡ The three sums make twenty million four hundred thousand dollars—call them, in round numbers, twenty millions. The expense of supporting a labouring family in Great Britain, as computed by Sir John Sinclair, on six families containing thirty-four persons, averages £4 12s. 10½*d.* sterling, or about twenty dollars a head. As his families were of the poorer class, and the subsistence a bare competency, let twenty-five per cent. be added, making the expense about twenty-five dollars a head. Dividing twenty millions by this sum, we have eight hundred thousand for the number of British persons whose sub-

\* Irish is meant to be included.

† This is stated as the fact is, not as it ought to be. The United States are reasonably entitled to half the freight, if, under regulations perfectly reciprocal in every channel of navigation, they could acquire that share. According to Lord Sheffield, indeed, the United States are well off compared with other nations; the tonnage employed in the trade with the whole of them, previous to the American Revolution, having belonged to British subjects in the proportion of more than eleven-twelfths. In the year 1660, other nations owned about 1-4; in 1700, less than 1-6; in 1725, 1-19; in 1750, 1-12; in 1774, less than that proportion. What the proportion is now, is not known. If such has been the operation of the British navigation law on other nations, it is our duty, without inquiring into their acquiescence in its monopolizing tendency, to defend ourselves against it by all the fair and prudent means in our power.

‡ This is admitted to be a very vague estimate. The proportion of our exports, which are either necessaries of life or have some profitable connexion with manufactures, might be pretty easily computed. The actual profit drawn from that proportion is a more difficult task; but if tolerably ascertained and compared with the proportion of such of our imports as are not for mere consumption, would present one very interesting view of the commerce of the United States.

sistence may be traced to emigration for its source ; or, allowing eight shillings sterling a week for the support of a working man, we have two hundred sixteen thousand three hundred forty-five of that class, for the number derived from the same source.

This lesson of fact, which merits the notice of every commercial nation, may be enforced by a more general view of the subject.

The present imports of the United States, adding to the first cost, &c., one-half the freight as the reasonable share of foreign nations, may be stated at twenty-five millions of dollars. Deducting five millions on account of East India articles, there remain in favour of Europe twenty millions of dollars. The foreign labour incorporated with such part of our exports as are subjects or ingredients for manufactures, together with half the export freight, is probably not of less value than fifteen millions of dollars. The two sums together make thirty-five millions of dollars, capable of supporting two hundred thirty-three thousand three hundred thirty-three families of six persons each, or three hundred seventy-eight thousand six hundred and five men, living on eight shillings sterling a week.

The share of this benefit which each nation is to enjoy will be determined by many circumstances. One that must have a certain and material influence, will be the taste excited here for their respective products and fabrics. This influence has been felt in all its force by the commerce of Great Britain, as the advantage originated in the emigrations from that country to this. Among the means of retaining it will not be numbered a restraint on emigrations. Other nations, who have to acquire their share in our commerce, are still more interested in aiding their other efforts by permitting and even promoting emigrations to this country, as fast as it may be disposed to welcome them. The space left by every ten or twenty thousand emigrants will be speedily filled by a surplus of life that would otherwise be lost. The twenty thousand in their new country, calling for the manufactures and productions required by their habits, will employ and sustain ten thousand persons in their former country, as a clear addition to its stock. In twenty or twenty-five years, the number so employed and added will be twenty thousand. And in the mean time example and information will be diffusing the same taste among other inhabitants here, and proportionally extending employment and population there.

Fourthly. Freedom of emigration is due to the general interests of humanity. The course of emigrations being always from places where living is more difficult to places where it is less difficult, the happiness of the emigrant is promoted by the change ; and as a more numerous progeny is another effect of the same cause, human life is at once made a greater blessing, and more individuals are created to partake of it.

The annual expense of supporting the poor in England amounts to more

than one million and a half sterling.\* The number of persons subsisting themselves not more than six months in the year is computed at one million two hundred sixty-eight thousand, and the number of beggars at forty-eight thousand. In France it has been computed that seven millions of men, women, and children live, one with another, on twenty-five livres, which is less than five dollars a year. Every benevolent reader will make his own reflections.

Fifthly. It may not be superfluous to add, that freedom of emigration is favorable to morals. A great proportion of the vices which distinguish crowded from thin settlements, are known to have their rise in the facility of illicit intercourse between the sexes on one hand, and the difficulty of maintaining a family on the other. Provide an outlet for the surplus of population, and marriages will be increased in proportion. Every four or five emigrants will be the fruit of a legitimate union which would not otherwise have taken place.

Sixthly. The remarks which have been made, though in many respects little applicable to the internal situation of the United States, may be of use as far as they tend to prevent mistaken and narrow ideas on an important subject. Our country being populated in different degrees in different parts of it, removals from the more compact to the more sparse or vacant districts are continually going forward. The object of these removals is evidently to exchange a less easy for a more easy subsistence. The effect of them must therefore be to quicken the aggregate population of our country. Considering the progress made in some situations towards their natural complement of inhabitants, and the fertility of others which have made little or no progress, the probable difference in their respective rates of increase is not less than as three in the former to five in the latter. Instead of lamenting, then, a loss of *three* human beings to Connecticut, Rhode Island, or New Jersey, the *Philanthropist* will rejoice that five will be gained to New York, Vermont, or Kentucky, and the *patriot* will be not less pleased that *two* will be added to the *citizens of the United States*.

PHILADELPHIA, Nov. 19, 1791.

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## 2. CONSOLIDATION.

Much has been said, and not without reason, against the consolidation of the States into one government. Omitting lesser objections, two consequences would probably flow from such a change in our political system, which jus-

\* From Easter, 1775, to Easter, 1776, was expended the sum of £1,556,804 6s. 3d. sterling. See Anderson, vol. v, p. 275. This well-informed writer conjectures the annual expence to be near £2,000,000 sterling. It is to be regretted that the number and expence of the poor in the United States cannot be contrasted with such statements. The subject well merits research, and would produce the truest eulogium on our country.

tify the cautions used against it. First, it would be impossible to avoid the dilemma of either relinquishing the present energy and responsibility of a *single* Executive Magistrate, for some *plural* substitute, which, by dividing so great a trust, might lessen the danger of it; or, suffering so great an accumulation of powers in the hands of that officer, as might by degrees transform him into a monarch. The incompetency of one Legislature to regulate all the various objects belonging to the local governments, would evidently force a transfer of many of them to the Executive department; whilst the increasing splendour and number of its prerogatives, supplied by this source, might prove excitements to ambition too powerful for a sober execution of the elective plan, and consequently strengthen the pretexts for an hereditary designation of the magistrate. Second. Were the State governments abolished, the same space of country that would produce an undue growth of the executive power, would prevent that control on the Legislative body which is essential to a faithful discharge of its trust; neither the voice nor the sense of ten or twenty millions of people, spread through so many latitudes as are comprehended within the United States, could ever be combined or called into effect, if deprived of those local organs, through which both can now be conveyed. In such a state of things, the impossibility of acting together might be succeeded by the inefficacy of partial expressions of the public mind, and this at length, by a universal silence and insensibility, leaving the whole government to that *self directed course* which, it must be owned, is the natural propensity of every government.

But if a consolidation of the States into one government be an event so justly to be avoided, it is not less to be desired, on the other hand, that a consolidation should prevail in their interests and affections; and this, too, as it fortunately happens, for the very reasons, among others, which lie against a governmental consolidation. For, in the first place, in proportion as uniformity is found to prevail in the interests and sentiments of the several States, will be the practicability of accommodating *Legislative* regulations to them, and thereby of withholding new and dangerous prerogatives from the Executive. Again, the greater the mutual confidence and affection of all parts of the Union, the more likely they will be to concur amicably, or to differ with moderation, in the elective designation of the Chief Magistrate, and by such examples to guard and adorn the vital principle of our republican Constitution. Lastly, the less the supposed difference of interests, and the greater the concord and confidence throughout the great body of the people, the more readily must they sympathize with each other; the more seasonably can they interpose a common manifestation of their sentiments; the more certainly will they take the alarm at usurpation or oppression; and the more effectually will they consolidate their defence of the public liberty.

Here, then, is a proper object presented, both to those who are most jealously attached to the separate authority reserved to the States, and to those who may

be more inclined to contemplate the people of America in the light of one nation. Let the former continue to watch against every encroachment which might lead to a gradual consolidation of the States into one government. Let the latter employ their utmost zeal, by eradicating local prejudices and mistaken rivalships, to consolidate the affairs of the States into one harmonious interest; and let it be the patriotic study of all to maintain the various authorities established by our complicated system, each in its respective constitutional sphere, and to erect over the whole one paramount empire of reason, benevolence and brotherly affection.

PHILADELPHIA, Dec. 3.

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### 3. PUBLIC OPINION.

Public opinion sets bounds to every government, and is the real sovereign in every free one.

As there are cases where the public opinion must be obeyed by the government; so there are cases where, not being fixed, it may be influenced by the government. This distinction, if kept in view, would prevent or decide many debates on the respect due from the government to the sentiments of the people.

In proportion as government is influenced by opinion, it must be so by whatever influences opinion. This decides the question concerning a *Constitutional Declaration of Rights*, which requires an influence on government, by becoming a part of the public opinion.

The larger a country the less easy for its real opinion to be ascertained, and the less difficult to be counterfeited; when ascertained or presumed, the more respectable it is in the eyes of individuals. This is favorable to the authority of government. For the same reason, the more extensive a country the more insignificant is each individual in his own eyes. This may be unfavorable to liberty.

Whatever facilitates a general intercourse of sentiments, as good roads, domestic commerce, a free press, and particularly a *circulation of newspapers through the entire body of the people, and Representatives going from, and returning among, every part of them*, is equivalent to a contraction of territorial limits, and is favorable to liberty, where these may be too extensive.

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### 4. MONEY.

[Observations written posterior to the Circular Address of Congress in Sept., 1779, and prior to their act of March, 1780.]

It has been taken for an axiom in all our reasonings on the subject of finance, that supposing the quantity and demand of things vendible in a country to re-



main the same, their price will vary according to the variation in the quantity of the circulating medium; in other words, that the value of money will be regulated by its quantity. I shall submit to the judgment of the public some considerations which determine mine to reject the proposition as founded in error. Should they be deemed not absolutely conclusive, they seem at least to shew that it is liable to too many exceptions and restrictions to be taken for granted as a fundamental truth. If the circulating medium be of universal value, as specie, a local increase or decrease of its quantity will not, whilst a communication subsists with other countries, produce a correspondent rise or fall in its value. The reason is obvious. When a redundancy of universal money prevails in any one country, the holders of it know their interest too well to waste it in extravagant prices, when it would be worth so much more to them else where. When a deficiency happens, those who hold commodities, rather than part with them at an undervalue in one country, would carry them to another. The variation of prices in these cases cannot, therefore, exceed the expense and insurance of transportation.

Suppose a country, totally unconnected with Europe or with any other country, to possess specie in the same proportion to circulating property that Europe does, prices there would correspond with those in Europe. Suppose that so much specie were thrown into circulation as to make the quantity exceed the proportion of Europe tenfold, without any change in commodities, or in the demand for them; as soon as such an augmentation had produced its effect, prices would rise tenfold, or, which is the same thing, money would be depreciated tenfold. In this state of things, suppose again that a free and ready communication were opened between this country and Europe, and that the inhabitants of the former were made sensible of the value of their money in the latter, would not its value among themselves immediately cease to be regulated by its quantity, and assimilate itself to the foreign value?

Mr. Hume, in his discourse on the balance of trade, supposes "that if four-fifths of all the money in Britain were annihilated in one night, and the nation reduced to the same condition in this particular as in the reigns of the Harrys and Edwards, that the price of all labour and commodities would sink in proportion, and everything be sold as cheap as in those ages. That, again, if all the money in Britain were multiplied fivefold in one night, a contrary effect would follow." This very ingenious writer seems not to have considered that in the reigns of the Harrys and Edwards the state of prices in the circumjacent nations corresponded with that of Britain; whereas, in both of his suppositions it would be no less than four-fifths different. Imagine that such a difference really existed, and remark the consequence. Trade is at present carried on between Britain and the rest of Europe, at a profit of 15 or 20 per cent. Were that profit raised to 400 per cent., would not their home market, in case of such a fall of prices, be so exhausted by exportation, and in case of such a rise of prices, be so overstocked with foreign commodities, as immediately to restore

the general equilibrium? Now, to borrow the language of the same author, "the same causes which would redress the inequality, were it to happen, must forever prevent it, without some violent external operation."

The situation of a country connected by commercial intercourse with other countries, may be compared to a single town or province whose intercourse with other towns and provinces results from political connexion. Will it be pretended that if the national currency were to be accumulated in a single town or province, so as to exceed its due proportion five or tenfold, a correspondent depreciation would ensue, and everything be sold five or ten times as dear as in a neighboring town or province?

If the circulating medium be a municipal one, as paper currency, still its value does not depend on its quantity. It depends on the credit of the State issuing it, and on the time of its redemption; and is no otherwise affected by the quantity than as the quantity may be supposed to *endanger* or *postpone* the redemption.

That it depends in part on the credit of the issuer, no one will deny. If the credit of the issuer, therefore, be perfectly unsuspected, the time of redemption alone will regulate its value. To support what is here advanced, it is sufficient to appeal to the nature of paper money. It consists of bills or notes of obligation payable in specie to the bearer, either on demand or at a future day. Of the first kind is the paper currency of Britain, and hence its equivalence to specie. Of the latter kind is the paper currency of the United States, and hence its inferiority to specie. But if its being redeemable, not on demand, but at a future day, be the cause of its inferiority, the distance of that day, and not its quantity, ought to be the measure of that inferiority. It has been shewn that the value of specie does not fluctuate according to local fluctuations in its quantity. Great Britain, in which there is such an immensity of circulating paper, shews that the value of paper depends as little on its quantity as that of specie, when the paper represents specie payable on demand. Let us suppose that the circulating notes of Great Britain, instead of being payable on demand, were to be redeemed at a future day, at the end of one year for example, and that no interest was due on them. If the same assurance prevailed that at the end of the year they would be equivalent to specie, as now prevails that they are every moment equivalent, would any other effect result from such a change, except that the notes would suffer a depreciation equal to one year's interest? They would in that case represent, not the nominal sum expressed on the face of them, but the sum remaining after a deduction of one year's interest. But if, when they represent the full nominal sum of specie, their circulation contributes no more to depreciate them than the circulation of the specie itself would do, does it not follow, that if they represented a sum of specie less than the nominal inscription, their circulation ought to depreciate them no more than so much specie, if substituted, would depreciate itself? We may extend the time from one to five, or to

twenty years; but we shall find no other rule of depreciation than the loss of the intermediate interest. What has been here supposed with respect to Great Britain has actually taken place in the United States. Being engaged in a necessary war without specie to defray the expense, or to support paper emissions for that purpose redeemable on demand, and being, at the same time, unable to borrow, no resource was left but to emit bills of credit to be redeemed in future. The inferiority of these bills to specie was, therefore, incident to the very nature of them. If they had been exchangeable on demand for specie, they would have been equivalent to it; as they were not exchangeable on demand, they were inferior to it. The degree of their inferiority must consequently be estimated by the time of their becoming exchangeable for specie—that is, the time of their redemption. To make it still more palpable that the value of our currency does not depend on its quantity, let us put the case that Congress had, during the first year of the war, emitted five millions of dollars to be redeemed at the end of ten years; that, during the second year of the war, they had emitted ten millions more, but with due security that the whole fifteen millions should be redeemed in five years; that, during the two succeeding years, they had augmented the emissions to one hundred millions, but from the discovery of some extraordinary sources of wealth, had been able to engage for the redemption of the whole sum in one year: it is asked whether the depreciation under these circumstances would have increased as the quantity of money increased, or whether, on the contrary, the money would not have risen in value at every accession to its quantity?

It has, indeed, happened that a progressive depreciation of our currency has accompanied its growing quantity; and to this is probably owing in a great measure the prevalence of the doctrine here opposed. When the fact, however, is explained, it will be found to coincide perfectly with what has been said. Every one must have taken notice that, in the emissions of Congress, no precise time has been stipulated for their redemption, nor any specific provision made for that purpose. A general promise entitling the bearer to so many dollars of metal as the paper bills express, has been the only basis of their credit. Every one, therefore, has been left to his own conjectures as to the time the redemption would be fulfilled; and as every addition made to the quantity in circulation would naturally be supposed to remove to a proportionally greater distance the redemption of the whole mass, it could not happen otherwise than that every additional emission would be followed by a further depreciation.

In like manner has the effect of a distrust of public credit, the other source of depreciation, been erroneously imputed to the quantity of money. The circumstances under which our early emissions were made could not but strongly concur with the futurity of their redemption to debase their value. The situation of the United States resembled that of an individual engaged in an expensive undertaking carried on, for want of cash, with bonds and notes secured

on an estate to which his title was disputed, and who had, besides, a combination of enemies employing every artifice to disparage that security. A train of sinister events during the early stages of the war likewise contributed to increase the distrust of the *public ability* to fulfil their engagements. Before the depreciation arising from this cause was removed by the success of our arms, and our alliance with France, it had drawn so large a quantity into circulation, that the quantity itself soon after begat a distrust of the *public disposition* to fulfil their engagements, as well as new doubts, in timid minds, concerning the issue of the contest. From that period, this cause of depreciation has been incessantly operating. It has first conduced to swell the amount of necessary emissions, and from that very amount has derived new force and efficacy to itself. Thus, a further discredit of our money has necessarily followed the augmentation of its quantity; but every one must perceive that it has not been the effect of the quantity considered in itself, but considered as an omen of public bankruptcy.\* Whether the money of a country,

\* As the depreciation of our money has been ascribed to a wrong cause, so, it may be remarked, have effects been ascribed to the depreciation, which result from other causes. Money is the instrument by which mens' wants are supplied, and many how possess it will part with it for that purpose, who would not gratify themselves at the expense of their visible property. Many, also, may acquire it who have no visible property. By increasing the quantity of money, therefore, you both increase the means of spending, and stimulate the desire to spend; and if the objects desired do not increase in proportion, their price must rise from the influence of the greater demand for them. Should the objects in demand happen, at the same juncture, as in the United States, to become scarcer, their prices must rise in a double proportion.

It is by this influence of an augmentation of money on demand that we ought to account for that proportional level of money, in all countries, which Mr. Hume attributes to its direct influence on prices. When an augmentation of the national coin takes place, it may be supposed either, 1. Not to augment demand at all; or, 2. To augment it so gradually that a proportional increase of industry will supply the objects of it; or, 3. To augment it so rapidly that the domestic market may prove inadequate, whilst the taste for distinction, natural to wealth, inspires, at the same time, a preference for foreign luxuries. The first case can seldom happen. Were it to happen, no change in prices nor any efflux of money would ensue, unless, indeed, it should be employed or loaned abroad. The superfluous portion would be either hoarded or turned into plate. The second case can occur only where the augmentation of money advances with a very slow and equable pace, and would be attended neither with a rise of prices, nor with a superfluity of money. The third is the only case in which the plenty of money would occasion it to overflow into other countries. The insufficiency of the home market to satisfy the demand would be supplied from such countries as might afford the articles in demand; and the money would thus be drained off, till that, and the demand excited by it, should fall to a proper level, and a balance be thereby restored between exports and imports.

The principle on which Mr. Hume's theory, and that of Montesquien before him, is founded, is manifestly erroneous. He considers the money in every country as the representative of the whole circulating property and industry in the country, and thence concludes that every variation in its quantity must increase or lessen the portion which represents the same portion of property and labor. The error lies in supposing that, because money serves to measure the value of all things, it represents and is equal in value to all things. The circulating property in every country, according to its market rate, far exceeds the amount of its money. At Athens, oxen; at Rome, sheep, were once used as a measure of the value of other things. It will hardly be supposed they were therefore equal in value to all other things.

then, be gold and silver, or paper currency, it appears that its value is not regulated by its quantity. If it be the former, its value depends on the general proportion of gold and silver to circulating property throughout all countries having free intercommunication. If the latter, it depends on the credit of the State issuing it, and the time at which it is to become equal to gold and silver.

Every circumstance which has been found to accelerate the depreciation of our currency naturally resolves itself into these general principles. The spirit of monopoly hath affected it in no other way than by creating an artificial scarcity of commodities wanted for public use, the consequence of which has been an increase of their price, and of the necessary emissions. Now it is this increase of emissions which has been shewn to lengthen the supposed period of their redemption, and to foster suspicions of public credit. Monopolies destroy the natural relation between money and commodities; but it is by raising the value of the latter, not by debasing that of the former. Had our money been gold or silver, the same prevalence of monopoly would have had the same effect on prices and expenditures, but these would not have had the same effect on the value of money.

The depreciation of our money has been charged on misconduct in the purchasing departments; but this misconduct must have operated in the same manner as the spirit of monopoly. By unnecessarily raising the price of articles required for public use, it has swelled the amount of necessary emissions, on which has depended the general opinion concerning the time and the probability of their redemption.

The same remark may be applied to the deficiency of imported commodities. The deficiency of these commodities has raised the price of them; the rise of their price has increased the emissions for purchasing them, and with the increase of emissions, have increased suspicions concerning their redemption.

Those who consider the quantity of money as the criterion of its value, compute the intrinsic depreciation of our currency by dividing the whole mass by the supposed necessary medium of circulation. Thus supposing the medium necessary for the United States to be 30,000,000 dollars, and the circulating emissions to be 200,000,000, the intrinsic difference between paper and specie will be nearly as 7 for 1. If its value depends on the time of its redemption, as hath been above maintained, the real difference will be found to be considerably less. Suppose the period necessary for its redemption to be 18 years, as seems to be understood by Congress, 100 dollars of paper 18 years hence will be equal in value to 100 dollars of specie; for at the end of that term 100 dollars of specie may be demanded for them. They must, consequently, at this time, be equal to as much specie as, with compound interest, will amount in that number of years to 100 dollars. If the interest of money be rated at 5 per cent., this present sum of specie will be about 41½ dollars. Admit, however, the use of money to be worth 6 per cent., about 35 dollars will then

amount in 18 years to 100; 35 dollars of specie, therefore, is at this time equal to 100 of paper; that is, the man who would exchange his specie for paper at this discount, and lock it in his desk for 18 years, would get 6 per cent. for his money. The proportion of 100 to 35 is less than 3 to 1. The intrinsic depreciation of our money, therefore, according to this rule of computation, is less than 3 to 1, instead of 7 to 1, according to the rule espoused in the circular address, or of 30 or 40 to 1 according to its currency in the market.

I shall conclude with observing that, if the preceding principles and reasoning be just, the plan on which our domestic loans have been obtained must have operated in a manner directly contrary to what was intended. A loan office certificate differs in nothing from a common bill of credit, except in its higher denomination, and in the interest allowed on it; and the interest is allowed merely as a compensation to the lender for exchanging a number of small bills, which, being easily transferable, are most convenient, for a single one so large as not to be transferable in ordinary transactions. As the certificates, however, do circulate in many of the more considerable transactions, it may justly be questioned, even on the supposition that the value of money depended on its quantity, whether the advantage to the public from the exchange would justify the terms of it. But dismissing this consideration, I ask whether such loans do in any shape lessen the public debt, and thereby render the discharge of it less suspected or less remote? Do they give any new assurance that a paper dollar will be one day equal to a silver dollar, or do they shorten the distance of that day? Far from it. The certificates constitute a part of the public debt no less than the bills of credit exchanged for them, and have an equal claim to redemption within the general period; nay, are to be paid off long before the expiration of that period with bills of credit, which will thus return into the general mass, to be redeemed along with it. Were these bills, therefore, not to be taken out of circulation at all, by means of the certificates, not only the expense of offices for exchanging, re-exchanging, and annually paying the interest would be avoided, but the whole sum of interest would be saved, which must make a formidable addition to the public emissions, protract the period of their redemption, and proportionally increase their depreciation. No expedient could, perhaps, have been devised more preposterous and unlucky. In order to relieve public credit, sinking under the weight of an enormous debt, we invent new expenditures. In order to raise the value of our money, which depends on the time of its redemption, we have recourse to a measure which removes its redemption to a more distant day. Instead of paying off the capital to the public creditors, we give them an enormous interest to change the name of the bit of paper which expresses the sum due to them; and think it a piece of dexterity in finance, by *emitting loan office certificates*, to elude the necessity of *emitting bills of credit*.

## 5. GOVERNMENT.

In Monarchies there is a twofold danger: 1st. That the eyes of a good prince cannot see all that he ought to know. 2nd. That the hands of a bad one will not be tied by the fear of combinations against him. Both these evils increase with the extent of domain; and prove, contrary to the received opinion, that monarchy is even more unfit for a great State than for a small one, notwithstanding the greater tendency in the former to that species of government. Aristocracies, on the other hand, are generally seen in small States; where a concentration of the public will is required by external danger, and that degree of concentration is found sufficient. The *many*, in such cases, cannot govern on account of emergencies which require the promptitude and precautions of a *few*, whilst the few themselves resist the usurpations of a *single* tyrant. In Thessaly, a country intersected by mountainous barriers into a number of small cantons, the governments, according to Thucydides, were in most instances oligarchical. Switzerland furnishes similar examples. The smaller the State the less intolerable is this form of government, its rigors being tempered by the facility and the fear of combinations among the people.

A Republic involves the idea of popular rights. A representative Republic chooses the wisdom of which hereditary aristocracy has the *chance*; whilst it excludes the oppression of that form. And a confederated Republic attains the force of monarchy, whilst it equally avoids the ignorance of a good prince and the oppression of a bad one. To secure all the advantages of such a system, every good citizen will be at once a sentinel over the rights of the people, over the authorities of the confederal government, and over both the rights and the authorities of the intermediate governments.

DECEMBER 31.

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 6. CHARTERS.

In Europe charters of liberty have been granted by power. America has set the example, and France has followed it, of charters of power granted by liberty. This revolution in the practice of the world may, with an honest praise, be pronounced the most triumphant epoch of its history, and the most consoling presage of its happiness. We look back already, with astonishment, at the daring outrages committed by despotism on the reason and the rights of man; we look forward with joy to the period when it shall be despoiled of all its usurpations, and bound forever in the chains with which it had loaded its miserable victims.

In proportion to the value of this revolution; in proportion to the importance of instruments, every word of which decides a question between power and

liberty; in proportion to the solemnity of acts proclaiming the will, and authenticated by the seal of the people, the only earthly source of authority, ought to be the vigilance with which they are guarded by every citizen in private life, and the circumspection with which they are executed by every citizen in public trust.

As compacts, charters of government are superior in obligation to all others, because they give effect to all others. As trusts, none can be more sacred, because they are bound on the conscience by the religious sanctions of an oath. As metes and bounds of government, they transcend all other landmarks, because every public usurpation is an encroachment on the private right, not of one, but of all.

The citizens of the United States have peculiar motives to support the energy of their constitutional charters.

Having originated the experiment, their merit will be estimated by its success.

The complicated form of their political system, arising from the partition of government between the States and the Union, and from the separations and subdivisions of the several departments in each, requires a more than common reverence for the authority which is to preserve order through the whole.

Being republicans, they must be anxious to establish the efficacy of popular charters in defending liberty against power, and power against licentiousness, and in keeping every portion of power within its proper limits; by this means discomfiting the partisans of anti-republican contrivances for the purpose.

All power has been traced up to opinion. The stability of all Governments and security of all rights may be traced to the same source. The most arbitrary government is controlled where the public opinion is fixed. The despot of Constantinople dares not lay a new tax because every slave thinks he ought not. The most systematic governments are turned by the slightest impulse from their regular path, when the public opinion no longer holds them in it. We see at this moment the *Executive* Magistrate of Great Britain exercising, under the authority of the representatives of the *people*, a *legislative* power over the West India commerce.

How devoutly is it to be wished, then, that the public opinion of the United States should be enlightened; that it should attach itself to their governments as delineated in the *great charters*, derived not from the usurped power of kings, but from the legitimate authority of the people; and that it should guarantee, with a holy zeal, these political scriptures from every attempt to add to or diminish from them. Liberty and order will never be *perfectly* safe until a trespass on the constitutional provisions for either shall be felt with the same keenness that resents an invasion of the dearest rights, until every citizen shall be an ARGUS to espy and an ÆGEON to avenge the unhallowed deed.

JANUARY 18.



## 7. PARTIES.

In every political society parties are unavoidable. A difference of interests, real or supposed, is the most natural and fruitful source of them. The great object should be to combat the evil: 1. By establishing a political equality among all. 2. By withholding *unnecessary* opportunities from a few to increase the inequality of property by an immoderate, and especially an unmerited, accumulation of riches. 3. By the silent operation of laws which, without violating the rights of property, reduce extreme wealth towards a state of mediocrity, and raise extreme indigence towards a state of comfort. 4. By abstaining from measures which operate differently on different interests, and particularly such as favor one interest at the expense of another. 5. By making one party a check on the other, so far as the existence of parties cannot be prevented nor their views accommodated. If this is not the language of reason, it is that of republicanism.

In all political societies different interests and parties arise out of the nature of things, and the great art of politicians lies in making them checks and balances to each other. Let us, then, increase these *natural distinctions*, by favoring an inequality of property; and let us add to them *artificial distinctions*, by establishing *kings*, and *nobles*, and *plebeians*. We shall then have the more checks to oppose to each other; we shall then have the more scales and the more weights to perfect and maintain the equilibrium. This is as little the voice of reason as it is that of republicanism.

From the expediency, in politics, of making natural parties mutual checks on each other, to infer the propriety of creating artificial parties in order to form them into mutual checks, is not less absurd than it would be in ethics to say that new vices ought to be promoted, where they would counteract each other, because this use may be made of existing vices.

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8. BRITISH GOVERNMENT.

The boasted equilibrium of this Government (so far as it is a reality) is maintained less by the distribution of its powers than by the force of public opinion. If the nation were in favor of absolute monarchy, the public liberty would soon be surrendered by their representatives. If a republican form of government were preferred, how could the monarch resist the national will? Were the public opinion neutral only, and the public voice silent, ambition in the House of Commons could wrest from him his prerogatives, or the avarice of its members might sell to him its privileges.

The provision required for the civil list at every accession of a king, shows at once his dependence on the representative branch and its dependence on the public opinion. Were this establishment to be made from year to year, instead

of being made for life, (a change within the legislative power,) the monarchy, unless maintained by corruption, would dwindle into a name. In the present temper of the nation, however, they would obstruct such a change by taking side with their king against their representatives.

Those who ascribe the preservation of the British Government to the form in which its powers are distributed and balanced, forget the revolutions which it has undergone. Compare its primitive with its present form.

A king at the head of 7 or 800 barons, sitting together in their own right, or, (admitting another hypothesis,) some in their own right, others as representatives of a few lesser barons, but still sitting together as a single House, and the judges holding their offices during the pleasure of the King; such was the British Government at one period.

At present, a King, as seen at the head of a Legislature, consisting of two Houses, each jealous of the other, one sitting in their own right, the other representing the people; and the judges forming a distinct and independent department.

In the first case, the judiciary is annexed to the executive, and the Legislature not even formed into separate branches. In the second, the legislative, executive, and judiciary are distinct; and the legislative subdivided in rival branches.

What a contrast in these forms? If the latter be self-balanced, the former could have no balance at all. Yet the former subsisted as well as the latter, and lasted longer than the latter, dating it from 1688, has been tried.

The former was supported by the opinion and circumstances of the times, like many of the intermediate variations through which the Government has passed, and as will be supported the future forms through which it probably remains to be conducted by the progress of reason and change of circumstances.

JANUARY 28.

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## 9. UNIVERSAL PEACE.

Among the various reforms which have been offered to the world, the projects for universal peace have done the greatest honor to the hearts, though they seem to have done very little to the heads, of their authors.

Rousseau, the most distinguished of these philanthopists, has recommended a confederation of sovereigns, under a council of deputies, for the double purpose of arbitrating external controversies among nations, and of guarantying their respective governments against internal revolutions. He was aware neither of the impossibility of executing his pacific plan among governments which feel so many allurements to war, nor, what is more extraordinary, of the tendency of his plan to perpetuate arbitrary power wherever it existed;

and, by extinguishing the hope of one day seeing an end of oppression, to cut off the only source of consolation remaining to the oppressed.

A universal and perpetual peace, it is to be feared, is in the catalogue of events which will never exist but in the imaginations of visionary philosophers, or in the breasts of benevolent enthusiasts. It is still, however, true, that war contains so much folly, as well as wickedness, that much is to be hoped from the progress of reason; and if anything is to be hoped, everything ought to be tried.

Wars may be divided into two classes: one flowing from the mere will of the government; the other according with the will of the society itself.

Those of the first class can no otherwise be prevented than by such a reformation of the government as may identify its will with the will of the society. The project of Rousseau was, consequently, as preposterous as it was impotent. Instead of beginning with an external application, and even precluding internal remedies, he ought to have commenced with, and chiefly relied on, the latter prescription.

He should have said, whilst war is to depend on those whose ambition, whose revenge, whose avidity, or whose caprice may contradict the sentiment of the community, and yet be controlled by it; whilst war is to be declared by those who are to spend the public money, not by those who are to pay it; by those who are to direct the public forces, not by those who are to support them; by those whose power is to be raised, not by those whose chains may be riveted, the disease must continue to be *hereditary*, like the government of which it is the offspring. As the first step towards a cure, the government itself must be regenerated. Its will must be made subordinate to, or rather the same with, the will of the community.

Had Rousseau lived to see the Constitutions of the United States and of France, his judgment might have escaped the censure to which his project has exposed it.

The other class of wars, corresponding with the public will, are less susceptible of remedy.

There are antidotes, nevertheless, which may not be without their efficacy. As wars of the first class were to be prevented by subjecting the will of the government to the will of the society, those of the second can only be controlled by subjecting the will of the society to the reason of the society; by establishing permanent and constitutional maxims of conduct, which may prevail over occasional impressions, and inconsiderate pursuits.

Here our republican philosopher might have proposed as a model to lawgivers, that war should not only be declared by the authority of the people, whose toils and treasures are to support its burdens, instead of the government which is to reap its fruits; but that each generation should be made to bear the burden of its own wars, instead of carrying them on at the expense of

other generations. And to give the fullest energy to his plan, he might have added, that each generation should not only bear its own burdens, but that the taxes composing them should include a due proportion of such as by their direct operation keep the people awake, along with those which, being wrapped up in other payments, may leave them asleep, to misapplications of their money.

To the objection, if started, that where the benefits of war descend to succeeding generations, the burdens ought also to descend, he might have answered, that the exceptions could not be easily made; that, if attempted, they must be made by one only of the parties interested; that in the alternative of sacrificing exceptions to general rules, or of converting exceptions into general rules, the former is the lesser evil; that the expense of *necessary* wars will never exceed the resources of an *entire* generation; that, in fine, the objection vanishes before the *fact*, that in every nation which has drawn on posterity for the support of its wars, *the accumulated interest* of its perpetual debts has soon become more than a *sufficient principal* for all its exigencies.

Were a nation to impose such restraints on itself, avarice would be sure to calculate the expenses of ambition; in the equipoise of these passions, reason would be free to decide for the public good, and an ample reward would accrue to the State—first, from the avoidance of all its wars of folly; secondly, from the vigor of its unwasted resources for wars of necessity and defence. Were all nations to follow the example, the reward would be doubled to each, and the temple of Janus might be shut, never to be opened more.

Had Rousseau lived to see the rapid progress of reason and reformation, which the present day exhibits, the philanthropy which dictated his project would find a rich enjoyment in the scene before him; and after tracing the past frequency of wars to a will in the government independent of the will of the people, to the practice by each generation of taxing the principal of its debts on future generations, and to the facility with which each generation is seduced into assumptions of the interest, by the deceptive species of taxes which pay it, he would contemplate in a reform of every government subjecting its will to that of the people, in a subjection of each generation to the payment of its own debts, and in a substitution of a more palpable, in place of an imperceptible mode of paying them, the only hope of UNIVERSAL AND PERPETUAL PEACE.

PHILADELPHIA, January 31st, 1792.

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#### 10. GOVERNMENT OF THE UNITED STATES.

Power being found by universal experience liable to abuses, a distribution of it into separate departments has become a first principle of free govern-

ments. By this contrivance, the portion entrusted to the same hands being less, there is less room to abuse what is granted; and the different hands being interested, each in maintaining its own, there is less opportunity to usurp what is not granted. Hence the merited praise of governments modeled on a partition of their powers into legislative, executive, and judiciary, and a repartition of the legislative into different houses.

The political system of the United States claims still higher praise. The power delegated by the people is first divided between the General Government and the State governments, each of which is then subdivided into legislative, executive, and judiciary departments. And as in a single government these departments are to be kept separate and safe by a defensive armour for each, so, it is to be hoped, do the two governments possess each the means of preventing or correcting unconstitutional encroachments of the other. Should this improvement in the theory of free government not be marred in the execution, it may prove the best legacy ever left by lawgivers to their country, and the best lesson ever given to the world by its benefactors. If a security against power lies in the division of it into parts mutually controlling each other, the security must increase with the increase of the parts into which the whole can be conveniently formed.

It must not be denied that the task of forming and maintaining a division of power between different governments is greater than among different departments of the same government, because it may be more easy (though sufficiently difficult) to separate by proper definitions the legislative, executive, and judiciary powers, which are more distinct in their nature, than to discriminate, by precise enumerations, one class of legislative powers from another class, one class of executive from another class, and one class of judiciary from another class, where, the powers being of a more kindred nature, their boundaries are more obscure and run more into each other.

If the task be difficult, however, it must by no means be abandoned. Those who would pronounce it impossible, offer no alternative to their country but schism or consolidation; both of them bad, but the latter the worst, since it is the high road to monarchy, than which nothing worse, in the eye of Republicans, could result from the anarchy implied in the former.

Those who love their country, its repose, and its republicanism, will therefore study to avoid the alternative by elucidating and guarding the limits which define the two governments, by inculcating moderation in the exercise of the powers of both, and particularly a mutual abstinence from such as might nurse present jealousies or engender greater.

In bestowing the eulogies due to the partitions and internal checks of power, it ought not the less to be remembered, that they are neither the sole nor the chief palladium of constitutional liberty. The people, who are the authors of this blessing, must also be its guardians. Their eyes must be ever ready to

mark, their voice to pronounce, and their arm to repel or repair, aggressions on the authority of their constitutions, the highest authority next to their own, because the immediate work of their own, and the most sacred part of their property, as recognising and recording the title to every other.

FEBRUARY 4th.

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## 11. SPIRIT OF GOVERNMENTS.

No government is perhaps reducible to a sole principle of operation. Where the theory approaches nearest to this character, different and often heterogeneous principles mingle their influence in the administration. It is useful, nevertheless, to analyze the several kinds of government, and to characterize them by the spirit which predominates in each.

Montesquieu has resolved the great operative principles of government into fear, honor, and virtue, applying the first to pure despotisms, the second to regular monarchies, and the third to republics. The portion of truth blended with the ingenuity of this system sufficiently justifies the admiration bestowed on its author. Its accuracy, however, can never be defended against the criticisms which it has encountered. Montesquieu was in politics not a Newton or a Locke, who established immortal systems—the one in matter, the other in mind. He was in his particular science what Bacon was in universal science. He lifted the veil from the venerable errors which enslaved opinion, and pointed the way to those luminous truths of which he had but a glimpse himself.

May not governments be properly divided, according to their predominant spirit and principles, into three species, of which the following are examples:

*First.* A government operating by a permanent military force, which at once maintains the government and is maintained by it; which is at once the cause of burdens on the people, and of submission in the people to their burdens. Such have been the governments under which human nature has groaned through every age. Such are the governments which still oppress it in almost every country of Europe, the quarter of the globe which calls itself the pattern of civilization and the pride of humanity.

*Secondly.* A government operating by corrupt influence, substituting the motive of private interest in place of public duty, converting its pecuniary dispensations into bounties to favorites or bribes to opponents, accommodating its measures to the avidity of a part of the nation instead of the benefit of the whole; in a word, enlisting an army of interested partisans, whose tongues, whose pens, whose intrigues, and whose active combinations, by supplying the terror of the sword, may support a real domination of the few, under an apparent liberty of the many. Such a government, wherever to be found, is an impostor. It is happy for the New World that it is not on the west side of the

Atlantic. It will be both happy and honorable for the United States if they never descend to mimic the costly pageantry of its form, nor betray themselves into the venal spirit of its administration.

*Thirdly.* A government deriving its energy from the will of the society, and operating, by the reason of its measures, on the understanding and interest of the society. Such is the government for which philosophy has been searching and humanity been fighting from the most remote ages. Such are the republican governments which it is the glory of America to have invented, and her unrivalled happiness to possess. May her glory be completed by every improvement on the theory which experience may teach, and her happiness be perpetuated by a system of administration corresponding with the purity of the theory.

FEBRUARY 18th, 1792.

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## 12. REPUBLICAN DISTRIBUTION OF CITIZENS.

A perfect theory on this subject would be useful, not because it could be reduced to practice by any plan of legislation, or ought to be attempted by violence on the will or property of individuals; but because it would be a monition against empirical experiments by power, and a model to which the free choice of occupations by the people might gradually approximate the order of society.

The best distribution is that which would most favor *health, virtue, intelligence,* and *competency* in the *greatest number* of citizens. It is needless to add to these objects *liberty* and *safety*. The first is presupposed by them. The last must result from them.

The life of the husbandman is pre-eminently suited to the comfort and happiness of the individual. *Health*, the first of blessings, is an appertenance of his property and his employment. *Virtue*, the health of the soul, is another part of his patrimony, and no less favored by his situation. *Intelligence* may be cultivated in this as well as in any other walk of life. If the mind be less susceptible of polish in retirement than in a crowd, it is more capable of profound and comprehensive efforts. Is it more ignorant of some things? It has a compensation in its ignorance of others. *Competency* is more universally the lot of those who dwell in the country where liberty is at the same time their lot. The extremes, both of want and of waste, have other abodes. 'Tis not the country that peoples either the Bridewells or the Bedlams. These mansions of wretchedness are tenanted from the distresses and vices of overgrown cities.

The condition to which the blessings of life are most denied is that of the sailor. His health is continually assailed and his span shortened by the stormy element to which he belongs. His virtue, at no time aided, is occasionally exposed to every scene that can poison it. His mind, like his body, is impris-

oned within the bark that transports him. Though traversing and circumnavigating the globe, he sees nothing but the same vague objects of nature; the same monotonous occurrences in ports and docks; and at home in his vessel what new ideas can shoot from the unvaried use of the ropes and the rudder, or from the society of comrades as ignorant as himself? In the supply of his wants he often feels a scarcity, seldom more than a bare sustenance; and if his ultimate prospects do not embitter the present moment, it is because he never looks beyond it. How unfortunate, that in the intercourse by which nations are enlightened and refined, and their means of safety extended, the immediate agents should be distinguished by the hardest condition of humanity.

The great interval between the two extremes is, with a few exceptions, filled by those who work the materials furnished by the earth in its natural and cultivated state.

It is fortunate, in general, and particularly for this country, that so much of the ordinary and most essential consumption takes place in fabrics which can be prepared in every family, and which constitute, indeed, the natural ally of agriculture. The former is the work within doors, as the latter is without; and each being done by hands or at times that can be spared from the other, the most is made of everything.

The class of citizens who provide at once their own food and their own raiment, may be viewed as the most truly independent and happy. They are more; they are the best basis of public liberty and the strongest bulwark of public safety. It follows, that the greater the proportion of this class to the whole society, the more free, the more independent, and the more happy must be the society itself.

In appreciating the regular branches of manufacturing and mechanical industry, their tendency must be compared with the principles laid down, and their merit graduated accordingly. Whatever is least favorable to vigor of body, to the faculties of the mind, or to the virtues or to the utilities of life, instead of being forced or fostered by public authority, ought to be seen with regret, as long as occupations more friendly to human happiness lie vacant.

The several professions of more elevated pretensions, the merchant, the lawyer, the physician, the philosopher, the divine, form a certain proportion of every civilized society, and readily adjust their numbers to its demands and its circumstances.

MARCH 3.

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### 13. FASHION.

An humble address has been lately presented to the Prince of Wales by the BUCKLE MANUFACTURERS of Birmingham, Wassa, Wolverhampton, and their environs, stating that the BUCKLE TRADE gives employment to more than



TWENTY THOUSAND persons, numbers of whom, in consequence of the prevailing fashion of SHOESTRINGS and SLIPPERS, are at present without employ, almost destitute of bread, and exposed to the horrors of want at the most in clement season; that to the manufacturers of BUCKLES and BUTTONS Birmingham owes its important figure on the map of England; that it is to no purpose to address FASHION herself, she being void of feeling and deaf to argument, but fortunately accustomed to listen to his voice, and to obey his commands; and, finally, IMPLORING his Royal Highness to consider the deplorable condition of their trade, which is in danger of being ruined by the *mutability of fashion*, and to give that direction to the *public taste* which will insure the lasting gratitude of the petitioners.

Several important reflections are suggested by this address.

I. The most precarious of all occupations which give bread to the industrious are those depending on mere fashion, which generally changes so suddenly, and often so considerably, as to throw whole bodies of people out of employment.

II. Of all occupations those are the least desirable in a free State which produce the most servile dependence of one class of citizens on another class. This dependence must increase as the *mutuality* of wants is diminished. Where the wants on one side are the absolute necessities, and on the other are neither absolute necessities, nor result from the habitual economy of life, but are the mere caprices of fancy, the evil is in its extreme; or if not—

III. The extremity of the evil must be in the case before us, where the absolute necessities depend on the caprices of fancy, and the caprice of a single fancy directs the fashion of the community. Here the dependence sinks to the lowest point of servility. We see a proof of it in the *spirit* of the address. *Twenty thousand* persons are to get or go without their bread, as a wanton youth may fancy to wear his shoes with or without straps, or to fasten his straps with strings or with buckles. Can any despotism be more cruel than a situation in which the existence of thousands depends on one will, and that will on the most slight and fickle of all motives, a mere whim of the imagination?

IV. What a contrast is here to the independent situation and manly sentiments of American citizens, who live on their own soil, or whose labour is necessary to its cultivation, or who are occupied in supplying wants which, being founded in solid utility, in comfortable accommodation, or in settled habits, produce a reciprocity of dependence, at once insuring subsistence, and inspiring a dignified sense of social rights!

V. The condition of those who receive employment and bread from the precarious source of fashion and superfluity, is a lesson to nations as well as to individuals. In proportion as a nation consists of that description of citizens, and depends on external commerce, it is dependent on the consumption and caprice of other nations. If the laws of propriety did not forbid, the manu-

facturers of Birmingham, Wassal, and Wolverhampton had as real an interest in supplicating the arbiters of fashion in America as the patron they have addressed. The dependence in the case of nations is even greater than among individuals of the same nation ; for, besides the *mutability of fashion*, which is the same in both, the *mutability of policy* is another source of danger in the former.

MARCH 20th.

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#### 14. PROPERTY.

This term, in its particular application, means “that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual.”

In its larger and juster meaning, it embraces everything to which a man may attach a value and have a right, and *which leaves to every one else the like advantage*.

In the former sense, a man's land, or merchandise, or money, is called his property.

In the latter sense, a man has a property in his opinions and the free communication of them.

He has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them.

He has a property very dear to him in the safety and liberty of his person.

He has an equal property in the free use of his faculties, and free choice of the objects on which to employ them.

In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights.

Where an excess of power prevails, property of no sort is duly respected. No man is safe in his opinions, his person, his faculties, or his possessions.

Where there is an excess of liberty, the effect is the same, though from an opposite cause.

Government is instituted to protect property of every sort ; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a *just* government which *impartially* secures to every man whatever is his *own*.

According to this standard of merit, the praise of affording a just security to property should be sparingly bestowed on a government which, however scrupulously guarding the possessions of individuals, does not protect them in the enjoyment and communication of their opinions, in which they have an equal, and, in the estimation of some, a more valuable property.

More sparingly should this praise be allowed to a government where a man's religious rights are violated by penalties, or fettered by tests, or taxed by a hierarchy.

Conscience is the most sacred of all property; other property depending in part on positive law, the exercise of that being a natural and unalienable right. To guard a man's house as his castle, to pay public and enforce private debts with the most exact faith, can give no title to invade a man's conscience, which is more sacred than his castle, or to withhold from it that debt of protection for which the public faith is pledged by the very nature and original conditions of the social pact.

That is not a just government, nor is property secure under it, where the property which a man has in his personal safety and personal liberty is violated by arbitrary seizures of one class of citizens for the service of the rest. A magistrate issuing his warrants to a press-gang would be in his proper functions in Turkey or Indostan, under appellations proverbial of the most complete despotism.

That is not a just government, nor is property secure under it, where arbitrary restrictions, exemptions, and monopolies deny to part of its citizens that free use of their faculties and free choice of their occupations which not only constitute their property in the general sense of the word, but are the means of acquiring property strictly so called.

What must be the spirit of legislation where a manufacturer of linen cloth is forbidden to bury his own child in a linen shroud, in order to favour his neighbour who manufactures woolen cloth; where the manufacturer and weaver of woolen cloth are again forbidden the economical use of buttons of that material, in favor of the manufacturer of buttons of other materials!

A just security to property is not afforded by that government, under which unequal taxes oppress one species of property and reward another species; where arbitrary taxes invade the domestic sanctuaries of the rich, and excessive taxes grind the faces of the poor; where the keenness and competitions of want are deemed an insufficient spur to labor, and taxes are again applied by an unfeeling policy, as another spur, in violation of that sacred property which Heaven, in decreeing man to earn his bread by the sweat of his brow, kindly reserved to him in the small repose that could be spared from the supply of his necessities.

If there be a government, then, which prides itself in maintaining the inviolability of property; which provides that none shall be taken *directly*, even for public use, without indemnification to the owner, and yet *directly* violates the property which individuals have in their opinions, their religion, their passions, and their faculties—nay, more, which *indirectly* violates their property in their actual possessions, in the labor that acquires their daily subsistence, and in the hallowed remnant of time which ought to relieve their fatigues and soothe their cares—the inference will have been anticipated that such a government is not a pattern for the United States.

If the United States mean to obtain or deserve the full praise due to wise and just governments, they will equally respect the rights of property and the

property in rights; they will rival the government that most sacredly guards the former, and by repelling its example in violating the latter, will make themselves a pattern to that and all other governments.

MARCH 27th.

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#### 15. THE UNION—WHO ARE ITS REAL FRIENDS?

Not those who charge others with not being its friends, whilst their own conduct is wantonly multiplying its enemies.

Not those who favor measures which, by pampering the spirit of speculation within and without the Government, disgust the best friends of the Union.

Not those who promote unnecessary accumulations of the debt of the Union, instead of the best means of discharging it as fast as possible, thereby increasing the causes of corruption in the Government, and the pretext for new taxes under its authority; the former undermining the confidence, the latter alienating the affection, of the people.

Not those who study, by arbitrary interpretations and insidious precedents, to pervert the limited Government of the Union into a government of unlimited discretion, contrary to the will and subversive of the authority of the people.

Not those who avow or betray principles of monarchy and aristocracy, in opposition to the republican principles of the Union and the republican spirit of the people, or who espouse a system of measures more accommodated to the depraved examples of those hereditary forms than to the true genius of our own.

Not those, in a word, who would force on the people the melancholy duty of choosing between the loss of the Union and the loss of what the Union was meant to secure.

*The real FRIENDS of the Union are those* who are friends to the authority of the people, the sole foundation on which the Union rests;

Who are friends to liberty, the great end for which the Union was formed;

Who are friends to the limited and republican system of government, the means provided by that authority for the attainment of that end;

Who are enemies to every public measure that might smooth the way to hereditary government, for resisting the tyrannies of which the Union was first planned, and for more effectually excluding which it was put into its present form;

Who, considering a public debt as injurious to the interests of the people and baneful to the virtue of the Government, are enemies to every contrivance for *unnecessarily* increasing its amount, or protracting its duration, or extending its influence.

In a word, those are the real friends of the Union who are friends to that

republican policy throughout, which is the only *cement* for the union of a republican people, in opposition to a spirit of usurpation and monarchy, which is the *menstruum* most capable of dissolving it.

MARCH 31st.

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### 16. A CANDID STATE OF PARTIES.

As it is the business of the contemplative statesman to trace the history of parties in a free country, so it is the duty of the citizen at all times to understand the actual state of them. Whenever this duty is omitted, an opportunity is given to designing men, by the use of artificial or nominal distinctions, to oppose and balance against each other those who never differed as to the end to be pursued, and may no longer differ as to the means of attaining it. The most interesting state of parties in the United States may be referred to three periods. Those who espoused the cause of independence and those who adhered to the British claims, formed the parties of the first period; if, indeed, the disaffected class were considerable enough to deserve the name of a party. This state of things was superseded by the treaty of peace in 1783. From 1783 to 1787 there were parties in abundance, but being rather local than general, they are not within the present review.

The Federal Constitution, proposed in the latter year, gave birth to a second and most interesting division of the people. Every one remembers it, because every one was involved in it.

Among those who embraced the Constitution, the great body were unquestionably friends to republican liberty; though there were, no doubt, some who were openly or secretly attached to monarchy and aristocracy, and hoped to make the Constitution a cradle for these hereditary establishments.

Among those who opposed the Constitution, the great body were certainly well affected to the Union and to good government, though there might be a few who had a leaning unfavorably to both. This state of parties was terminated by the regular and effectual establishment of the Federal Government in 1788, out of the administration of which, however, has arisen a third division, which, being natural to most political societies, is likely to be of some duration in ours.

One of the divisions consists of those who, from particular interest, from natural temper, or from the habits of life, are more partial to the opulent than to the other classes of society; and having debauched themselves into a persuasion that mankind are incapable of governing themselves, it follows with them, of course, that government can be carried on only by the pageantry of rank, the influence of money and emoluments, and the tenor of military force. Men of those sentiments must naturally wish to point the measures of Government less to the interest of the many than of a few, and less to the reason of

the many than to their weaknesses; hoping, perhaps, in proportion to the ardor of their zeal, that by giving such a turn to the administration, the Government itself may by degrees be narrowed into fewer hands, and approximated to an hereditary form. The other division consists of those who, believing in the doctrine that mankind are capable of governing themselves and hating hereditary power as an insult to the reason and an outrage to the rights of man, are naturally offended at every public measure that does not appeal to the understanding and to the general interest of the community, or that is not strictly conformable to the principles and conducive to the preservation of republican government.

This being the real state of parties among us, an experienced and dispassionate observer will be at no loss to decide on the probable conduct of each.

The anti-republican party, as it may be called, being the weaker in point of numbers, will be induced by the most obvious motives to strengthen themselves with the men of influence, particularly of moneyed, which is the most active and insinuating influence. It will be equally their true policy to weaken their opponents by reviving exploded parties, and taking advantage of all prejudices, local, political, and occupational, that may prevent or disturb a general coalition of sentiments.

The Republican party, as it may be termed, conscious that the mass of the people in every part of the Union, in every State, and of every occupation, must at bottom be with them, both in interest and sentiment, will naturally find their account in burying all antecedent questions, in banishing every other distinction than that between enemies and friends to republican government, and in promoting a general harmony among the latter, wherever residing or however employed.

Whether the republican or the rival party will ultimately establish its ascendence, is a problem which may be contemplated now, but which time alone can solve. On one hand, experience shows that in politics, as in war, stratagem is often an overmatch for numbers; and, among more happy characteristics of our political situation, it is now well understood that there are peculiarities, some temporary, others more durable, which may favour that side in the contest.

On the republican side, again, the superiority of numbers is so great, their sentiments are so decided, and the practice of making a common cause, where there is a common sentiment and common interest, in spite of circumstantial and artificial distinctions, is so well understood, that no temperate observer of human affairs will be surprised if the issue in the present instance should be reversed, and the Government be administered in the spirit and form approved by the great body of the people.

PHILADELPHIA, September 22.

## 17. WHO ARE THE BEST KEEPERS OF THE PEOPLE'S LIBERTIES?

*Republican.*—The people themselves. The sacred trust can be nowhere so safe as in the hands most interested in preserving it.

*Anti-Republican.*—The people are stupid, suspicious, licentious. They cannot safely trust themselves. When they have established government they should think of nothing but obedience, leaving the care of their liberties to their wiser rulers.

*Republican.*—Although all men are born free, and all nations might be so, yet, too true it is that slavery has been the general lot of the human race. Ignorant, they have been cheated; asleep, they have been surprised; divided, the yoke has been forced upon them. But what is the lesson? that because the people *may* betray themselves they ought to give themselves up, blindfold, to those who have an interest in betraying them? Rather conclude that the people ought to be enlightened to be awakened; to be united, that after establishing a government they should watch over it as well as obey it.

*Anti-Republican.*—You look at the surface only, where errors float, instead of fathoming the depths where truth lies hid. It is not the government that is disposed to fly off from the people; but the people that are ever ready to fly off from the government. Rather say, then, enlighten the government, warn it to be vigilant, enrich it with influence, arm it with force, and to the people never pronounce but two words, *submission* and *confidence*.

*Republican.*—The centrifugal tendency, then, is in the people, not in the government, and the secret art lies in restraining the tendency by augmenting the attractive principle of the government with all the weight that can be added to it. What a perversion of the natural order of things, to make *power* the primary and central object of the social system, and *liberty* but its satellite!

*Anti-Republican.*—The science of the stars can never instruct you in the mysteries of government. Wonderful as it may seem, the more you increase the attractive force of power, the more you enlarge the sphere of liberty; the more you make government independent and hostile towards the people, the better security you provide for their rights and interests. Hence the wisdom of the theory, which, after limiting the share of the people to a third of the government, and lessening the influence of that share by the mode and term of delegating it, establishes two grand hereditary orders, with feelings, habits, interests, and prerogatives, all inveterately hostile to the rights and interests of the people, yet, by a *mysterious* operation, all combining to fortify the people in both.

*Republican.*—Mysterious indeed! But mysteries belong to religion, not to government; to the ways of the Almighty, not to the works of man. And in religion itself there is nothing mysterious to its author; the mystery lies in the dimness of the human sight. So in the institutions of man let there be no

mystery, unless for those inferior beings endowed with a ray, perhaps, of the twilight vouchsafed to the first order of terrestrial creation.

*Anti-Republican.*—You are destitute, I perceive, of every quality of a good citizen, or, rather, of a good *subject*. You have neither the light of faith nor the spirit of obedience. I denounce you to the government as an accomplice of atheism and anarchy.

*Republican.*—And I forbear to denounce you to the people, though a blasphemer of their rights and an idolater of tyranny. Liberty disdains to persecute.

DECEMBER 20.



## POLITICAL OBSERVATIONS.

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A variety of publications, in pamphlets and other forms, have appeared in different parts of the Union since the session of Congress which ended in June, 1794; endeavoring, by discolored representations of our public affairs, and particularly of certain occurrences of that session, to turn the tide of public opinion into a party channel. The immediate object of the writers was either avowedly or evidently to operate on the approaching elections of Federal Representatives. As that crisis will have entirely elapsed before the following observations will appear, they will, at least, be free from a charge of the same views; and will, consequently, have the stronger claim to that deliberate attention and reflection to which they are submitted.

The publications alluded to have passed slightly over the transactions of the First and Second Congress; and so far, their example will here be followed.

Whether, indeed, the funding system was modelled either on the principles of substantial justice or on the demands of public faith? Whether it did not contain ingredients friendly to the duration of the public debt, and implying that it was regarded as a public good? Whether the assumption of the State debts was not enforced by overcharged representations; and whether, if the burdens had been equalized only, instead of being assumed in the gross, the States could have discharged their respective proportions, by their local resources, sooner and more conveniently than the General Government will be able to discharge the whole debts by general resources? Whether the excise system be congenial with the spirit and conducive to the happiness of our country, or can even justify itself as a productive source of revenue? Whether again the Bank was not established without authority from the Constitution? Whether it did not throw unnecessary and unreasonable advantages into the hands of men, previously enriched beyond reason or necessity?\* And whether

\* According to the plan of the Bank, originally recommended in the report of the Secretary of the Treasury, the charter was to continue until the final redemption of that part of its stock consisting of public debt; that is, until the whole of the six per cent. stock should be redeemed; for the part held by the Bank could not be finally redeemed until the final redemption of the entire mass. In the progress of the bill through Congress, the term, not without difficulty, (as it appears,) was fixed at about twenty years. Notwithstanding this reduction, the market value of Bank stock has given an average profit to the subscribers of thirty or forty per cent. on their capitals, or an aggregate profit of three on the aggregate capital of eight millions; and it could not otherwise happen, than that this immense gain would fall into the hands of those who had gained most by purchases of certificates, because the great purchasers being most on the watch, having the best intelligence, and, in general, actually attending in person, or by agents, on the operations of the Government, would, of course, be the first to seize the proffered advantage, in exclusion of

it can be allowed the praise of a salutary operation until its effects shall have been more accurately traced, and its hidden transactions shall be fully unveiled to the public eye? These and others are questions which, though of great importance, it is not intended here to examine. Most of them have been finally decided by the competent authority; and the rest have, no doubt, already impressed themselves on the public attention.

Passing on then to the session of Congress preceding the last, we are met, in the first place, by the most serious charges against the Southern members of Congress in general, and particularly against the Representatives of Virginia. They are charged with having supported a policy which would inevitably have involved the United States in the war of Europe, have reduced us from the rank of a free people to that of French colonies, and, possibly, have landed us in disunion, anarchy, and misery; and the policy from which these tremendous calamities was to flow, is referred to certain commercial resolutions moved by a member from Virginia in the House of Representatives.

To place in its true light the fallacy which infers such consequences from such a cause, it will be proper to review the circumstances which preceded and attended the resolution.

It is well known that at the peace between the United States and Great Britain, it became a question with the latter, whether she should endeavor to regain the lost commerce of America by liberal and reciprocal arrangements; or trust to a relapse of it into its former channels, without the price of such arrangements on her part. Whilst she was fearful that our commerce would be conducted into new and rival channels, she leaned to the first side of the alternative, and a bill was actually carried in the House of Commons, by the present Prime Minister\* corresponding with that sentiment. She soon, however,

the primitive, the distant, and the uninformed, if not misinformed, holders of the subscribable paper.

It has actually happened, that the first provision for redeeming the debt at the stipulated rate has been postponed for five years; and the provision now made, if no interruption whatever should take place, will not effect the object within less than twenty-five or thirty years. It will not be difficult to compute the additional profit which would have accrued to the stockholders had the original plan been adopted. But there is another, and, perhaps, a more important view of the tendency of a plan making the duration of the charter to depend on the duration of the public debt. It would have stimulated, by the strongest motive of interest, that important and influential corporation to impede the final discharge of the public debt, in order to prolong its charter and its emoluments. At present, indeed, it has but too obvious a temptation to favor the continuance and increase of public debts; since new debts call for anticipations by loans of its paper, and produce new taxes, by which the circulation of its paper is extended.

Those who attend to this subject, with minds clouded neither by prejudice nor by interest, will rightly decide on the union which has subsisted between a seat in Congress and a seat at the Bank. The indecorum as well as evil tendency of the alliance has, by provoking the censorial notice of the public, produced a temporary dissolution of it. Query, whether there be not a remnant of the abuse in the case of such as are at the same time stockholders of the Bank and members of Congress? In the latter character they vote for borrowing money on public account, which, in their former character, they are to lend on their own account.

\* Mr. Pitt.

began to discover (or to hope) that the weakness of our Federal Government, and the want of concurrence among the State governments, would secure her against the danger at first apprehended. From that moment all ideas of conciliation and concession vanished. She determined to enjoy at once the full benefit of the freedom allowed by our regulations, and of the monopolies established by her own.

In this state of things, the pride as well as the interest of America were everywhere aroused. The mercantile world, in particular, was all on fire; complaints flew from one end of the continent to the other; projects of retaliation and redress engrossed the public attention. At one time the States endeavored, by separate efforts, to counteract the unequal laws of Great Britain. At another, correspondencies were opened for uniting their efforts. An attempt was also made to vest in the former Congress a limited power for a limited time, in order to give effect to the general will.

All these experiments, instead of answering the purpose in view, served only to confirm Great Britain in her first belief that her restrictive plans were in no danger of retaliation.

It was at length determined by the Legislature of Virginia to go to work in a new way. It was proposed, and most of the States agreed, to send commissioners to digest some change in our general system that might prove an effectual remedy. The Commissioners met; but finding their powers too circumscribed for the great object, which expanded itself before them, they proposed a Convention, on a more enlarged plan, for a general revision of the Federal Government.

From this Convention proceeded the present Federal Constitution, which gives to the general will the means of providing in the several necessary cases for the general welfare; and particularly in the case of regulating our commerce in such manner as may be required by the regulations of other countries.

It was natural to expect that one of the first objects of deliberation under the new Constitution would be that which had been first and most contemplated in forming it. Accordingly it was, at the first session, proposed that something should be done analogous to the wishes of the several States, and expressive of the efficiency of the new Government. A discrimination between nations in treaty and those not in treaty, the mode most generally embraced by the States, was agreed to in several forms, and adhered to in repeated votes by a very great majority of the House of Representatives. The Senate, however, did not concur with the House of Representatives, and our commercial arrangements were made up without any provision on the subject.

From that date to the session of Congress ending in June, 1794, the interval passed without any effective appeal to the interest of Great Britain. A silent reliance was placed on her voluntary justice or her enlightened interest.

This long and patient reliance being ascribed (as was foretold) to other

causes than a generous forbearance on the part of the United States, had, at the commencement of the Third Congress, left us, with respect to a reciprocity of commercial regulations between the two countries, precisely where the commencement of the First Congress had found us. This was not all; the western posts, which entailed an expensive Indian war on us, continued to be withheld, although all pretext for it had been removed on our part. Depredations as derogatory to our rights as grievous to our interests, had been licensed by the British Government against our lawful commerce on the high seas. And it was believed, on the most probable grounds, that the measure by which the Algerine pirates were let loose on the Atlantic had not taken place without the participation of the same unfriendly counsels. In a word, to say nothing of the American victims to savages and barbarians, it was estimated that our annual damages from Great Britain were not less than three or four millions of dollars.

This distressing situation spoke the more loudly to the patriotism of the Representatives of the people, as the nature and manner of the communications from the President seemed to make a formal and affecting appeal on the subject to their co-operation. The necessity of some effort was palpable. The only room for different opinions seemed to lie in the different modes of redress proposed. On one side nothing was proposed beyond the eventual measures of defence, in which all concurred, except the building of six frigates, for the purpose of enforcing our rights against Algiers. The other side, considering this measure as pointed at one only of our evils, and as inadequate even to that, thought it best to seek for some safe but powerful remedy, that might be applied to the root of them; and with this view the commercial propositions were introduced.

They were at first opposed, on the ground that Great Britain was amicably disposed towards the United States, and that we ought to await the event of the depending negotiation. To this it was replied, that more than four years of appeal to that disposition had been tried in vain by the new Government; that the negotiation had been abortive and was no longer depending; that the late letters\* from Mr. Pinckney, the Minister at London, had not only cut off all remaining hope from that source, but had expressly pointed commercial regulations as the most eligible redress to be pursued.

Another ground of opposition was, that the United States were more dependent on the trade of Great Britain than Great Britain was on the trade of the United States. This will appear scarcely credible to those who understand the commerce between the two countries, who recollect that it supplies us chiefly with superfluities; whilst in return it employs the industry of one part of her people, sends to another part the very bread which keeps them from starving,

\* See his letter of 15th August, 1793, to the Secretary of State, in the printed communications from the President to the Congress.

and remits, moreover, an annual balance in specie of ten or twelve millions of dollars.\* It is true, nevertheless, as the debate shews, that this was the language, however strange, of some who combated the propositions.

Nay, what is still more extraordinary, it was maintained that the United States had, on the whole, little or no reason to complain of the footing of their commerce with Great Britain; although such complaints had prevailed in every State, among every class of citizens, ever since the year 1783; and although the Federal Constitution had originated in those complaints, and had been established with the known view of redressing them.

As such objections could have little effect in convincing the judgment of the House of Representatives, and still less that of the public at large, a new mode of assailing the propositions has been substituted. The American people love peace; and the cry of war might alarm when no hope remained of convincing them. The cry of war has accordingly been echoed through the continent with a loudness proportioned to the emptiness of the pretext; and to this cry has been added another still more absurd, that the propositions would, in the end, enslave the United States to their allies and plunge them into anarchy and misery.

It is truly mortifying to be obliged to tax the patience of the reader with an examination of such gross absurdities; but it may be of use to expose where there may be no necessity to refute them.

What were the commercial propositions? They discriminated between nations in treaty and nations not in treaty, by an additional duty on the manufactures and trade of the latter; and they reciprocated the navigation laws of all nations who excluded the vessels of the United States from a common right of being used in the trade between the United States and such nations.

Is there anything here that could afford a cause or a pretext for war to Great Britain or any other nation? If we hold at present the rank of a free people; if we are no longer Colonies of Great Britain; if we have not already relapsed into some dependence on that nation, we have the self-evident right to regulate our trade according to our own will and our own interest, not according to her will or her interest. This right can be denied to no independent nation. It has not been and will not be denied to ourselves, by any opponent of the propositions.

\* This balance is not precise, but may be deemed within the amount. It appears from a late, and apparently an office statement from *Great Britain* of exports and imports between Great Britain and the United States, that the actual balance in the year 1791 was *three millions thirty-one thousand two hundred and fifteen pounds fourteen and ninepence sterling*, and in the year 1792 *three millions two hundred and thirty-one thousand and ninety pounds seven shillings and fourpence sterling*, equal to *fourteen millions three hundred and sixty thousand four hundred and one dollars*. As this relates to the trade with Great Britain only, the balance in our favor in the West India trade is to be deducted. There is reason, however, to believe that it would not reduce the general balance so low as is above stated; besides, that the balance against us in the trade with Ireland is not taken into the account.

If the propositions could give no right to Great Britain to make war, would they have given any color to her for such an outrage on us? No American citizen will affirm it. No British subject, who is a man of candor, will pretend it; because, he must know that the commercial regulations of Great Britain herself have discriminated among foreign nations whenever it was thought convenient. They have discriminated against particular nations by name; they have discriminated with respect to particular articles by name, by the nations producing them, and by the places exporting them. And as to the navigation articles proposed, they were not only common to the other countries along with Great Britain, but reciprocal between Great Britain and the United States; nay, it is notorious that they fell short of an immediate and exact reciprocity of her own navigation laws.

Would any nation be so barefaced as to quarrel with another for doing the same thing which she herself has done, for doing less than she herself has done, towards that particular nation? It is impossible that Great Britain would ever expose herself by so absurd as well as arrogant a proceeding. If she really meant to quarrel with this country, common prudence and common decency would prescribe some other less odious pretext for her hostility.

It is the more astonishing that such a charge against the propositions should have been hazarded when the opinion and the proceedings of America on the subject of our commercial policy is reviewed.

Whilst the power over trade remained with the several States there were few of them that did not exercise it, on the principle, if not in the mode, of the commercial propositions. The Eastern States, generally, passed laws either discriminating between some foreign nations and others, or levelled against Great Britain by name. Maryland and Virginia did the same; so did two, if not the three, of the more Southern States. Was it ever, during that period, pretended at home or abroad, that a cause or pretext for the quarrel was given to Great Britain or any other nation? or were our rights better understood at that time than at this, or more likely then than now to command the respect due to them?

Let it not be said Great Britain was then at peace; she is now at war. If she would not wantonly attempt to control the exercise of our sovereign rights when she had no other enemy on her hands, will she be mad enough to make the attempt when her hands are fully employed with the war already on them? Would not those who say now postpone the measures until Great Britain shall be at peace be more ready and have more reason to say, in time of peace, postpone them until she shall be at war; there will then be no danger of her throwing new enemies into the scale against her?

Nor let it be said that the combined Powers would aid and stimulate Great Britain to wage an unjust war on the United States. They also are too fully occupied with their present enemy to wish for another on their hands; not to add, that two of those Powers, being in treaty with the United States, are

favoured by the propositions; and that all of them are well known to entertain an habitual jealousy of the monopolizing character and maritime ascendancy of that nation.

One thing ought to be regarded as certain and conclusive on this head: whilst the war against France remains unsuccessful the United States are in no danger from any of the Powers engaged in it. In the event of a complete overthrow of that Republic, it is impossible to say what might follow. But if the hostile views of the combination should be turned towards this continent, it would clearly not be to vindicate the commercial interests of Great Britain against the commercial rights of the United States. The object would be, to root out Liberty from the face of the earth. No pretext would be wanted, or a better would be contrived than anything to be found in the commercial propositions.

On whatever other side we view the clamor against these propositions as inevitably productive of war, it presents neither evidence to justify it nor argument to colour it.

The allegation necessarily supposes either that the friends of the plan could discover no probability, where its opponents could see a certainty, or that the former were less averse to war than the latter.

The first supposition will not be discussed. A few observations on the other may throw new lights on the whole subject.

The members, in general, who espoused these propositions have been constantly in that part of the Congress who have professed with most zeal, and pursued with most scruple, the characteristics of republican government. They have adhered to these characteristics in defining the meaning of the Constitution, in adjusting the ceremonial of public proceedings, and in marking out the course of the Administration. They have manifested, particularly, a deep conviction of the danger to liberty and the Constitution, from a gradual assumption or extension of discretionary powers in the executive department; from successive augmentations of a standing army; and from the perpetuity and progression of public debts and taxes. They have been sometimes reprehended in debate for an excess of caution and jealousy on these points. And the newspapers of a certain stamp, by distorting and discolouring this part of their conduct, have painted it in all the deformity which the most industrious calumny could devise.

Those best acquainted with the individuals who more particularly supported the propositions will be foremost to testify, that such are the principles which not only govern them in public life, but which are invariably maintained by them in every other situation. And it cannot be believed nor suspected, that with such principles they could view war as less an evil than it appeared to their opponents.

Of all the enemies to public liberty war is, perhaps, the most to be dreaded,

because it comprises and develops the germ of every other. War is the parent of armies; from these proceed debts and taxes; and armies, and debts, and taxes are the known instruments for bringing the many under the domination of the few. In war, too, the discretionary power of the Executive is extended; its influence in dealing out offices, honors, and emoluments is multiplied; and all the means of seducing the minds, are added to those of subduing the force, of the people. The same malignant aspect in republicanism may be traced in the inequality of fortunes, and the opportunities of fraud, growing out of a state of war, and in the degeneracy of manners and of morals, engendered by both. No nation could preserve its freedom in the midst of continual warfare.

Those truths are well established. They are read in every page which records the progression from a less arbitrary to a more arbitrary government, or the transition from a popular government to an aristocracy or a monarchy.

It must be evident, then, that in the same degree as the friends of the propositions were jealous of armies, and debts, and prerogative, as dangerous to a republican Constitution, they must have been averse to war, as favourable to armies and debts, and prerogative.

The fact accordingly appears to be, that they were particularly averse to war. They not only considered the propositions as having no tendency to war, but preferred them, as the most likely means of obtaining our objects without war. They thought, and thought truly, that Great Britain was more vulnerable in her commerce than in her fleets and armies; that she valued our necessities for her markets, and our markets for her superfluities, more than she feared our frigates or our militia; and that she would, consequently, be more ready to make proper concessions under the influence of the former, than of the latter motive.

Great Britain is a commercial nation. Her power, as well as her wealth, is derived from commerce. The American commerce is the most valuable branch she enjoys. It is the more valuable, not only as being of vital importance to her in some respects, but of growing importance beyond estimate in its general character. She will not easily part with such a resource. She will not rashly hazard it. She would be particularly aware of forcing a perpetuity of regulations, which not merely diminish her share, but may favour the rivalry of other nations. If anything, therefore, in the power of the United States could overcome her pride, her avidity, and her repugnancy to this country, it was justly concluded to be, not the fear of our arms, which, though invincible in defence, are little formidable in a war of offence, but the fear of suffering in the most fruitful branch of her trade, and of seeing it distributed among her rivals.

If any doubt on this subject could exist, it would vanish on a recollection



of the conduct of the British ministry at the close of the war in 1783. It is a fact which has been already touched, and is as notorious as it is instructive, that during the apprehension of finding her commerce with the United States abridged or endangered by the consequences of the Revolution, Great Britain was ready to purchase it, even at the expense of her West Indies monopoly. It was not until after she began to perceive the weakness of the Federal Government, the discord in the counteracting plans of the State governments, and the interest she would be able to establish here, that she ventured on that system to which she has since inflexibly adhered. Had the present Federal Government, on its first establishment, done what it ought to have done, what it was instituted and expected to do, and what was actually proposed and intended it should do; had it revived and confirmed the belief in Great Britain that our trade and navigation would not be free to her without an equal and reciprocal freedom to us in her trade and navigation, we have her own authority for saying that she would long since have met us on proper ground; because the same motives which produced the bill brought into the British Parliament by Mr. Pitt, in order to prevent the evil apprehended, would have produced the same concession at least, in order to obtain a recall of the evil, after it had taken place.

The aversion to war in the friends of the propositions may be traced through the whole proceedings and debates of the session. After the depredations in the West Indies which seemed to fill up the measure of British aggressions, they adhered to their original policy of pursuing redress, rather by commercial than by hostile operations, and with this view unanimously concurred in the bill for suspending importations from British ports; a bill that was carried through the House by a vote of fifty-eight against thirty-four. The friends of the propositions appeared, indeed, never to have admitted that Great Britain could seriously mean to force a war with the United States, unless in the event of prostrating the French Republic, and they did not believe that such an event was to be apprehended.

Confiding in this opinion, to which time has given its full sanction, they could not accede to those extraordinary measures, which nothing short of the most obvious and imperious necessity could plead for. They were as ready as any to fortify our harbours, and fill our magazines and arsenals; these were safe and requisite provisions for our permanent defence. They were ready and anxious for arming and preparing our militia; that was the true republican bulwark of our security. They joined also in the addition of a regiment of artillery to the military establishment, in order to complete the defensive arrangement on our eastern frontier. These facts are on record, and are the proper answer to those shameless calumnies which have asserted that the friends of the commercial propositions were enemies to every proposition for the national security.

But it was their opponents, not they, who continually maintained that on a

failure of negotiation it would be more eligible to seek redress by war than by commercial regulations; who talked of raising armies that might threaten the neighbouring possessions of foreign powers; who contended for delegating to the Executive the prerogatives of deciding whether the country was at war or not, and of levying, organizing, and calling into the field a regular army of ten, fifteen, nay of TWENTY-FIVE THOUSAND men.

It is of some importance that this part of the history of the session, which has found no place in the late reviews of it, should be well understood. They who are curious to learn the particulars must examine the debates and the votes. A full narrative would exceed the limits which are here prescribed. It must suffice to remark, that the efforts were varied and repeated until the last moment of the session, even after the departure of a number of members forbade new propositions, much more a renewal of rejected ones; and that the powers proposed to be surrendered to the Executive were those which the Constitution has most jealously appropriated to the Legislature.

The reader shall judge on this subject for himself.

The Constitution expressly and exclusively vests in the Legislature the power of declaring a state of war: it was proposed that the Executive might, in the recess of the Legislature, declare the United States to be in a state of war.

The Constitution expressly and exclusively vests in the Legislature the power of raising armies: it was proposed that, in the recess of the Legislature, the Executive might, at its pleasure, raise or not raise an army of ten, fifteen, or twenty-five thousand men.

The Constitution expressly and exclusively vests in the Legislature the power of creating offices: it was proposed that the Executive, in the recess of the Legislature, might create offices as well as appoint officers for an army of ten, fifteen, or twenty-five thousand men.

A delegation of such powers would have struck, not only at the fabric of our Constitution, but at the foundation of all well organized and well checked governments.

The separation of the power of declaring war from that of conducting it, is wisely contrived to exclude the danger of its being declared for the sake of its being conducted.

The separation of the power of raising armies from the power of commanding them, is intended to prevent the raising of armies for the sake of commanding them.

The separation of the power of creating offices from that of filling them, is an essential guard against the temptation to create offices for the sake of gratifying favourites or multiplying dependents.

Where would be the difference between the blending of these incompatible powers, by surrendering the legislative part of them into the hands of the Executive, and by assuming the executive part of them into the hands of the

Legislature? In either case the principle would be equally destroyed, and the consequences equally dangerous.

An attempt to answer these observations by appealing to the virtues of the present Chief Magistrate, and to the confidence justly placed in them, will be little calculated either for his genuine patriotism or for the sound judgment of the American public.

The people of the United States would not merit the praise universally allowed to their intelligence if they did not distinguish between the respect due to the man and the functions belonging to the office. In expressing the former, there is no limit or guide, but the feelings of their grateful hearts. In deciding the latter, they will consult the Constitution; they will consider human nature, and, looking beyond the character of the existing Magistrate, fix their eyes on the precedent which must descend to his successors.

Will it be more than truth to say, that this great and venerable name is too often assumed for what cannot recommend itself, and for what there is neither proof nor probability that its sanction can be claimed? Do arguments fail? Is the public mind to be encountered? There are not a few ever ready to invoke the name of WASHINGTON; to garnish their heretical doctrines with his virtues, and season their unpalatable measures with his popularity. Those who take this liberty will not, however, be mistaken; his truest friends will be the last to sport with his influence—above all, for electioneering purposes. And it is but a fair suspicion, that they who draw most largely on that fund are hastening fastest to bankruptcy in their own.

As vain would be the attempt to explain away such alarming attacks on the Constitution, by pleading the difficulty, in some cases, of drawing a line between the different departments of power, or by recurring to the little precedents which may have crept in at urgent or unguarded moments.

It cannot be denied, that there may, in certain cases, be a difficulty in distinguishing the exact boundary between legislative and executive powers; but the real friend of the Constitution and of liberty, by his endeavors to lessen or avoid the difficulty, will easily be known from him who labors to increase the obscurity, in order to remove the constitutional landmarks without notice.

Nor will it be denied that precedents may be found where the line of separation between these powers has not been sufficiently regarded; where an improper latitude of discretion, particularly, has been given, or allowed, to the executive departments. But what does this prove? That the line ought to be considered as imaginary; that constitutional organizations of power ought to lose their effect? No. It proves with how much deliberation precedents ought to be established, and with how much caution arguments from them should be admitted. It may furnish another criterion, also, between the real and ostensible friend of constitutional liberty. The first will be as vigilant in resisting, as the last will be in promoting, the growth of inconsiderate or insidious precedents into established encroachments.

The next charge to be examined is, the tendency of the propositions to degrade the United States into French colonies.

As it is difficult to argue against suppositions made and multiplied at will, so it is happily impossible to impose on the good sense of this country by arguments which rest on suppositions only. In the present question it is first supposed that the exercise of the self-evident and sovereign right of regulating trade after the example of all independent nations, and that of the example of Great Britain towards the United States, would inevitably involve the United States in a war with Great Britain. It is then supposed that the other combined Powers, though some of them be favored by the regulations proposed, and all of them be jealous of the maritime predominance of Great Britain, would support the wrongs of Great Britain against the rights of the United States. It is, lastly, supposed that our allies, (the French,) in the event of success in establishing their own liberties, which they owe to our example, would be willing, as well as able, to rob us of ours, which they assisted us in obtaining; and that so malignant is their disposition on this head, that we should not be spared, even if embarked in a war against her own enemy. To finish the picture, it is intimated that in the character of allies we are the more exposed to this danger from the secret and hostile ambition of France.

It will not be expected that any formal refutation should be wasted on absurdities which answer themselves. None but those who have surrendered their reasoning faculties to the violence of their prejudices, will listen to suggestions implying that the freest nation in Europe is the basest people on the face of the earth; that instead of the friendly and festive sympathy indulged by the people of the United States, they ought to go into mourning at every triumph of the French arms; that instead of regarding the French revolution as a blessing to mankind and a bulwark to their own, they ought to anticipate its success as of all events the most formidable to their liberty and sovereignty; and that, calculating on the political connexion with that nation, as the source of additional danger from its enmity and its usurpation, the first favorable moment ought to be seized for putting an end to it.

It is not easy to dismiss this subject, however, without reflecting, with grief and surprise, on the readiness with which many launch into speculations unfriendly to the struggles of France, and regardless of the interesting relations in which that country stands to this. They seem to be more struck with every circumstance that can be made a topic of reproach or of chimerical apprehensions, than with all the splendid objects which are visible through the gloom of a revolution. But if there be an American who can see, without benevolent joy, the progress of that liberty to which he owes his own happiness, interest, at least, ought to find a place in his calculations. And if he cannot enlarge his views to the influence of the successes and friendship of France, or our safety as a nation, and particularly as a Republic, how can he be insensible to the benefits presented to the United States in her commerce? The French

markets consume more of our best productions than are consumed by any other nation. If a balance in specie be as favorable as is usually supposed, the sum which supplies the immense drains of our specie is derived also from the same source more than from any other. And in the great and precious article of navigation, the share of American tonnage employed in the trade with the French dominions gives to that trade a distinguished value; as well to that part of the Union which most depends on ships and seamen for its prosperity, as to that which most requires them for its protection.

Whenever these considerations shall have that full weight which a calm review will not fail to allow them, none will wonder more than the mercantile class of citizens themselves, that whilst they so anxiously wait stipulations from Great Britain, which are always within our command, so much indifference should be felt to those more important privileges in the trade of France, which, if not secured by a seasonable improvement of the commercial treaty with her, may possibly be forever lost to us.

Among the aspersions propagated against the friends, and the merits arrogated by the opponents, of the commercial propositions, much use has been made of the envoyship extraordinary to Great Britain. It has been affirmed that the former were averse to the measure on account of its pacific tendency; and that it was embraced by the latter as the proper substitute for all commercial operations on the policy of Great Britain. It is to be remembered, however,

1. That this measure originated wholly with the Executive.
2. That the opposition to it in the Senate (as far as the public have any knowledge of it) was made, not to the measure of appointing an envoy extraordinary, but to the appointment of the Chief Justice of the United States for that service.
3. That the House of Representatives never gave any opinion on the occasion, and that no opinion appears to have been expressed in debate by any individual of that House which can be tortured into a disapprobation of the measure on account of its pacific tendency.
4. That the measure did not take place until the commercial propositions had received all the opposition that could be given to them.
5. That there is no spark of evidence, that if the envoyship had never taken place or been thought of, the opponents of the propositions would have concurred in any commercial measures whatever, even after the West India spoliations had laid in their full claim to the public attention.

But it may be fairly asked of those who opposed first the commercial propositions, and then the non-importation bill, and who rest their justification on the appointment of an envoy extraordinary, wherein lay the inconsistency between these legislative and executive plans?

Was it thought best to appeal to the voluntary justice or liberal policy of Great Britain, and to these only? This was not certainly the case with those

who opposed the commercial appeals to the interest and the apprehension of Great Britain, because they were the most zealous for appealing to her fears by military preparations and menaces. If these had any meaning, they avowed that Great Britain was not to be brought to reason otherwise than by the danger of injury to herself. And such being her disposition, she would, of course, be most influenced by measures, of which the comparative operation would be most against her. Whether that would be apprehended from measures of the one or the other kind will easily be decided. But in every view, if *fear* was a proper auxiliary to negotiation, the appeal to it in the commercial measures proposed could not be inconsistent with the envoyship. The inconsistency belongs to the reasoning of those who would pronounce it proper and effectual to say to Great Britain, do us justice or we will seize on Canada, though the loss will be trifling to you, while the cost will be immense to us; and who pronounce it improper and ineffectual to say to Great Britain, do us justice or you will suffer a wound where you will most of all feel it, in a branch of your commerce which feeds one part of your dominions, and sends annually to the other a balance in specie of more than ten millions of dollars.

The opponents of the commercial measures may be asked, in the next place, to what cause the issue of the envoyship, if successful, ought to be ascribed?

Will it have been the pure effect of a benevolent and conciliatory disposition in Great Britain towards the United States? This will hardly be pretended by her warmest admirers and advocates. It is disproved by the whole tenor of her conduct ever since we were an independent and republican nation. Had this cordial disposition, or even a disposition to do us justice, been really felt, the delay would not have been spun out to so late a day. The moment would rather have been chosen when we were least in condition to vindicate our interest by united councils and persevering efforts. The motives then would have been strongest, and the merit most conspicuous; instead of this honourable and prudent course, it has been the vigilant study of Great Britain to take all possible advantage of our embarrassments; nor has the least inclination been shown to relax her system, except at the crisis in 1783, already mentioned, when, not foreseeing these embarrassments, she was alarmed for her commerce with the United States.

Will the success be ascribable to the respect paid to that country by the measure, or to the talents and address of the envoy?

Such an explanation of the fact is absolutely precluded by a series of other facts.

Soon after the peace, Mr. Adams, the present Vice President of the United States, was appointed Minister Plenipotentiary to the British Court. The measure was the more respectful as no mutual arrangement had been promised between the two countries, nor any intimation received from Great Britain that the civility should be returned; nor was the civility returned

during the whole period of his residence. The manner in which he was treated, and the United States through him, his protracted exertions and the mortifying inefficacy of them are too much in the public remembrance to need a rehearsal.

This first essay on the temper of Great Britain towards the United States was prior to the establishment of the Federal Constitution. The important change produced in our situation by this event led to another essay, which is not unknown to the public. Although in strictness it might not unreasonably have been expected, after what had been done in the instance of Mr. Adams, that the advance towards a diplomatic accommodation should then have come from Great Britain, Mr. G. Morris was made an agent for feeling her pulse and soothing her pride a second time. The history of his operations is not particularly known. It is certain, however, that this repetition of the advance produced no sensible change on her disposition towards us, much less any actual compliance with our just expectations and demands. The most that can be said is, that it was, after a considerable interval, followed by the mission of Mr. Hammond to the United States; who, as it is said, however, refused, notwithstanding the long residence of Mr. Adams at the court of London without a return of the civility, to commit the dignity of his master, until the most explicit assurances were given that Mr. Pinckney should immediately counterplace him.

The mission of this last respectable citizen forms a third appeal to the justice and good will of the British Government on the subjects between the two countries. His negotiations on that side the Atlantic, as well as those through Mr. Hammond on this, having been laid before the Congress and printed for general information, will speak for themselves. It will only be remarked, that they terminated here in the disclosure that Mr. Hammond had no authority, either to adjust the differences connected with the treaty of peace, or to concur in any solid arrangements for reciprocity in commerce and navigation; and that in Great Britain they terminated in the conviction of Mr. Pinckney that nothing was to be expected from the voluntary justice or policy of that country, and in his advice, before quoted, of *Commercial Regulations*, as the best means for obtaining a compliance with our just claims.

All who weigh these facts with candor will join in concluding that the success of the envoyship must be otherwise explained than by the operation of diplomatic compliments, or of personal talents.

To what causes, then, will the United States be truly indebted for any favorable result to the envoyship?

Every well-informed and unprejudiced mind will answer, to the following :

1. The spirit of America expressed by the vote of the House of Representatives, on the subject of the commercial propositions, by the large majority of that house (overruled by the casting voice in the Senate) in favour of the non importation bill, and by the act laying an embargo. Although these proceedings

would, doubtless, have been more efficacious if the two former had obtained the sanction of laws, and if the last had not been so soon repealed,\* yet they must have had no little effect as warnings to the British Government, that if her obstinacy should take away the last pretext from the opponents of such measures, it might be impossible to divide or mislead our public councils with respect to them in future.

There is no room to pretend that her relaxation in this case, if she should relax, will be the effect, not of those proceedings, but of the ultimate defeat of them. Former defeats of a like policy had repeatedly taken place, and are known to have produced, instead of relaxation, a more confirmed perseverance on the part of Great Britain. Under the old Confederation, the United States had not the power over commerce: of that situation she took advantage. The new government which contained the power did not evince the will to exert it: of that situation she still took the advantage. Should she yield, then, at the present juncture, the problem ought not to be solved, without presuming her to be satisfied by what has lately passed—that the United States have now not only the power but the will to exert it.

The reasoning is short and conclusive. In the year 1783, when Great Britain apprehended commercial restrictions from the United States, she was disposed to concede and to accommodate. From the year 1783 to the year 1794, when she apprehended no commercial restrictions, she showed no disposition to concede or to accommodate. In the year 1794, when alarming evidence was given of the danger of commercial restrictions, she did concede and accommodate.

If anything can have weakened the operation of the proceedings above referred to on the British Government, it must be the laboured and vehement attempts of their opponents to show that the United States had little to demand and everything to dread from Great Britain; that the commerce between the two countries was more essential to us than to her; that our citizens would be less willing than her subjects to bear, and our Government less able than hers to enforce, restrictions or interruptions of it: in a word, that we were more dependent on her than she was on us; and, therefore, ought to court her not to withdraw from us her supplies, though chiefly luxuries, instead of threatening to withdraw from her our supplies, though mostly necessaries.

It is difficult to say whether the indiscretion or the fallacy of such arguments be the more remarkable feature in them. All that can be hoped is, that an antidote to their mischievous tendency in Great Britain may be found in the consciousness there of the errors on which they are founded, and the contempt which they will be known to have excited in this country.

2. The other cause will be, the posture into which Europe has been thrown

\* That this is particularly true of the embargo is certain, as well from the known effect of that measure in the West Indies as from the admission of the West India planters in their late petition to the King and Council of Great Britain.



by the war with France, and particularly by the campaign of 1794. The combined armies have everywhere felt the superior valour, discipline, and resources of their Republican enemies. Prussia, after heavy and perfidious [?] draughts on the British Treasury, has retired from the common standard to contend with new dangers peculiar to herself. Austria, worn out in unavailing resistance, her arms disgraced, her treasure exhausted, and her vassals discontented, seeks her last consolation in the same source of British subsidy. The Dutch, instead of continuing their proportion of aids for the war, have their whole faculties turned over to France. Spain, with all her wealth and all her pride, is palsied in every nerve, and forced to the last resorts of royalty, to a reduction of salaries and pensions, and to the hoards of superstition. Great Britain herself has seen her military glory eclipsed, her projects confounded, her hopes blasted, her marine threatened, her resources overcharged, and her Government in danger of losing its energy, by the despotic excesses into which it has been overstrained.

If, under such circumstances, she does not abandon herself to apathy and despair, it is because she finds her credit still alive, and in that credit sees some possibility of making terms with misfortune. But what is the basis of that credit? Her commerce. And what is the most valuable remnant of that resource? The commerce with the U. States. Will she risk this best part of her last resource, by persevering in her selfish and unjust treatment of the United States?

Time will give a final answer to this question. All that can be now pronounced is, that if, on the awful precipice to which G. Britain is driven, she will open neither her eyes to her danger nor her heart to her duty, her character must be a greater contrast to the picture of it drawn by the opponents of the commercial measures than could have easily been imagined. If, on the other hand, she should relent and consult her reason, the change will be accounted for by her prospects on the other side of the Atlantic, and the countenance exhibited on this; without supposing her character to vary in a single feature from the view of it entertained by the friends of such measures.

That the rising spirit of America, and the successes of France, will have been the real causes of any favorable terms obtained by the mission of Mr. Jay, cannot be controverted. Had the same forbearance which was tried for ten years on the part of the United States been continued, and had the combined Powers proceeded in the victorious career which has signalized the French arms, under this reverse of circumstances the most bigoted Englishman will be ashamed to say that any relaxing change in the policy of his Government was to be hoped for by the United States.

Such are the reflections which occur on the supposition of a successful issue to the envoyship. Should it unhappily turn out that neither the new countenance presented by America, nor the adverse fortunes of Great Britain, can bend the latter to a reasonable accommodation, it may be worth while to in-

quire what will probably be the evidence furnished by the friends and adversaries of commercial measures with respect to their comparative attachments to peace?\*

If any regard be paid to consistency, those who opposed all such measures must be for an instant resort to arms. With them there was no alternative, but negotiation or war. Their language was, let us try the former, but be prepared for the latter; if the olive branch fail, let the sword vindicate our rights, as it has vindicated the rights of other nations. A real war is both more honourable and more eligible than commercial regulations. In these G. B. is an over-match for us.

On the other side, the friends of commercial measures, if consistent, will prefer these measures, as an intermediate experiment between negotiation and war. They will persist in their language, that Great Britain is more dependent on us than we are on her; that this has ever been the American sentiment, and is the true basis of American policy; that war should not be resorted to till everything short of war has been tried; that if Great Britain be invulnerable to our attacks, it is in her fleets and armies; that if the United States can bring her to reason at all, the surest as well as the cheapest means will be a judicious system of commercial operations; that here the United States are unquestionably an over-match for Great Britain.

It must be the ardent prayer of all, that the occasion may not happen for such a test of the consistency and the disposition of those whose counsels were so materially different on the subject of a commercial vindication of our rights. Should it be otherwise ordained, the public judgment will pronounce on which side the politics were most averse to war, and most anxious for every pacific effort that might at the same time be an efficient one, in preference to that last and dreadful resort of injured nations.

There remain two subjects belonging to the session of Congress under review, on each of which some comments are made proper by the misrepresentations which have been propagated.

The first is, The naval armament.

The second, The new taxes then established.

As to the first, it appears from the debates and other accounts, to have been urged in favour of the measure, that six frigates of one hundred and eighty-four guns, to be stationed at the mouth of the Mediterranean, would be sufficient to protect the American trade against the Algerine pirates; that such a force would not cost more than six hundred thousand dollars, including an outfit of stores and provisions for six months, and might be built in time to take their station by July or August last; that the expense of this armament would be fully justified by the importance of our trade to the south of Europe; that without such a protection the whole trade of the Atlantic would be ex-

\* When this was written the result of Mr. Jay's mission was wholly unknown.

posed to depredation ; nay, that the American coast might not escape the enterprising avarice of these roving barbarians ; that such an effort on the part of the United States was particularly due to the unfortunate citizens already groaning in chains and pining in despair, as well as to those who might otherwise be involved in the same fate. Other considerations of less influence may have entered into the decision on the same side.

On the other side, it was said that the force was insufficient for the object ; that the expense would be greater than was estimated ; that there was a limit to the expense which could be afforded for the protection of any branch of trade ; that the aggregate value of the annual trade, export and import, to Spain and Portugal, appeared, from authentic documents, not to exceed three and an half millions of dollars ;\* that the profit, only, on this amount was to be compared with the expense of the frigates ; that if the American vessels engaged in those channels should give place to vessels at peace with Algiers, they would repair to the channels quitted by the latter vessels, so that it would be rather a change than a loss of employment ; that the other distant branches of our trade would be little affected, and our own coast not at all ; that the frigates, at so great a distance on a turbulent sea, would be exposed to dangers, as well as attended with expenses, not to be calculated ; and if stationed where intended, would leave our trade up the Mediterranean as unprotected as it is at present : That in addition to these considerations, the frigates would not be ready by the time stated, nor probably until the war and the occasion would be over ; that if the removal of the Portuguese squadron from the blockade really proceeded, as was alleged, from Great Britain, she would, under some pretext or other, contrive to defeat the object of the frigates ; that if Great Britain was not at the bottom of the measure, the interest which Portugal had in our trade, which supplies her with the necessaries of life, would soon restore the protection she had withdrawn ; that it would be more effectual, as well as cheaper, to concert arrangements with Portugal, by which the United States would be subjected to an equitable share only, instead of taking on themselves the whole of the burden ; that as to our unfortunate citizens in captivity, the frigates could neither be in time nor of force to relieve them ; that money alone could do this, and that a sufficient sum ought to be provided for the purpose ; that it was moreover to be considered, that if there were any disposition in Great Britain to be irritated into a war with us, or to seek an occasion for it, those who, on other questions, had taken that ground of argument ought to be particularly aware of danger from the collision of naval armaments within the sphere of British jealousy, and in the way, perhaps, of a favourite object.

No undue blame is meant to be thrown on those who did not yield to this

\* It appears by a late official document that the amount of the trade since that period has considerably increased in value ; but it may be remarked, that in the same ratio the motives to renew the protection have been strengthened in Portugal and Spain.

reasoning, however conclusive it may now appear. The vote in favor of the measure, was, indeed, so checkered, that it cannot even be attributed to the influence of party. It is but justice, at the same time, to those who opposed the measure, to remark, that instead of the frigates being at their destined station in July or August last, the keel of one only was laid in December; the timber for the rest being then in the forest, and the whole of the present year stated to be necessary for their completion; that, consequently, it is nearly certain now they will not be in service before the war in Europe will be over,\* and that in the mean time it has turned out as was foretold, that Portugal has felt sufficient motives to renew the blockade; so that if the frigates had been adapted to the original object they would not be required for it; more especially as it has likewise turned out, according to another anticipation, that money would alone be the agent for restoring the captive exiles to their freedom and their country.

It may possibly be said that the frigates, though not necessary or proper for the service first contemplated, may usefully be applied to the security of our coasts, against pirates, privateers, and smugglers. This is a distinct question. The sole and avowed object of the naval armament was the protection of our trade against the Algerines. To that object the force is appropriated by the law itself. The President can apply it to no other. If any other now presents itself it may fairly be now discussed; but as it was not the object then, the measure cannot be tested by it now. If there be sufficient reasons of any sort for such a naval establishment, those who disapproved it for an impracticable and impolitic object may, with perfect consistency, allow these reasons their full weight. It is much to be questioned, however, whether any good reason could be found for going on with the whole undertaking; besides, that in general, the commencement of political measures under one pretext, and the prosecution of them under another, has always an aspect that justifies circumspection, if not suspicion.

With respect to the new taxes, the second remaining subject, a very brief explanation will be sufficient.

From a general view of the proceedings of Congress on this subject, it appears that the advocates for the new taxes urged them—1st On the probability of a diminution of the import for 1794, as an effect of some of the questions agitated in Congress on the amount of exports from Great Britain to the United States. 2dly. On the probability of war with Great Britain, which would still further destroy the revenue, at the same time that it would beget an immense addition to the public expenditures. On the first of these points,

\* It may be added, that the original estimate and appropriation for the annual support of the frigates was two hundred and forty-seven thousand nine hundred dollars only; whereas the sum required at the last session, by the Secretary of War, for six months' support, in the year 1795, is two hundred twenty-four thousand seven hundred and fifty-four dollars; making the annual support four hundred forty-nine thousand five hundred and eight dollars.

those who did not concur in the new taxes, at least in all of them, denied the probability of any material diminution of the import without a war. On the other point, they denied any such probability of a war as to require what was proposed; and in both these opinions they have been justified by subsequent experience. War has not taken place, nor does it appear ever to have been meditated, unless in the event of subverting the French Republic, which was never probable; whilst the revenue from the import, instead of being diminished, has very considerably exceeded any former amount.

It will not be improper to remark, as a further elucidation of this subject—  
1st. That most, if not all, who refused to concur in some of the new taxes as not justified by the occasion, actually concurred in others which were least objectionable, as an accommodating precaution against contingencies. 2d. That the objection to one of the taxes was its breach of the Constitution—an objection insuperable in its nature, and which there is reason to believe will be established by the judicial authority, if ever brought to that test; and that the objections to others were such as had always had weight with the most enlightened patriots of America. 3. That in the opinions of the most zealous patrons of new Ways and Means, the occasion, critical as they pressed it, did not ultimately justify all the taxes proposed. It appears, in particular, that a bill imposing a variety of duties, mostly in the nature of stamp duties, into which a duty on transfers of stock had been inserted as an amendment, was in the last stage defeated by those who had, in general, urged the new taxes, and this very bill itself in the earlier stage of it.

These, with the preceding observations on a very interesting period of Congressional history, will be left to the candid judgment of the public. Such as may not before have viewed the transactions of that period through any other medium than the misrepresentations which have been circulated, will have an opportunity of doing justice to themselves as well as to others. And no doubt can be entertained, that in this, as in all other cases, it will be found that truth, however stifled or perverted for a time, will finally triumph in the detection of calumny, and in the contempt which awaits its authors.

APRIL 20, 1795.

## VIRGINIA RESOLUTIONS OF 1798.

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IN THE HOUSE OF DELEGATES.

FRIDAY, December 21, 1798

[1.] *Resolved*, That the General Assembly of Virginia doth unequivocally express a firm resolution to maintain and defend the Constitution of the United States, and the Constitution of this State, against every aggression either foreign or domestic; and that they will support the Government of the United States in all measures warranted by the former.

[2.] That this Assembly most solemnly declares a warm attachment to the Union of the States, to maintain which it pledges all its powers; and that, for this end, it is their duty to watch over and oppose every infraction of those principles which constitute the only basis of that Union, because a faithful observance of them can alone secure its existence and the public happiness.

[3.] That this Assembly doth explicitly and peremptorily declare that it views the powers of the Federal Government as resulting from the compact to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact; as no further valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate, palpable, and dangerous exercise of other powers not granted by the said compact, the States, who are parties thereto, have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them.

[4.] That the General Assembly doth also express its deep regret, that a spirit has in sundry instances been manifested by the Federal Government to enlarge its powers by forced constructions of the constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases (which, having been copied from the very limited grant of powers in the former Articles of Confederation, were the less liable to be misconstrued) so as to destroy the meaning and effect of the particular enumeration which necessarily explains and limits the general phrases; and so as to consolidate the States, by degrees, into one sovereignty, the obvious tendency and inevitable result of which would be to transform the present republican system of the United States into an absolute, or, at best, a mixed monarchy.

[5.] That the General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution in the two late cases of the "Alien and Sedition Acts," passed at the last session of Congress; the

first of which exercises a power nowhere delegated to the Federal Government, and which, by uniting legislative and judicial powers to those of [the] executive, subvert the general principles of free government, as well as the particular organization and positive provisions of the Federal Constitution; and the other of which acts exercises, in like manner, a power not delegated by the Constitution, but, on the contrary, expressly and positively forbidden by one of the amendments thereto,—a power which, more than any other, ought to produce universal alarm, because it is levelled against the right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right.

[6.] That this State having by its Convention which ratified the Federal Constitution expressly declared that, among other essential rights, “the liberty of conscience and of the press cannot be cancelled, abridged, restrained or modified by any authority of the United States,” and from its extreme anxiety to guard these rights from every possible attack of sophistry or ambition, having, with other States, recommended an amendment for that purpose, which amendment was in due time annexed to the Constitution,—it would mark a reproachful inconsistency and criminal degeneracy, if an indifference were now shown to the palpable violation of one of the rights thus declared and secured, and to the establishment of a precedent which may be fatal to the other.

[7.] That the good people of this Commonwealth, having ever felt and continuing to feel the most sincere affection for their brethren of the other States, the truest anxiety for establishing and perpetuating the union of all and the most scrupulous fidelity to that Constitution, which is the pledge of mutual friendship, and the instrument of mutual happiness, the General Assembly doth solemnly appeal to the like dispositions of the other States, in confidence that they will concur with this Commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional; and that the necessary and proper measures will be taken by each for co-operating with this State, in maintaining unimpaired the authorities, rights, and liberties reserved to the States respectively, or to the people.

[8.] That the Governor be desired to transmit a copy of the foregoing resolutions to the Executive authority of each of the other States, with a request that the same may be communicated to the Legislature thereof; and that a copy be furnished to each of the Senators and Representatives representing this State in the Congress of the United States.

Attest:

JOHN STEWART.

1798, December 24. Agreed to by the Senate.

H. BROOKE.

A true copy from the original deposited in the office of the General Assembly.

JOHN STEWART, *Keeper of Rolls.*

## VIRGINIA RESOLUTIONS OF 1799.

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[IN THE HOUSE OF DELEGATES,  
FRIDAY, January 4, 1799.

*Resolved*, That the General Assembly of Virginia will co-operate with the authorities of the United States in maintaining the independence, Union, and Constitution thereof, against the hostilities or intrigues of all foreign Powers whatsoever; and that although differences of opinion do exist in relation to internal and domestic measures, yet a charge that there is a party in this Commonwealth under the influence of any foreign Power is unfounded and calumnious.

*Resolved*, That the General Assembly do, and will always, behold with indignation, depredations on our commerce, insults on our citizens, impressments of our seamen, or any other injuries committed on the people or Government of the United States by foreign nations.

*Resolved*, Nevertheless, that our security from invasion and the force of our militia render a standing army unnecessary; that the policy of the United States forbids a war of aggression; that our whole reliance ought to be on ourselves; and, therefore, that while we will repel invasion at every hazard, we shall deplore and deprecate the evils of war for any other cause.

*Resolved*, That a copy of the foregoing resolutions be sent to each of the Senators and Representatives of this State in Congress.

Attest: JOHN STEWART, C. H. D.

1799, January 10th. Agreed to by the Senate.

H. BROOKE, C. S.

A true copy from the original deposited in the office of the General Assembly.

JOHN STEWART, *Keeper of Rolls.*]



## ADDRESS OF THE GENERAL ASSEMBLY TO THE PEOPLE OF THE COMMONWEALTH OF VIRGINIA.

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FELLOW-CITIZENS,—Unwilling to shrink from our representative responsibility, conscious of the purity of our motives, but acknowledging your right to supervise our conduct, we invite your serious attention to the emergency which dictated the subjoined resolutions. Whilst we disdain to alarm you by ill-founded jealousies, we recommend an investigation, guided by the coolness of wisdom, and a decision bottomed on firmness but tempered with moderation.

It would be perfidious in those entrusted with the guardianship of the State sovereignty, and acting under the solemn obligation of the following oath, "I do swear that I will support the Constitution of the United States," not to warn you of encroachments, which, though clothed with the pretext of necessity, or disguised by arguments of expediency, may yet establish precedents which may ultimately devote a generous and unsuspecting people to all the consequences of usurped power.

Encroachments springing from a government whose organization cannot be maintained without the co-operation of the States, furnish the strongest excitements upon the State Legislatures to watchfulness, and impose upon them the strongest obligation to preserve unimpaired the line of partition.

The acquiescence of the States under infractions of the federal compact, would either beget a speedy consolidation, by precipitating the State governments into impotency and contempt; or prepare the way for a revolution, by a repetition of these infractions, until the people are roused to appear in the majesty of their strength. It is to avoid these calamities that we exhibit to the people the momentous question, whether the Constitution of the United States shall yield to a construction which defies every restraint and overwhelms the best hopes of republicanism.

Exhortations to disregard domestic usurpation, until foreign danger shall have passed, is an artifice which may be forever used; because the possessors of power, who are the advocates for its extension, can ever create national embarrassments, to be successively employed to soothe the people into sleep, whilst that power is swelling, silently, secretly, and fatally. Of the some character are insinuations of a foreign influence, which seize upon a laudable enthusiasm against danger from abroad, and distort it by an unnatural application, so as to blind your eyes against danger at home.

The sedition act presents a scene which was never expected by the early

friends of the Constitution. It was then admitted that the State sovereignties were only diminished by powers specifically enumerated, or necessary to carry the specified powers into effect. Now, Federal authority is deduced from implication; and from the existence of State law, it is inferred that Congress possess a similar power of legislation; whence Congress will be endowed with a power of legislation in all cases whatsoever, and the States will be stripped of every right reserved, by the concurrent claims of a paramount Legislature.

The sedition act is the offspring of these tremendous pretensions, which inflict a death-wound on the sovereignty of the States.

For the honor of American understanding, we will not believe that the people have been allured into the adoption of the Constitution by an affectation of defining powers, whilst the *preamble* would admit a construction which would erect the will of Congress into a power paramount in all cases, and therefore limited in none. On the contrary, it is evident that the objects for which the Constitution was formed were deemed attainable only by a particular enumeration and specification of each power granted to the Federal Government; reserving all others to the people, or to the States. And yet it is in vain we search for any specified power embracing the right of legislation against the freedom of the press.

Had the States been despoiled of their sovereignty by the generality of the preamble, and had the Federal Government been endowed with whatever they should judge to be instrumental towards union, justice, tranquillity, common defence, general welfare, and the preservation of liberty, nothing could have been more frivolous than an enumeration of powers.

It is vicious in the extreme to calumniate meritorious public servants; but it is both artful and vicious to arouse the public indignation against calumny in order to conceal usurpation. Calumny is forbidden by the laws, usurpation by the Constitution. Calumny injures individuals, usurpation, States. Calumny may be redressed by the common judicatures; usurpation can only be controlled by the act of society. Ought *usurpation*, which is most mischievous, to be rendered less hateful by *calumny*, which, though injurious, is in a degree less pernicious? But the laws for the correction of calumny were not defective. Every libellous writing or expression might receive its punishment in the State courts, from juries summoned by an officer, who does not receive his appointment from the President, and is under no influence to court the pleasure of Government, whether it injured public officers or private citizens. Nor is there any distinction in the Constitution empowering Congress exclusively to punish calumny directed against an officer of the General Government; so that a construction assuming the power of protecting the reputation of a citizen officer will extend to the case of any other citizen, and open to Congress a right of legislation in every conceivable case which can arise between individuals.

In answer to this, it is urged that every Government possesses an inherent

power of self-preservation, entitling it to do whatever it shall judge necessary for that purpose.

This is a repetition of the doctrine of implication and expediency in different language, and admits of a similar and decisive answer, namely, that as the powers of Congress are defined, powers inherent, implied, or expedient, are obviously the creatures of ambition; because the care expended in defining powers would otherwise have been superfluous. Powers extracted from such sources will be indefinitely multiplied by the aid of armies and patronage, which, with the impossibility of controlling them by any demarcation, would presently terminate reasoning, and ultimately swallow up the State sovereignties.

So insatiable is a love of power that it has resorted to a distinction between the freedom and licentiousness of the press for the purpose of converting the third amendment of the Constitution, which was dictated by the most lively anxiety to preserve that freedom, into an instrument for abridging it. Thus usurpation even justifies itself by a precaution against usurpation; and thus an amendment universally designed to quiet every fear is adduced as the source of an act which has produced general terror and alarm.

The distinction between liberty and licentiousness is still a repetition of the Protean doctrine of implication, which is ever ready to work its ends by varying its shape. By its help, the judge as to what is licentious may escape through any constitutional restriction. Under it men of a particular religious opinion might be excluded from office, because such exclusion would not amount to an establishment of religion, and because it might be said that their opinions were licentious. And under it Congress might denominate a religion to be heretical and licentious, and proceed to its suppression. Remember that precedents once established are so much positive power; and that the nation which reposes on the pillow of political confidence, will sooner or later end its political existence in a deadly lethargy. Remember, also, that it is to the press mankind are indebted for having dispelled the clouds which long encompassed religion, for disclosing her genuine lustre, and disseminating her salutary doctrines.

The sophistry of a distinction between the liberty and the licentiousness of the press is so forcibly exposed in a late memorial from our late envoys to the Minister of the French Republic, that we here present it to you in their own words:

“The genius of the Constitution, and the opinion of the people of the United States, cannot be overruled by those who administer the Government. Among those principles deemed sacred in America, among those sacred rights considered as forming the bulwark of their liberty, which the Government contemplates with awful reverence and would approach only with the most cautious circumspection, there is no one of which the importance is more deeply impressed on the public mind than the liberty of the press. That this *liberty* is often carried to excess; that it has sometimes degenerated into *licentiousness*, is seen and lamented, but the remedy has not yet been discovered. *Perhaps it is an evil inseparable from the good with which it is allied; perhaps it is a shoot which cannot be stripped from the stalk without wounding vitally the plant from which it is torn.* How

*ever desirable those measures might be which might correct without enslaving the press, they have never yet been devised in America.* No regulations exist which enable the Government to suppress whatever calumnies or invectives any individual may choose to offer to the public eye, or to punish such calumnies and invectives otherwise than by a legal prosecution in courts which are alike open to all who consider themselves as injured."

As if we were bound to look for security from the personal probity of Congress amidst the frailties of man, and not from the barriers of the Constitution, it has been urged that the accused under the sedition act is allowed to prove the truth of the charge. This argument will not for a moment disguise the unconstitutionality of the act, if it be recollected that opinions as well as facts are made punishable, and that the truth of an opinion is not susceptible of proof. By subjecting the truth of opinion to the regulation, fine, and imprisonment, to be inflicted by those who are of a different opinion, the free range of the human mind is injuriously restrained. The sacred obligations of religion flow from the due exercise of opinion, in the solemn discharge of which man is accountable to his God alone; yet, under this precedent the truth of religion itself may be ascertained, and its pretended licentiousness punished by a jury of a different creed from that held by the person accused. This law, then, commits the double sacrilege of arresting reason in her progress towards perfection, and of placing in a state of danger the free exercise of religious opinions. But where does the Constitution allow Congress to create crimes and inflict punishment, provided they allow the accused to exhibit evidence in his defence? This doctrine, united with the assertion, that sedition is a common law offence, and therefore within the correcting power of Congress, opens at once the hideous volumes of penal law, and turns loose upon us the utmost invention of insatiable malice and ambition, which, in all ages, have debauched morals, depressed liberty, shackled religion, supported despotism, and deluged the scaffold with blood.

All the preceding arguments, arising from a deficiency of constitutional power in Congress, apply to the alien act; and this act is liable to other objections peculiar to itself. If a suspicion that aliens are dangerous constitute the justification of that power exercised over them by Congress, then a similar suspicion will justify the exercise of a similar power over natives; because there is nothing in the Constitution distinguishing between the power of a State to permit the residence of natives and of aliens. It is, therefore, a right originally possessed, and never surrendered, by the respective States, and which is rendered dear and valuable to Virginia, because it is assailed through the bosom of the Constitution, and because her peculiar situation renders the easy admission of artisans and laborers an interest of vast importance.

But this bill contains other features, still more alarming and dangerous. It dispenses with the trial by jury; it violates the judicial system; it confounds legislative, executive, and judicial powers; it punishes without trial; and it bestows upon the President despotic power over a numerous class of men.

Are such measures consistent with our constitutional principles? And will an accumulation of power so extensive in the hands of the Executive, over aliens, secure to natives the blessings of republican liberty?

If measures can mould governments, and if an uncontrolled power of construction is surrendered to those who administer them, their progress may be easily foreseen, and their end easily foretold. A lover of monarchy, who opens the treasures of corruption by distributing emolument among devoted partisans, may at the same time be approaching his object and deluding the people with professions of republicanism. He may confound monarchy and republicanism, by the art of definition. He may varnish over the dexterity which ambition never fails to display, with the pliancy of language, the seduction of expediency, or the prejudices of the times; and he may come at length to avow that so extensive a territory as that of the United States can only be governed by the energies of monarchy; that it cannot be defended, except by standing armies; and that it cannot be united except by consolidation.

Measures have already been adopted which may lead to these consequences. They consist—

In fiscal systems and arrangements, which keep a host of commercial and wealthy individuals imbodied, and obedient to the mandates of the treasury.

In armies and navies, which will, on the one hand, enlist the tendency of man to pay homage to his fellow-creature who can feed or honor him; and on the other, employ the principle of fear, by punishing imaginary insurrections, under the pretext of preventive justice.

In the extensive establishment of a volunteer militia, rallied together by a political creed, armed and officered by executive power, so as to deprive the States of their constitutional right to appoint militia officers, and to place the great bulk of the people in a defenceless situation.

In swarms of officers, civil and military, who can inculcate political tenets tending to consolidation and monarchy both by indulgencies and severities; and can act as spies over the free exercise of human reason.

In destroying, by the sedition act, the responsibility of public servants and public measures to the people, thus retrograding towards the exploded doctrine "that the administrators of the Government are the masters, and not the servants, of the people," and exposing America, which acquired the honour of taking the lead among nations towards perfecting political principles, to the disgrace of returning first to ancient ignorance and barbarism.

In exercising a power of depriving a portion of the people of that representation in Congress bestowed by the Constitution.

In the adoration and efforts of some known to be rooted in enmity to Republican Government, applauding and supporting measures by every contrivance calculated to take advantage of the public confidence, which is allowed to be ingenious, but will be fatally injurious.

In transferring to the Executive important legislative powers; particularly

the power of raising armies, and borrowing money without limitation of interest.

In restraining the freedom of the press, and investing the Executive with legislative, executive, and judicial powers, over a numerous body of men.

And, that we may shorten the catalogue, in establishing, by successive precedents, such a mode of construing the Constitution as will rapidly remove every restraint upon Federal power.

Let history be consulted; let the man of experience reflect: nay, let the artificers of monarchy be asked what further materials they can need for building up their favorite system.

These are solemn but painful truths; and yet we recommend it to you not to forget the possibility of danger from without, although danger threatens us from within. Usurpation is indeed dreadful; but against foreign invasion, if that should happen, let us rise with hearts and hands united, and repel the attack with the zeal of freemen who will strengthen their title to examine and correct domestic measures, by having defended their country against foreign aggression.

Pledged as we are, fellow-citizens, to these sacred engagements, we yet humbly and fervently implore the Almighty Disposer of events to avert from our land war and usurpation, the scourges of mankind; to permit our fields to be cultivated in peace; to instil into nations the love of friendly intercourse; to suffer our youth to be educated in virtue, and to preserve our morality from the pollution invariably incident to habits of war; to prevent the laborer and husbandman from being harassed by taxes and imposts; to remove from ambition the means of disturbing the commonwealth; to annihilate all pretexts for power afforded by war; to maintain the Constitution; and to bless our nation with tranquillity, under whose benign influence we may reach the summit of happiness and glory, to which we are destined by *nature* and *nature's God*.

Attest:

JOHN STEWART, C. H. D.

1799, January 23d. Agreed to by the Senate.

H. BROOKE, C. S.

A true copy from the original deposited in the office of the General Assembly.

JOHN STEWART, *Keeper of Rolls*.

## REPORT ON THE VIRGINIA RESOLUTIONS.

HOUSE OF DELEGATES, Session of 1799-1800.

*Report of the Committee to whom were referred the Communications of various States, relative to the Resolutions of the last General Assembly of this State, concerning the Alien and Sedition Laws.*

Whatever room might be found in the proceedings of some of the States, who have disapproved of the resolutions of the General Assembly of this Commonwealth, passed on the 21st day of December, 1798, for painful remarks on the spirit and manner of those proceedings, it appears to the committee most consistent with the duty, as well as dignity, of the General Assembly, to hasten an oblivion of every circumstance which might be construed into a diminution of mutual respect, confidence, and affection among the members of the Union.

The committee have deemed it a more useful task to revise, with a critical eye, the resolutions which have met with this disapprobation; to examine fully the several objections and arguments which have appeared against them; and to inquire whether there be any errors of fact, of principle, or of reasoning, which the candor of the General Assembly ought to acknowledge and correct.

The first of the resolutions is in the words following:

*“Resolved, That the General Assembly of Virginia doth unequivocally express a firm resolution to maintain and defend the Constitution of the United States and the Constitution of this State against every aggression, either foreign or domestic, and that they will support the Government of the United States in all measures warranted by the former.”*

No unfavorable comment can have been made on the sentiments here expressed. To maintain and defend the Constitution of the United States, and of their own State, against every aggression, both foreign and domestic, and to support the Government of the United States in all measures warranted by their Constitution, are duties which the General Assembly ought always to feel, and to which, on such an occasion, it was evidently proper to express their sincere and firm adherence.

In their next resolution—

*“The General Assembly most solemnly declares a warm attachment to the Union of the States, to maintain which it pledges all its powers; and that for this end it is their duty to watch over and oppose every infraction of those principles which constitute the only basis of that Union, because a faithful observance of them can alone secure its existence, and the public happiness.”*

The observation just made is equally applicable to this solemn declaration

of warm attachment to the Union, and this solemn pledge to maintain it; nor can any question arise among enlightened friends of the Union, as to the duty of watching over and opposing every infraction of those principles which constitute its basis, and a faithful observance of which can alone secure its existence, and the public happiness thereon depending.

The third resolution is in the words following:

“That this Assembly doth explicitly and peremptorily declare, that it views the powers of the Federal Government as resulting from the compact to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact—as no further valid than they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States who are parties thereto have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them.”

On this resolution the committee have bestowed all the attention which its importance merits. They have scanned it not merely with a strict, but with a severe eye; and they feel confidence in pronouncing that, in its just and fair construction, it is unexceptionably true in its several positions, as well as constitutional and conclusive in its inferences.

The resolution declares, *first*, that “it views the powers of the Federal Government as resulting from the compact to which the States are parties;” in other words, that the Federal powers are derived from the Constitution; and that the Constitution is a compact to which the States are parties.

Clear as the position must seem, that the Federal powers are derived from the Constitution, and from that alone, the committee are not unapprized of a late doctrine which opens another source of Federal powers not less extensive and important than it is new and unexpected. The examination of this doctrine will be most conveniently connected with a review of a succeeding resolution. The committee satisfy themselves here with briefly remarking, that in all the contemporary discussions and comments which the Constitution underwent, it was constantly justified and recommended on the ground that the powers not given to the Government were withheld from it; and that if any doubt could have existed on this subject, under the original text of the Constitution, it is removed, as far as words could remove it, by the 12th amendment, now a part of the Constitution, which expressly 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 other position involved in this branch of the resolution, namely, “that the States are parties to the Constitution” or compact, is, in the judgment of the committee, equally free from objection. It is indeed true that the term “States” is sometimes used in a vague sense, and sometimes in different senses, according to the subject to which it is applied. Thus, it sometimes means the separate sections of territory occupied by the political societies within each; sometimes the particular governments established by those socie-



ties; sometimes those societies as organized into those particular governments; and, lastly, it means the people composing those political societies, in their highest sovereign capacity. Although it might be wished that the perfection of language admitted less diversity in the signification of the same words, yet little inconvenience is produced by it where the true sense can be collected with certainty from the different applications. In the present instance, whatever different construction of the term "States," in the resolution, may have been entertained, all will at least concur in that last mentioned; because in that sense the Constitution was submitted to the "States;" in that sense the "States" ratified it; and in that sense of the term "States" they are consequently parties to the compact from which the powers of the Federal Government result.

The next position is, that the General Assembly views the powers of the Federal Government "as limited by the plain sense and intention of the instrument constituting that compact," and "as no farther valid than they are authorized by the grants therein enumerated." It does not seem possible that any just objection can lie against either of these clauses. The first amounts merely to a declaration that the compact ought to have the interpretation plainly intended by the parties to it; the other, to a declaration that it ought to have the execution and effect intended by them. If the powers granted be valid, it is solely because they are granted; and if the granted powers are valid because granted, all other powers not granted must not be valid.

The resolution having taken this view of the Federal compact, proceeds to infer "that, in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States who are parties thereto have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them."

It appears to your committee to be a plain principle, founded in common sense, illustrated by common practice, and essential to the nature of compacts, that where resort can be had to no tribunal superior to the authority of the parties, the parties themselves must be the rightful judges, in the last resort, whether the bargain made has been pursued or violated. The Constitution of the United States was formed by the sanction of the States, given by each in its sovereign capacity. It adds to the stability and dignity, as well as to the authority of the Constitution, that it rests on this legitimate and solid foundation. The States, then, being the parties to the constitutional compact, and in their sovereign capacity, it follows of necessity that there can be no tribunal above their authority to decide, in the last resort, whether the compact made by them be violated; and, consequently, that, as the parties to it, they must themselves decide, in the last resort, such questions as may be of sufficient magnitude to require their interposition.

It does not follow, however, because the States, as sovereign parties to their constitutional compact, must ultimately decide whether it has been violated, that such a decision ought to be interposed either in a hasty manner or on doubtful and inferior occasions. Even in the case of ordinary conventions between different nations, where, by the strict rule of interpretation, a breach of a part may be deemed a breach of the whole—every part being deemed a condition of every other part, and of the whole—it is always laid down that the breach must be both wilful and material, to justify an application of the rule. But in the case of an intimate and constitutional union, like that of the United States, it is evident that the interposition of the parties, in their sovereign capacity, can be called for by occasions only deeply essentially affecting the vital principles of their political system.

The resolution has, accordingly, guarded against any misapprehension of its object, by expressly requiring for such an interposition “the case of a *deliberate, palpable, and dangerous* breach of the Constitution by the exercise of *powers not granted* by it.” It must be a case, not of a light and transient nature, but of a nature *dangerous* to the great purposes for which the Constitution was established. It must be a case, moreover, not obscure or doubtful in its construction, but plain and *palpable*. Lastly, it must be a case not resulting from a partial consideration or hasty determination, but a case stamped with a final consideration and *deliberate* adherence. It is not necessary, because the resolution does not require, that the question should be discussed, how far the exercise of any particular power, ungranted by the Constitution, would justify the interposition of the parties to it. As cases might easily be stated which none would contend ought to fall within that description, cases, on the other hand, might with equal ease be stated, so flagrant and so fatal as to unite every opinion in placing them within the description.

But the resolution has done more than guard against misconstruction, by expressly referring to cases of a *deliberate, palpable, and dangerous* nature. It specifies the object of the interposition which it contemplates to be solely that of arresting the progress of the *evil* of usurpation, and of maintaining the authorities, rights, and liberties appertaining to the States as parties to the Constitution.

From this view of the resolution it would seem inconceivable that it can incur any just disapprobation from those who, laying aside all momentary impressions, and recollecting the genuine source and object of the Federal Constitution, shall candidly and accurately interpret the meaning of the General Assembly. If the deliberate exercise of dangerous powers, palpably withheld by the Constitution, could not justify the parties to it in interposing even so far as to arrest the progress of the evil, and thereby to preserve the Constitution itself, as well as to provide for the safety of the parties to it, there would be an end to all relief from usurped power, and a direct subversion of the rights

specified or recognised under all the State constitutions, as well as a plain denial of the fundamental principle on which our independence itself was declared.

But it is objected that the judicial authority is to be regarded as the sole expositor of the Constitution, in the last resort; and it may be asked for what reason the declaration by the General Assembly, supposing it to be theoretically true, could be required at the present day, and in so solemn a manner.

On this objection it might be observed, *first*, that there may be instances of usurped power, which the forms of the Constitution would never draw within the control of the judicial department; *secondly*, that if the decision of the judiciary be raised above the authority of the sovereign parties to the Constitution, the decisions of the other departments, not carried by the forms of the Constitution before the judiciary, must be equally authoritative and final with the decisions of that department. But the proper answer to the objection is, that the resolution of the General Assembly relates to those great and extraordinary cases in which all the forms of the Constitution may prove ineffectual against infractions dangerous to the essential rights of the parties to it. The resolution supposes that dangerous powers, not delegated, may not only be usurped and executed by the other departments, but that the judicial department also may exercise or sanction dangerous powers beyond the grant of the Constitution, and, consequently, that the ultimate right of the parties to the Constitution to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority as well as by another; by the judiciary as well as by the executive or the legislature.

However true, therefore, it may be that the judicial department is, in all questions submitted to it by the forms of the Constitution, to decide in the last resort, this resort must necessarily be deemed the last in relation to the authorities of the other departments of the Government; not in relation to the rights of the parties to the constitutional compact, from which the judicial as well as the other departments hold their delegated trusts. On any other hypothesis, the delegation of judicial power would annul the authority delegating it; and the concurrence of this department with the others in usurped powers might subvert forever, and beyond the possible reach of any rightful remedy, the very Constitution which all were instituted to preserve.

The truth declared in the resolution being established, the expediency of making the declaration at the present day may safely be left to the temperate consideration and candid judgment of the American public. It will be remembered that a frequent recurrence to fundamental principles is solemnly enjoined by most of the State constitutions, and particularly by our own, as a necessary safeguard against the danger of degeneracy to which republics are liable, as well as other governments, though in a less degree than others. And a fair comparison of the political doctrines not unfrequent at the present day with those which characterized the epoch of our Revolution, and which form

the basis of our republican constitutions, will best determine whether the declaratory recurrence here made to those principles ought to be viewed as unreasonable and improper, or as a vigilant discharge of an important duty. The authority of constitutions over governments, and of the sovereignty of the people over constitutions, are truths which are at all times necessary to be kept in mind, and at no time, perhaps, more necessary than at present.

The fourth resolution stands as follows :

“That the General Assembly doth also express its deep regret that a spirit has in sundry instances been manifested by the Federal Government to enlarge its powers by forced constructions of the constitutional charter which defines them ; and that indications have appeared of a design to expound certain general phrases, (which, having been copied from the very limited grant of powers in the former Articles of Confederation, were the less liable to be misconstrued,) so as to destroy the meaning and effect of the particular enumeration which necessarily explains and limits the general phrases, and so as to consolidate the States by degrees into one sovereignty, the obvious tendency and inevitable result of which would be to transform the present republican system of the United States into an absolute, or at best a mixed, monarchy.”

The *first* question here to be considered is, whether a spirit has, in sundry instances, been manifested by the Federal Government to enlarge its powers by forced constructions of the constitutional charter.

The General Assembly having declared their opinion merely by regretting, in general terms, that forced constructions for enlarging the Federal powers have taken place, it does not appear to the committee necessary to go into a specification of every instance to which the resolution may allude. The Alien and Sedition Acts being particularly named in a succeeding resolution, are of course to be understood as included in the allusion. Omitting others which have less occupied public attention, or been less extensively regarded as unconstitutional, the resolution may be presumed to refer particularly to the Bank Law, which, from the circumstances of its passage, as well as the latitude of construction on which it is founded, strikes the attention with singular force ; and the Carriage Tax, distinguished also by circumstances in its history having a similar tendency. Those instances alone, if resulting from forced construction, and calculated to enlarge the powers of the Federal Government, as the committee cannot but conceive to be the case, sufficiently warrant this part of the resolution. The committee have not thought it incumbent on them to extend their attention to laws which have been objected to, rather as varying the constitutional distribution of powers in the Federal Government, than as an absolute enlargement of them ; because instances of this sort, however important in their principles and tendencies, do not appear to fall strictly within the text under review.

The other questions presenting themselves are—1. Whether indications have appeared of a design to expound certain general phrases copied from the “Articles of Confederation,” so as to destroy the effect of the particular enumeration explaining and limiting their meaning. 2. Whether this exposition would by degrees consolidate the States into one sovereignty. 3. Whether the

tendency and result of this consolidation would be to transform the republican system of the United States into a monarchy.

1. The general phrases here meant, must be those "of providing for the common defence and general welfare."

In the "Articles of Confederation," the phrases are used as follows, in Article VIII: "All charges of war, and all other expenses that shall be incurred *for the common defence and general welfare*, and allowed by the United States in Congress assembled, shall be defrayed out of the common treasury, which shall be supplied by the several States in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States, in Congress assembled, shall from time to time direct and appoint."

In the existing Constitution they make the following part of Section 8: "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States."

This similarity in the use of these phrases, in the two great Federal charters, might well be considered as rendering their meaning less liable to be misconstrued in the latter; because it will scarcely be said that in the former they were ever understood to be either a general grant of power, or to authorize the requisition or application of money by the old Congress to the common defence and general welfare, except in the cases afterwards enumerated, which explained and limited their meaning; and if such was the limited meaning attached to these phrases in the very instrument revised and re-modeled by the present Constitution, it can never be supposed that, when copied into this Constitution, a different meaning ought to be attached to them.

That, notwithstanding this remarkable security against misconstruction, a design has been indicated to expound these phrases in the Constitution so as to destroy the effect of the particular enumeration of powers by which it explains and limits them, must have fallen under the observation of those who have attended to the course of public transactions. Not to multiply proofs on this subject, it will suffice to refer to the Debates of the Federal Legislature, in which arguments have on different occasions been drawn, with apparent effect, from these phrases in their indefinite meaning.

To these indications might be added, without looking further, the official Report on Manufactures, by the late Secretary of the Treasury, made on the 5th of December, 1791, and the Report of a Committee of Congress, in January, 1797, on the promotion of Agriculture. In the first of these it is expressly contended to belong "to the discretion of the National Legislature to pronounce upon the objects which concern the *general welfare*, and for which, under that description, an appropriation of money is requisite and proper. "And there seems to be no room for a doubt that whatever concerns the general

“interests of LEARNING, of AGRICULTURE, of MANUFACTURES, and of COMMERCE, “are within the sphere of the National Councils, *as far as regards an application of money.*” The latter Report assumes the same latitude of power in the national councils, and applies it to the encouragement of agriculture by means of a society to be established at the seat of Government. Although neither of these Reports may have received the sanction of a law carrying it into effect, yet, on the other hand, the extraordinary doctrine contained in both has passed without the slightest positive mark of disapprobation from the authority to which it was addressed.

Now, whether the phrases in question be construed to authorize every measure relating to the common defence and general welfare, as contended by some—or every measure only in which there might be an application of money, as suggested by the caution of others—the effect must substantially be the same, in destroying the import and force of the particular enumeration of powers which follow these general phrases in the Constitution; for it is evident that there is not a single power whatever which may not have some reference to the common defence or the general welfare; nor a power of any magnitude, which, in its exercise, does not involve or admit an application of money. The government, therefore, which possesses power in either one or other of these extents, is a government without the limitations formed by a particular enumeration of powers; and, consequently, the meaning and effect of this particular enumeration is destroyed by the exposition given to these general phrases.

This conclusion will not be affected by an attempt to qualify the power over the “general welfare,” by referring it to cases where the *general welfare* is beyond the reach of *separate* provisions by the *individual States*, and leaving to these their jurisdictions in cases to which their separate provisions may be competent; for, as the authority of the individual States must in all cases be incompetent to general regulations operating through the whole, the authority of the United States would be extended to every object relating to the general welfare which might, by any possibility, be provided for by the general authority. This qualifying construction, therefore, would have little, if any, tendency to circumscribe the power claimed under the latitude of the terms “general welfare.”

The true and fair construction of this expression, both in the original and existing Federal compacts, appears to the committee too obvious to be mistaken. In both, the Congress is authorized to provide money for the common defence and *general welfare*. In both, is subjoined to this authority an enumeration of the cases to which their powers shall extend. Money cannot be applied to the *general welfare*, otherwise than by an application of it to some *particular* measure conducive to the general welfare. Whenever, therefore, money has been raised by the general authority, and is to be applied to a particular measure, a question arises whether the particular measure be within the enumerated authorities vested in Congress. If it be, the money requisite

for it may be applied to it; if it be not, no such application can be made. This fair and obvious interpretation coincides with and is enforced by the clause in the Constitution which declares that "no money shall be drawn from the Treasury, but in consequence of appropriations by law." An appropriation of money to the general welfare would be deemed rather a mockery than an observance of this constitutional injunction.

2. Whether the exposition of the general phrases here combatted would not by degrees consolidate the States into one sovereignty, is a question concerning which the committee can perceive little room for difference of opinion. To consolidate the States into one sovereignty, nothing more can be wanted than to supersede their respective sovereignties in the cases reserved to them, by extending the sovereignty of the United States to all cases of the "general welfare"—that is to say, *to all cases whatever*.

3. That the obvious tendency and inevitable result of a consolidation of the States into one sovereignty, would be to transform the republican system of the United States into a monarchy, is a point which seems to have been sufficiently decided by the general sentiment of America. In almost every instance of discussion relating to the consolidation in question, its certain tendency to pave the way to monarchy seems not to have been contested. The prospect of such a consolidation has formed the only topic of controversy. It would be unnecessary, therefore, for the committee to dwell long on the reasons which support the position of the General Assembly. It may not be improper, however, to remark two consequences evidently flowing from an extension of the Federal powers to every subject falling within the idea of the "general welfare."

One consequence must be, to enlarge the sphere of discretion allotted to the Executive Magistrate. Even within the legislative limits properly defined by the Constitution, the difficulty of accommodating legal regulations to a country so great in extent and so various in its circumstances has been much felt, and has led to occasional investments of power in the Executive, which involve perhaps as large a portion of discretion as can be deemed consistent with the nature of the Executive trust. In proportion as the objects of legislative care might be multiplied, would the time allowed for each be diminished, and the difficulty of providing uniform and particular regulations for all be increased. From these sources would necessarily ensue a greater latitude to the agency of that department which is always in existence, and which could best mould regulations of a general nature so as to suit them to the diversity of particular situations. And it is in this latitude, as a supplement to the deficiency of the laws, that the degree of Executive prerogative materially consists.

The other consequence would be, that of an excessive augmentation of the offices, honors, and emoluments, depending on the Executive will. Add to the present legitimate stock all those of every description which a consolidation of the States would take from them and turn over to the Federal Gov-

ernment, and the patronage of the Executive would necessarily be as much swelled in this case as its prerogative would be in the other.

This disproportionatè increase of prerogative and patronage must, evidently, either enable the Chief Magistrate of the Union, by quiet means, to secure his re-election from time to time, and finally to regulate the succession as he might please; or, by giving so transcendent an importance to the office, would render the elections to it so violent and corrupt, that the public voice itself might call for an hereditary in place of an elective succession. Whichever of these events might follow, the transformation of the republican system of the United States into a monarchy, anticipated by the General Assembly from a consolidation of the States into one sovereignty, would be equally accomplished; and whether it would be into a mixed or an absolute monarchy might depend on too many contingencies to admit of any certain foresight.

The resolution next in order is contained in the following terms:

“That the General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution, in the two late cases of the ‘Alien and Sedition Acts,’ passed at the last session of Congress; the first of which exercises a power nowhere delegated to the Federal Government, and which, by uniting legislative and judicial powers to those of executive, subverts the general principles of a free Government, as well as the particular organization and positive provisions of the Federal Constitution; and the other of which acts exercises, in like manner, a power not delegated by the Constitution, but, on the contrary, expressly and positively forbidden by one of the amendments thereto; a power which, more than any other, ought to produce universal alarm; because it is levelled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right.”

The subject of this resolution having, it is presumed, more particularly led the General Assembly into the proceedings which they communicated to the other States, and being in itself of peculiar importance, it deserves the most critical and faithful investigation, for the length of which no other apology will be necessary.

The subject divides itself into—*first*, “The Alien Act;” *secondly*, “The Sedition Act.”

Of the “Alien Act,” it is affirmed by the resolution—1st. That it exercises a power nowhere delegated to the Federal Government. 2d. That it unites legislative and judicial powers to those of the Executive. 3d. That this union of power subverts the general principles of free government. 4th. That it subverts the particular organization and positive provisions of the Federal Constitution.

In order to clear the way for a correct view of the first position several observations will be premised.

In the first place, it is to be borne in mind that it being a characteristic feature of the Federal Constitution, as it was originally ratified, and an amendment thereto having precisely declared, “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;” it is incumbent in this,



as in every other exercise of power by the Federal Government, to prove from the Constitution that it grants the particular power exercised.

The next observation to be made is, that much confusion and fallacy have been thrown into the question by blending the two cases of *aliens, members of a hostile nation*, and *aliens, members of friendly nations*. These two cases are so obviously and so essentially distinct, that it occasions no little surprise that the distinction should have been disregarded; and the surprise is so much the greater, as it appears that the two cases are actually distinguished by two separate acts of Congress, passed at the same session, and comprised in the same publication; the one providing for the case of "alien enemies;" the other, "concerning aliens" indiscriminately, and, consequently, extending to aliens of every nation in peace and amity with the United States. With respect to alien enemies, no doubt has been intimated as to the Federal authority over them; the Constitution having expressly delegated to Congress the power to declare war against any nation, and, of course, to treat it and all its members as enemies. With respect to aliens who are not enemies, but members of nations in peace and amity with the United States, the power assumed by the act of Congress is denied to be constitutional; and it is, accordingly, against this act that the protest of the General Assembly is expressly and exclusively directed.

A third observation is, that were it admitted, as is contended, that the "act concerning aliens" has for its object, not a *penal*, but a *preventive* justice, it would still remain to be proved that it comes within the constitutional power of the Federal Legislature; and, if within its power, that the Legislature has exercised it in a constitutional manner.

In the administration of preventive justice the following principles have been held sacred: that some probable ground of suspicion be exhibited before some judicial authority; that it be supported by oath or affirmation; that the party may avoid being thrown into confinement by finding pledges or sureties for his legal conduct, sufficient in the judgment of some judicial authority; that he may have the benefit of a writ of *habeas corpus*, and thus obtain his release if wrongfully confined; and that he may at any time be discharged from his recognisance, or his confinement, and restored to his former liberty and rights on the order of the proper judicial authority, if it shall see sufficient cause.

All these principles of the only preventive justice known to American jurisprudence are violated by the Alien Act. The ground of suspicion is to be judged of, not by any judicial authority, but by the Executive Magistrate alone. No oath or affirmation is required. If the suspicion be held reasonable by the President, he may order the suspected alien to depart the territory of the United States, without the opportunity of avoiding the sentence by finding pledges for his future good conduct. As the President may limit the time of departure as he pleases, the benefit of the writ of *habeas corpus*

may be suspended with respect to the party, although the Constitution ordains that it shall not be suspended unless when the public safety may require it, in case of rebellion or invasion—neither of which existed at the passage of the act; and the party being, under the sentence of the President, either removed from the United States, or being punished by imprisonment, or disqualification ever to become a citizen, on conviction of not obeying the order of removal, he cannot be discharged from the proceedings against him, and restored to the benefits of his former situation, although the *highest judicial authority* should see the most sufficient cause for it.

But, in the last place, it can never be admitted that the removal of aliens, authorized by the act, is to be considered, not as punishment for an offence, but as a measure of precaution and prevention. If the banishment of an alien from a country into which he has been invited as the asylum most auspicious to his happiness—a country where he may have formed the most tender connexions; where he may have invested his entire property, and acquired property of the real and permanent, as well as the movable and temporary kind; where he enjoys, under the laws, a greater share of the blessings of personal security, and personal liberty, than he can elsewhere hope for, and where he may have nearly completed his probationary title to citizenship; if, moreover, in the execution of the sentence against him, he is to be exposed, not only to the ordinary dangers of the sea, but to the peculiar casualties incident to a crisis of war and of unusual licentiousness on that element, and possibly to vindictive purposes which his emigration itself may have provoked; if a banishment of this sort be not a punishment, and among the severest of punishments, it will be difficult to imagine a doom to which the name can be applied. And if it be a punishment, it will remain to be inquired whether it can be constitutionally inflicted, on mere suspicion, by the single will of the Executive Magistrate, on persons convicted of no personal offence against the laws of the land, nor involved in any offence against the law of nations, charged on the foreign State of which they are members.

One argument offered in justification of this power exercised over aliens is, that the admission of them into the country being of favor, not of right, the favor is at all times revocable.

To this argument it might be answered, that, allowing the truth of the inference, it would be no proof of what is required. A question would still occur, whether the Constitution had vested the discretionary power of admitting aliens in the Federal Government or in the State governments.

But it cannot be a true inference, that, because the admission of an alien is a favor, the favor may be revoked at pleasure. A grant of land to an individual may be of favor, not of right; but the moment the grant is made, the favor becomes a right, and must be forfeited before it can be taken away. To pardon a malefactor may be a favor, but the pardon is not, on that account, the less irrevocable. To admit an alien to naturalization, is as much a favor as

to admit him to reside in the country; yet it cannot be pretended that a person naturalized can be deprived of the benefits any more than a native citizen can be disfranchised.

Again, it is said, that aliens not being parties to the Constitution, the rights and privileges which it secures cannot be at all claimed by them.

To this reasoning, also, it might be answered that, although aliens are not parties to the Constitution, it does not follow that the Constitution has vested in Congress an absolute power over them. The parties to the Constitution may have granted, or retained, or modified, the power over aliens, without regard to that particular consideration.

But a more direct reply is, that it does not follow, because aliens are not parties to the Constitution, as citizens are parties to it, that, whilst they actually conform to it, they have no right to its protection. Aliens are not more parties to the laws than they are parties to the Constitution; yet it will not be disputed that, as they owe, on one hand, a temporary obedience, they are entitled, in return, to their protection and advantage.

If aliens had no rights under the Constitution, they might not only be banished, but even capitally punished, without a jury or the other incidents to a fair trial. But so far has a contrary principle been carried, in every part of the United States, that, except on charges of treason, an alien has, besides all the common privileges, the special one of being tried by a jury, of which one-half may be also aliens.

It is said further, that, by the law and practice of nations, aliens may be removed, at discretion, for offences against the law of nations; that Congress are authorized to define and punish such offences; and that to be dangerous to the peace of society is, in aliens, one of those offences.

The distinction between alien enemies and alien friends is a clear and conclusive answer to this argument. Alien enemies are under the law of nations, and liable to be punished for offences against it. Alien friends, except in the single case of public ministers, are under the municipal law, and must be tried and punished according to that law only.

This argument also, by referring the alien act to the power of Congress to define and *punish* offences against the law of nations, yields the point that the act is of a *penal*, not merely of a preventive operation. It must, in truth, be so considered. And if it be a penal act, the punishment it inflicts must be justified by some offence that deserves it.

Offences for which aliens, within the jurisdiction of a country, are punishable, are—first, offences committed by the nation of which they make a part, and in whose offences they are involved; secondly, offences committed by themselves alone, without any charge against the nation to which they belong. The first is the case of alien enemies; the second, the case of alien friends. In the first case, the offending nation can no otherwise be punished than by war, one of the laws of which authorizes the expulsion of such of its members as

may be found within the country against which the offence has been committed. In the second case—the offence being committed by the individual, not by his nation, and against the municipal law, not against the law of nations—the individual only, and not the nation, is punishable; and the punishment must be conducted according to the municipal law, not according to the law of nations. Under this view of the subject, the act of Congress for the removal of alien enemies, being conformable to the law of nations, is justified by the Constitution; and the “act” for the removal of alien friends, being repugnant to the constitutional principles of municipal law, is unjustifiable.

Nor is the act of Congress for the removal of alien friends more agreeable to the general practice of nations than it is within the purview of the law of nations. The general practice of nations distinguishes between alien friends and alien enemies. The latter it has proceeded against, according to the law of nations, by expelling them as enemies. The former it has considered as under a local and temporary allegiance, and entitled to a correspondent protection. If contrary instances are to be found in barbarous countries, under undefined prerogatives, or amid revolutionary dangers, they will not be deemed fit precedents for the Government of the United States, even if not beyond its constitutional authority.

It is said that Congress may grant letters of marque and reprisal; that reprisals may be made on persons as well as property; and that the removal of aliens may be considered as the exercise, in an inferior degree, of the general power of reprisal on persons.

Without entering minutely into a question that does not seem to require it, it may be remarked that reprisal is a seizure of foreign persons or property, with a view to obtain that justice for injuries done by one State, or its members, to another State, or its members, for which a refusal of the aggressors requires such a resort to force under the law of nations. It must be considered as an abuse of words to call the removal of persons from a country a seizure or reprisal on them; nor is the distinction to be overlooked between reprisals on persons within the country and under the faith of its laws, and on persons out of the country. But laying aside these considerations, it is evidently impossible to bring the alien act within the power of granting reprisals, since it does not allege or imply any injury received from any particular nation for which this proceeding against its members was intended as a reparation. The proceeding is authorized against aliens *of every nation*; of nations charged neither with any similar proceedings against American citizens, nor with any injuries for which justice might be sought in the mode prescribed by the act. Were it true, therefore, that good causes existed for reprisals against one or more foreign nations, and that neither the persons nor property of its members under the faith of our laws could plead an exemption, the operation of the act ought to have been limited to the aliens among us belonging to such nations. To license reprisals against all nations for aggressions charged on one

only, would be a measure as contrary to every principle of justice and public law as to a wise policy, and the universal practice of nations.

It is said that the right of removing aliens is an incident to the power of war vested in Congress by the Constitution.

This is a former argument in a new shape only, and is answered by repeating, that the removal of alién enemies is an incident to the power of war; that the removal of alien friends is not an incident to the power of war.

It is said that Congress are, by the Constitution, to protect each State against invasion; and that the means of *preventing* invasion are included in the power of protection against it.

The power of war, in general, having been before granted by the Constitution, this clause must either be a mere specification for greater caution and certainty, of which there are other examples in the instrument, or be the injunction of a duty superadded to a grant of the power. Under either explanation it cannot enlarge the powers of Congress on the subject. The power and the duty to protect each State against an invading enemy would be the same under the general power, if this regard to greater caution had been omitted.

Invasion is an operation of war. To protect against invasion is an exercise of the power of war. A power, therefore, not incident to war cannot be incident to a particular modification of war. And as the removal of alien friends has appeared to be no incident to a general state of war, it cannot be incident to a partial state or a particular modification of war.

Nor can it ever be granted that a power to act on a case when it actually occurs, includes a power over all the means that may *tend to prevent* the occurrence of the case. Such a latitude of construction would render unavailing every practical definition of particular and limited powers. Under the idea of preventing war in general, as well as invasion in particular, not only an indiscriminate removal of all aliens might be enforced, but a thousand other things still more remote from the operations and precautions appertenant to war might take place. A bigoted or tyrannical nation might threaten us with war, unless certain religious or political regulations were adopted by us; yet it never could be inferred, if the regulations which would prevent war were such as Congress had otherwise no power to make, that the power to make them would grow out of the purpose they were to answer. Congress have power to suppress insurrections, yet it would not be allowed to follow that they might employ all the means tending to prevent them, of which a system of moral instruction for the ignorant, and of provident support for the poor, might be regarded as among the most efficacious.

One argument for the power of the General Government to remove aliens would have been passed in silence, if it had appeared under any authority inferior to that of a report made during the last session of Congress to the House of Representatives by a committee, and approved by the House. The doctrine

on which this argument is founded is of so new and so extraordinary a character, and strikes so radically at the political system of America, that it is proper to state it in the very words of the report :

“The act [concerning aliens] is said to be unconstitutional, because to remove aliens is a direct breach of the Constitution, which provides, by the 9th section of the 1st article, that the migration or importation of such persons as any of the States shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808.”

Among the answers given to this objection to the constitutionality of the act, the following very remarkable one is extracted :

“Thirdly, that as the Constitution has *given to the States* no power to remove aliens during the period of the limitation under consideration, in the mean time, on the construction assumed, there would be no authority in the country empowered to send away dangerous aliens, which cannot be admitted.”

The reasoning here used would not in any view be conclusive, because there are powers exercised by most other Governments, which, in the United States, are withheld by the people, both from the General Government and from the State governments. Of this sort are many of the powers prohibited by the Declarations of Right prefixed to the constitutions, or by the clauses in the constitutions in the nature of such declarations. Nay, so far is the political system of the United States distinguishable from that of other countries, by the caution with which powers are delegated and defined, that in one very important case, even of commercial regulation and revenue, the power is absolutely locked up against the hands of both Governments. A tax on exports can be laid by no constitutional authority whatever. Under a system thus peculiarly guarded there could surely be no absurdity in supposing that alien friends, who, if guilty of treasonable machinations, may be punished, or if suspected on probable grounds, may be secured by pledges or imprisonment, in like manner with permanent citizens, were never meant to be subjected to banishment by any arbitrary and unusual process, either under the one Government or the other.

But it is not the inconclusiveness of the general reasoning in this passage which chiefly calls the attention to it. It is the principle assumed by it, that the powers held by the States are given to them by the Constitution of the United States ; and the inference from this principle, that the powers supposed to be necessary which are not so given to the State governments, must reside in the Government of the United States.

The respect which is felt for every portion of the constituted authorities forbids some of the reflections which this singular paragraph might excite ; and they are the more readily suppressed, as it may be presumed, with justice perhaps as well as candor, that inadvertence may have had its share in the error. It would be an unjustifiable delicacy, nevertheless, to pass by so portentous a claim, proceeding from so high an authority, without a monitory notice of the fatal tendencies with which it would be pregnant.

Lastly, it is said that a law on the same subject with the Alien Act, passed

by this State originally in 1785, and re-enacted in 1792, is a proof that a summary removal of suspected aliens was not heretofore regarded by the Virginia Legislature as liable to the objections now urged against such a measure.

This charge against Virginia vanishes before the simple remark, that the law of Virginia relates to "suspicious persons, being the subjects of any foreign power or State who shall have *made a declaration of war*, or actually *commenced hostilities*, or from whom the President shall apprehend *hostile designs*;" whereas the act of Congress relates to aliens, being the subjects of foreign powers and States who have neither declared war nor commenced hostilities, nor from whom hostile designs are apprehended.

2. It is next affirmed of the Alien Act, that it unites legislative, judicial, and executive powers, in the hands of the President.

However difficult it may be to mark in every case with clearness and certainty the line which divides legislative power from the other departments of power, all will agree that the powers referred to these departments may be so general and undefined as to be of a legislative, not of an executive or judicial nature, and may for that reason be unconstitutional. Details, to a certain degree, are essential to the nature and character of a law; and on criminal subjects, it is proper that details should leave as little as possible to the discretion of those who are to apply and execute the law. If nothing more were required, in exercising a legislative trust, than a general conveyance of authority—without laying down any precise rules by which the authority conveyed should be carried into effect—it would follow that the whole power of legislation might be transferred by the Legislature from itself, and proclamations might become substitutes for laws. A delegation of power in this latitude would not be denied to be a union of the different powers.

To determine, then, whether the appropriate powers of the distinct departments are united by the act authorizing the Executive to remove aliens, it must be inquired whether it contains such details, definitions, and rules, as appertain to the true character of a law; especially a law by which personal liberty is invaded, property deprived of its value to the owner, and life itself indirectly exposed to danger.

The Alien Act declares "that it shall be lawful for the President to order all such aliens as he shall judge *dangerous* to the peace and safety of the United States, or shall have reasonable ground to *suspect* are concerned in any treasonable or *secret machinations* against the Government thereof, to depart," &c.

Could a power be given in terms less definite, less particular, and less precise? To be *dangerous to the public safety*—to be *suspected of secret machinations* against the Government; these can never be mistaken for legal rules or certain definitions. They leave everything to the President. His will is the law.

But it is not a legislative power only that is given to the President. He is

to stand in the place of the judiciary also. His suspicion is the only evidence which is to convict; his order, the only judgment which is to be executed.

Thus it is the President whose will is to designate the offensive conduct; it is his will that is to ascertain the individuals on whom it is charged; and it is his will that is to cause the sentence to be executed. It is rightly affirmed, therefore, that the act unites legislative and judicial powers to those of the executive.

3. It is affirmed that this union of power subverts the general principles of free government.

It has become an axiom in the science of government, that a separation of the legislative, executive, and judicial departments is necessary to the preservation of public liberty. Nowhere has this axiom been better understood in theory, or more carefully pursued in practice, than in the United States.

4. It is affirmed that such a union of power subverts the particular organization and positive provisions of the Federal Constitution.

According to the particular organization of the Constitution, its legislative powers are vested in the Congress, its executive powers in the President, and its judicial powers in a supreme and inferior tribunals. The union of any two of these powers, and still more of all three, in any one of these departments, as has been shown to be done by the Alien Act, must, consequently, subvert the constitutional organization of them.

That positive provisions in the Constitution, securing to individuals the benefits of fair trial, are also violated by the union of powers in the Alien Act, necessarily results from the two facts that the Act relates to alien friends, and that alien friends, being under the municipal law only, are entitled to its protection.

The *second* object against which the resolution protests is the Sedition Act.

Of this Act it is affirmed: 1. That it exercises in like manner a power not delegated by the Constitution. 2. That the power, on the contrary, is expressly and positively forbidden by one of the amendments to the Constitution. 3. That this is a power which more than any other ought to produce universal alarm, because it is levelled against that right of freely examining public characters and measures, and of free communication thereon, which has ever been justly deemed the only effectual guardian of every other right.

1. That it exercises a power not delegated by the Constitution.

Here, again, it will be proper to recollect that the Federal Government being composed of powers specifically granted, with a reservation of all others to the States or to the people, the positive authority under which the Sedition Act could be passed must be produced by those who assert its constitutionality. In what part of the Constitution, then, is this authority to be found?

Several attempts have been made to answer this question, which will be ex-



amined in their order. The committee will begin with one which has filled them with equal astonishment and apprehension, and which, they cannot but persuade themselves, must have the same effect on all who will consider it with coolness and impartiality, and with a reverence for our Constitution in the true character in which it issued from the sovereign authority of the people. The committee refer to the doctrine lately advanced, as a sanction to the Sedition Act, "that the common or unwritten law," a law of vast extent and complexity, and embracing almost every possible subject of legislation, both civil and criminal, makes a part of the law of these States, in their united and national capacity.

The novelty, and, in the judgment of the committee, the extravagance of this pretension, would have consigned it to the silence in which they have passed by other arguments which an extraordinary zeal for the Act has drawn into the discussion; but the auspices under which this innovation presents itself have constrained the committee to bestow on it an attention which other considerations might have forbidden.

In executing the task, it may be of use to look back to the colonial state of this country, prior to the Revolution; to trace the effect of the Revolution which converted the Colonies into independent States; to inquire into the import of the Articles of Confederation, the first instrument by which the Union of the States was regularly established; and, finally, to consult the Constitution of 1787, which is the oracle that must decide the important question.

In the state prior to the Revolution, it is certain that the common law, under different limitations, made a part of the colonial codes. But whether it be understood that the original colonists brought the law with them, or made it their law by adoption, it is equally certain that it was the separate law of each colony within its respective limits, and was unknown to them as a law pervading and operating through the whole as one society.

It could not possibly be otherwise. The common law was not the same in any two of the Colonies; in some the modifications were materially and extensively different. There was no common legislature by which a common will could be expressed in the form of a law; nor any common magistracy by which such a law could be carried into practice. The will of each colony, alone and separately, had its organs for these purposes.

This stage of our political history furnishes no foothold for the patrons of this new doctrine.

Did, then, the principle or operation of the great event which made the Colonies independent States imply or introduce the common law as a law of the Union?

The fundamental principle of the Revolution was, that the Colonies were co-ordinate members with each other and with Great Britain, of an empire united by a common executive sovereign, but not united by any common legislative sovereign. The legislative power was maintained to be as complete in

each American Parliament, as in the British Parliament. And the royal prerogative was in force in each Colony by virtue of its acknowledging the King for its executive magistrate, as it was in Great Britain by virtue of a like acknowledgment there. A denial of these principles by Great Britain, and the assertion of them by America, produced the Revolution.

There was a time, indeed, when an exception to the legislative separation of the several component and co-equal parts of the empire obtained a degree of acquiescence. The British Parliament was allowed to regulate the trade with foreign nations, and between the different parts of the empire. This was, however, mere practice without right, and contrary to the true theory of the Constitution. The convenience of some regulations, in both cases, was apparent; and as there was no legislature with power over the whole, nor any constitutional pre-eminence among the legislatures of the several parts, it was natural for the legislature of that particular part which was the eldest and the largest to assume this function, and for the others to acquiesce in it. This tacit arrangement was the less criticised, as the regulations established by the British Parliament operated in favour of that part of the empire which seemed to bear the principal share of the public burdens, and were regarded as an indemnification of its advances for the other parts. As long as this regulating power was confined to the two objects of conveniency and equity, it was not complained of nor much inquired into. But, no sooner was it perverted to the selfish views of the party assuming it, than the injured parties began to feel and to reflect; and the moment the claim to a direct and indefinite power was ingrafted on the precedent of the regulating power, the whole charm was dissolved, and every eye opened to the usurpation. The assertion by Great Britain of a power to make laws for the other members of the empire *in all cases whatsoever*, ended in the discovery that she had a right to make laws for them *in no cases whatsoever*.

Such being the ground of our Revolution, no support nor colour can be drawn from it for the doctrine that the common law is binding on these States as one society. The doctrine, on the contrary, is evidently repugnant to the fundamental principle of the Revolution.

The Articles of Confederation are the next source of information on this subject.

In the interval between the commencement of the Revolution and the final ratification of these Articles, the nature and extent of the Union was determined by the circumstances of the crisis, rather than by any accurate delineation of the general authority. It will not be alleged that the "common law" could have had any legitimate birth as a law of the United States during that state of things. If it came as such into existence at all, the Charter of Confederation must have been its parent.

Here again, however, its pretensions are absolutely destitute of foundation. This instrument does not contain a sentence or a syllable that can be tortured

into a countenance of the idea that the parties to it were, with respect to the objects of the common law, to form one community. No such law is named, or implied, or alluded to, as being in force, or as brought into force by that compact. No provision is made by which such a law could be carried into operation; whilst, on the other hand, every such inference or pretext is absolutely precluded by Article II, which declares "that 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."

Thus far it appears that not a vestige of this extraordinary doctrine can be found in the origin or progress of American institutions. The evidence against it has, on the contrary, grown stronger at every step, till it has amounted to a formal and positive exclusion, by written articles of compact among the parties concerned.

Is this exclusion revoked, and the common law introduced as national law by the present Constitution of the United States? This is the final question to be examined.

It is readily admitted that particular parts of the common law may have a sanction from the Constitution, so far as they are necessarily comprehended in the technical phrases which express the powers delegated to the Government; and so far also as such other parts may be adopted by Congress as necessary and proper for carrying into execution the powers expressly delegated. But the question does not relate to either of these portions of the common law. It relates to the common law beyond these limitations.

The only part of the Constitution which seems to have been relied on in this case is the 2d section of Article III: "The judicial power shall extend to all cases *in law and equity arising under this Constitution*, the laws of the United States, and treaties made or which shall be made under their authority."

It has been asked, what cases, distinct from those arising under the laws and treaties of the United States, can arise under the Constitution, other than those arising under the common law? and it is inferred that the common law is accordingly adopted or recognised by the Constitution.

Never, perhaps, was so broad a construction applied to a text so clearly unsusceptible of it. If any colour for the inference could be found, it must be in the impossibility of finding any other cases in law and equity, within the provisions of the Constitution, to satisfy the expression; and rather than resort to a construction affecting so essentially the whole character of the Government, it would perhaps be more rational to consider the expression as a mere pleonasm or inadvertence. But it is not necessary to decide on such a dilemma. The expression is fully satisfied and its accuracy justified by two descriptions of cases to which the judicial authority is extended, and neither of which implies that the common law is the law of the United States. One of these descrip

tions comprehends the cases growing out of the restrictions on the legislative power of the States. For example, it is provided that "no State shall emit bills of credit," or "make any thing but gold and silver coin a tender in payment of debts." Should this prohibition be violated, and a suit *between citizens of the same State* be the consequence, this would be a case arising under the Constitution before the judicial power of the United States. A second description comprehends suits between citizens and foreigners, of citizens of different States, to be decided according to the State or foreign laws, but submitted by the Constitution to the judicial power of the United States, the judicial power being in several instances extended beyond the legislative power of the United States.

To this explanation of the text the following observations may be added:

The expression "cases in law and equity" is manifestly confined to cases of a civil nature, and would exclude cases of criminal jurisdiction. Criminal cases in law and equity would be a language unknown to the law.

The succeeding paragraph of the same section is in harmony with this construction. It is in these words: "In all cases affecting ambassadors, or other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. *In all* the other cases (including cases of law and equity arising under the Constitution) the Supreme Court shall have *appellate* jurisdiction both as to law and *fact*; with such exceptions and under such regulations as Congress shall make."

This paragraph, by expressly giving an *appellate* jurisdiction in cases of law and equity arising under the Constitution, to *fact* as well as to law, clearly excludes criminal cases where the trial by jury is secured, because the fact in such cases is not a subject of appeal. And, although the appeal is liable to such *exceptions* and regulations as Congress may adopt, yet it is not to be supposed that an *exception of all* criminal cases could be contemplated, as well because a discretion in Congress to make or omit the exception would be improper, as because it would have been unnecessary. The exception could as easily have been made by the Constitution itself, as referred to the Congress.

Once more: the amendment last added to the Constitution deserves attention as throwing light on this subject. "The judicial power of the United States shall not be construed to extend to any suit in *law* or *equity* commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign power." As it will not be pretended that any criminal proceeding could take place against a State, the terms *law* or *equity* must be understood as appropriate to *civil* in exclusion of *criminal* cases.

From these considerations it is evident that this part of the Constitution, even if it could be applied at all to the purpose for which it has been cited,

would not include any cases whatever of a criminal nature, and consequently would not authorize the inference from it that the judicial authority extends to *offences* against the common law as offences arising under the Constitution.

It is further to be considered that, even if this part of the Constitution could be strained into an application to every common-law case, criminal as well as civil, it could have no effect in justifying the Sedition Act; which is an exercise of legislative and not of judicial power: and it is the judicial power only of which the extent is defined in this part of the Constitution.

There are two passages in the Constitution in which a description of the law of the United States is found. The first is contained in Article III, Section 2, in the words following: "This Constitution, the laws of the United States, and treaties made or which shall be made under their authority." The second is contained in the second paragraph of Article VI, as follows: "This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land." The first of these descriptions was meant as a guide to the judges of the United States; the second, as a guide to the judges of the several States. Both of them consist of an enumeration which was evidently meant to be precise and complete. If the common law had been understood to be a law of the United States, it is not possible to assign a satisfactory reason why it was not expressed in the enumeration.

In aid of these objections the difficulties and confusion inseparable from a constructive introduction of the common law would afford powerful reasons against it.

Is it to be the common law with or without the British statutes?

If without the statutory amendments, the vices of the code would be insupportable.

If with these amendments, what period is to be fixed for limiting the British authority over our laws?

Is it to be the date of the eldest or the youngest of the Colonies?

Or are the dates to be thrown together and a medium deduced?

Or is our independence to be taken for the date?

Is, again, regard to be had to the various changes in the common law made by the local codes of America?

Is regard to be had to such changes, subsequent as well as prior to the establishment of the Constitution?

Is regard to be had to future as well as past changes?

Is the law to be different in every State as differently modified by its code, or are the modifications of any particular State to be applied to all?

And, on the latter supposition, which, among the State codes, would form the standard?

Questions of this sort might be multiplied with as much ease as there would be difficulty in answering them.

The consequences flowing from the proposed construction furnish other objections equally conclusive, unless the text were peremptory in its meaning and consistent with other parts of the instrument.

These consequences may be in relation to the legislative authority of the United States; to the executive authority; to the judicial authority; and to the governments of the several States.

If it be understood that the common law is established by the Constitution, it follows that no part of the law can be altered by the Legislature; such of the statutes already passed as may be repugnant thereto would be nullified, particularly the Sedition Act itself, which boasts of being a melioration of the common law; and the whole code, with all its incongruities, barbarisms, and bloody maxims, would be inviolably saddled on the good people of the United States.

Should this consequence be rejected and the common law be held, like other laws, liable to revision and alteration by the authority of Congress, it then follows that the authority of Congress is co-extensive with the objects of common law—that is to say, with every object of legislation; for to every such object does some branch or other of the common law extend. The authority of Congress would therefore be no longer under the limitations marked out in the Constitution. They would be authorized to legislate in all cases whatsoever.

In the next place, as the President possesses the executive powers of the Constitution, and is to see that the laws be faithfully executed, his authority also must be co-extensive with every branch of the common law. The additions which this would make to his power, though not readily to be estimated, claim the most serious attention.

This is not all; it will merit the most profound consideration, how far an indefinite admission of the common law, with a latitude in construing it, equal to the construction by which it is deduced from the Constitution, might draw after it the various prerogatives making part of the unwritten law of England. The English Constitution itself is nothing more than a composition of unwritten laws and maxims.

In the third place, whether the common law be admitted as of legal or of constitutional obligation, it would confer on the judicial department a discretion little short of a legislative power.

On the supposition of its having a constitutional obligation, this power in the judges would be permanent and irremediable by the Legislature. On the other supposition the power would not expire until the Legislature should have introduced a full system of statutory provisions. Let it be observed, too, that besides all the uncertainties above enumerated, and which present an immense field for judicial discretion, it would remain with the same department

to decide what parts of the common law would, and what would not, be properly applicable to the circumstances of the United States.

A discretion of this sort has always been lamented as incongruous and dangerous, even in the Colonial and State courts, although so much narrowed by positive provisions in the local codes on all the principal subjects embraced by the common law. Under the United States, where so few laws exist on those subjects, and where so great a lapse of time must happen before the vast chasm could be supplied, it is manifest that the power of the judges over the law would, in fact, erect them into legislators, and that for a long time it would be impossible for the citizens to conjecture, either what was or would be law.

In the last place, the consequence of admitting the common law as the law of the United States, on the authority of the individual States, is as obvious as it would be fatal. As this law relates to every subject of legislation, and would be paramount to the Constitutions and laws of the States, the admission of it would overwhelm the residuary sovereignty of the States, and by one constructive operation new model the whole political fabric of the country.

From the review thus taken of the situation of the American colonies prior to their independence; of the effect of this event on their situation; of the nature and import of the Articles of Confederation; of the true meaning of the passage in the existing Constitution from which the common law has been deduced; of the difficulties and uncertainties incident to the doctrine; and of its vast consequences in extending the powers of the Federal Government, and in superseding the authorities of the State governments—the committee feel the utmost confidence in concluding that the common law never was, nor by any fair construction ever can be, deemed a law for the American people as one community; and they indulge the strongest expectation that the same conclusion will finally be drawn by all candid and accurate inquirers into the subject. It is, indeed, distressing to reflect that it ever should have been made a question, whether the Constitution, on the whole face of which is seen so much labor to enumerate and define the several objects of Federal power, could intend to introduce in the lump, in an indirect manner, and by a forced construction of a few phrases, the vast and multifarious jurisdiction involved in the common law—a law filling so many ample volumes; a law overspreading the entire field of legislation; and a law that would sap the foundation of the Constitution as a system of limited and specified powers. A severer reproach could not, in the opinion of the committee, be thrown on the Constitution, on those who framed or on those who established it, than such a supposition would throw on them.

The argument, then, drawn from the common law, on the ground of its being adopted or recognised by the Constitution, being inapplicable to the Seditious Act, the committee will proceed to examine the other arguments which have been founded on the Constitution.

They will waste but little time on the attempt to cover the act by the pre-

amble to the Constitution, it being contrary to every acknowledged rule of construction to set up this part of an instrument in opposition to the plain meaning expressed in the body of the instrument. A preamble usually contains the general motives or reasons for the particular regulations or measures which follow it, and is always understood to be explained and limited by them. In the present instance, a contrary interpretation would have the inadmissible effect of rendering nugatory or improper every part of the Constitution which succeeds the preamble.

The paragraph in Article I, Section 8, which contains the power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare, having been already examined, will also require no particular attention in this place. It will have been seen that, in its fair and consistent meaning, it cannot enlarge the enumerated powers vested in Congress.

The part of the Constitution which seems most to be recurred to, in the defence of the Sedition Act, is the last clause of the above section, empowering Congress "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

The plain import of this clause is, that Congress shall have all the incidental or instrumental powers necessary and proper for carrying into execution all the express powers, whether they be vested in the Government of the United States, more collectively, or in the several departments or officers thereof.

It is not a grant of new powers to Congress, but merely a declaration, for the removal of all uncertainty, that the means of carrying into execution those otherwise granted are included in the grant.

Whenever, therefore, a question arises concerning the constitutionality of a particular power, the first question is, whether the power be expressed in the Constitution. If it be, the question is decided. If it be not expressed, the next inquiry must be, whether it is properly an incident to an express power, and necessary to its execution. If it be, it may be exercised by Congress. If it be not, Congress cannot exercise it.

Let the question be asked, then, whether the power over the press exercised in the Sedition Act be found among the powers expressly vested in the Congress. This is not pretended.

Is there any express power, for executing which it is a necessary and proper power?

The power which has been selected, as least remote, in answer to this question, is that "of suppressing insurrections;" which is said to imply a power to *prevent* insurrections, by punishing whatever may *lead* or *tend* to them. But it surely cannot, with the least plausibility, be said, that the regulation of



the press, and a punishment of libels, are exercises of a power to suppress insurrections. The most that could be said would be that the punishment of libels, if it had the tendency ascribed to it, might prevent the occasion of passing or executing laws necessary and proper for the suppression of insurrections.

Has the Federal Government no power, then, to prevent as well as to punish resistance to the laws ?

They have the power, which the Constitution deemed most proper, in their hands for the purpose. The Congress has power, before it happens, to pass laws for punishing it; and the executive and judiciary have power to enforce those laws when it does happen.

It must be recollected by many, and could be shown to the satisfaction of all, that the construction here put on the terms "necessary and proper" is precisely the construction which prevailed during the discussions and ratifications of the Constitution. It may be added, and cannot too often be repeated, that it is a construction absolutely necessary to maintain their consistency with the peculiar character of the Government, as possessed of particular and definite powers only, not of the general and indefinite powers vested in ordinary Governments; for if the power to *suppress insurrections* includes a power to *punish libels*, or if the power to *punish* includes a power to *prevent*, by all the means that may have that *tendency*, such is the relation and influence among the most remote subjects of legislation, that a power over a very few would carry with it a power over all. And it must be wholly immaterial whether unlimited powers be exercised under the name of unlimited powers, or be exercised under the name of unlimited means of carrying into execution limited powers.

This branch of the subject will be closed with a reflection which must have weight with all, but more especially with those who place peculiar reliance on the judicial exposition of the Constitution as the bulwark provided against undue extensions of the legislative power. If it be understood that the powers implied in the specified powers have an immediate and appropriate relation to them, as means necessary and proper for carrying them into execution, questions on the constitutionality of laws passed for this purpose will be of a nature sufficiently precise and determinate for judicial cognizance and control. If, on the other hand, Congress are not limited in the choice of means by any such appropriate relation of them to the specified powers; but may employ all such means as they may deem fitted to *prevent* as well as to *punish* crimes subjected to their authority; such as may have a *tendency* only to *promote* an object for which they are authorized to provide; every one must perceive that questions relating to means of this sort must be questions for mere policy and expediency, on which legislative discretion alone can decide, and from which the judicial interposition and control are completely excluded.

II. The next point which the resolution requires to be proved is, that the

power over the press exercised by the Sedition Act is positively forbidden by one of the amendments to the Constitution.

The amendment stands in these words: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or *abridging the freedom of speech or of the press*; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

In the attempts to vindicate the Sedition Act it has been contended—1. That the "freedom of the press" is to be determined by the meaning of these terms in the common law. 2. That the article supposes the power over the press to be in Congress, and prohibits them only from *abridging* the freedom allowed to it by the common law.

Although it will be shown, on examining the second of these positions, that the amendment is a denial to Congress of all power over the press, it may not be useless to make the following observations on the first of them:

It is deemed to be a sound opinion that the Sedition Act, in its definition of some of the crimes created, is an abridgment of the freedom of publication, recognised by principles of the common law in England.

The freedom of the press under the common law is, in the defences of the Sedition Act, made to consist in an exemption from all *previous* restraint on printed publications by persons authorized to inspect and prohibit them. It appears to the committee that this idea of the freedom of the press can never be admitted to be the American idea of it; since a law inflicting penalties on printed publications would have a similar effect with a law authorizing a previous restraint on them. It would seem a mockery to say that no laws should be passed preventing publications from being made, but that laws might be passed for punishing them in case they should be made.

The essential difference between the British Government and the American Constitutions will place this subject in the clearest light.

In the British Government the danger of encroachments on the rights of the people is understood to be confined to the executive magistrate. The representatives of the people in the Legislature are not only exempt themselves from distrust, but are considered as sufficient guardians of the rights of their constituents against the danger from the Executive. Hence it is a principle, that the Parliament is unlimited in its power; or, in their own language, is omnipotent. Hence, too, all the ramparts for protecting the rights of the people—such as their Magna Charta, their Bill of Rights, &c.—are not reared against the Parliament, but against the royal prerogative. They are merely legislative precautions against executive usurpations. Under such a government as this, an exemption of the press from previous restraint, by licensers appointed by the King, is all the freedom that can be secured to it.

In the United States the case is altogether different. The People, not the Government, possess the absolute sovereignty. The Legislature, no less than

the Executive, is under limitations of power. Encroachments are regarded as possible from the one as well as from the other. Hence, in the United States the great and essential rights of the people are secured against legislative as well as against executive ambition. They are secured, not by laws paramount to prerogative, but by constitutions paramount to laws. This security of the freedom of the press requires that it should be exempt not only from previous restraint by the Executive, as in Great Britain, but from legislative restraint also; and this exemption, to be effectual, must be an exemption not only from the previous inspection of licensers, but from the subsequent penalty of laws.

The state of the press, therefore, under the common law, cannot, in this point of view, be the standard of its freedom in the United States.

But there is another view under which it may be necessary to consider this subject. It may be alleged that although the security for the freedom of the press be different in Great Britain and in this country, being a legal security only in the former, and a constitutional security in the latter; and although there may be a further difference, in an extension of the freedom of the press, here, beyond an exemption from previous restraint, to an exemption from subsequent penalties also; yet that the actual legal freedom of the press, under the common law, must determine the degree of freedom which is meant by the terms, and which is constitutionally secured against both previous and subsequent restraints.

The committee are not unaware of the difficulty of all general questions which may turn on the proper boundary between the liberty and licentiousness of the press. They will leave it, therefore, for consideration only how far the difference between the nature of the British Government and the nature of the American Governments, and the practice under the latter, may show the degree of rigor in the former to be inapplicable to and not obligatory in the latter.

The nature of governments elective, limited, and responsible in all their branches, may well be supposed to require a greater freedom of animadversion than might be tolerated by the genius of such a government as that of Great Britain. In the latter it is a maxim that the King, an hereditary, not a responsible magistrate, can do no wrong, and that the Legislature, which in two-thirds of its composition is also hereditary, not responsible, can do what it pleases. In the United States the executive magistrates are not held to be infallible, nor the Legislatures to be omnipotent; and both being elective, are both responsible. Is it not natural and necessary, under such different circumstances, that a different degree of freedom in the use of the press should be contemplated?

Is not such an inference favoured by what is observable in Great Britain itself? Notwithstanding the general doctrine of the common law on the subject of the press, and the occasional punishment of those who use it with a freedom offensive to the Government, it is well known that with respect to the responsible members of the Government, where the reasons operating here

become applicable there, the freedom exercised by the press and protected by public opinion far exceeds the limits prescribed by the ordinary rules of law. The ministry, who are responsible to impeachment, are at all times animadverted on by the press with peculiar freedom, and during the elections for the House of Commons, the other responsible part of the Government, the press is employed with as little reserve towards the candidates.

The practice in America must be entitled to much more respect. In every State, probably, in the Union, the press has exerted a freedom in canvassing the merits and measures of public men of every description which has not been confined to the strict limits of the common law. On this footing the freedom of the press has stood; on this footing it yet stands. And it will not be a breach either of truth or of candour to say, that no persons or presses are in the habit of more unrestrained animadversions on the proceedings and functionaries of the State governments than the persons and presses most zealous in vindicating the act of Congress for punishing similar animadversions on the Government of the United States.

The last remark will not be understood as claiming for the State governments an immunity greater than they have heretofore enjoyed. Some degree of abuse is inseparable from the proper use of every thing, and in no instance is this more true than in that of the press. It has accordingly been decided by the practice of the States, that it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits. And can the wisdom of this policy be doubted by any who reflect that to the press alone, chequered as it is with abuses, the world is indebted for all the triumphs which have been gained by reason and humanity over error and oppression; who reflect that to the same beneficent source the United States owe much of the lights which conducted them to the ranks of a free and independent nation, and which have improved their political system into a shape so auspicious to their happiness? Had "Sedition Acts," forbidding every publication that might bring the constituted agents into contempt or disrepute, or that might excite the hatred of the people against the authors of unjust or pernicious measures, been uniformly enforced against the press, might not the United States have been languishing at this day under the infirmities of a sickly Confederation? Might they not, possibly, be miserable colonies, groaning under a foreign yoke?

To these observations one fact will be added, which demonstrates that the common law cannot be admitted as the *universal* expositor of American terms, which may be the same with those contained in that law. The freedom of conscience and of religion are found in the same instruments which assert the freedom of the press. It will never be admitted that the meaning of the former, in the common law of England, is to limit their meaning in the United States.

Whatever weight may be allowed to these considerations, the committee do

not, however, by any means intend to rest the question on them. They contend that the article of amendment, instead of supposing in Congress a power that might be exercised over the press, provided its freedom was not abridged, was meant as a positive denial to Congress of any power whatever on the subject.

To demonstrate that this was the true object of the article, it will be sufficient to recall the circumstances which led to it, and to refer to the explanation accompanying the article.

When the Constitution was under the discussions which preceded its ratification, it is well known that great apprehensions were expressed by many, lest the omission of some positive exception, from the powers delegated, of certain rights, and of the freedom of the press particularly, might expose them to the danger of being drawn, by construction, within some of the powers vested in Congress, more especially of the power to make all laws necessary and proper for carrying their other powers into execution. In reply to this objection, it was invariably urged to be a fundamental and characteristic principle of the Constitution, that all powers not given by it were reserved; that no powers were given beyond those enumerated in the Constitution, and such as were fairly incident to them; that the power over the rights in question, and particularly over the press, was neither among the enumerated powers, nor incident to any of them; and consequently that an exercise of any such power would be manifest usurpation. It is painful to remark how much the arguments now employed in behalf of the Sedition Act are at variance with the reasoning which then justified the Constitution, and invited its ratification.

From this posture of the subject resulted the interesting question, in so many of the Conventions, whether the doubts and dangers ascribed to the Constitution should be removed by any amendments previous to the ratification, or be postponed in confidence that, as far as they might be proper, they would be introduced in the form provided by the Constitution. The latter course was adopted; and in most of the States, ratifications were followed by propositions and instructions for rendering the Constitution more explicit, and more safe to the rights not meant to be delegated by it. Among those rights, the freedom of the press, in most instances, is particularly and emphatically mentioned. The firm and very pointed manner in which it is asserted in the proceedings of the Convention of this State will be hereafter seen.

In pursuance of the wishes thus expressed, the first Congress that assembled under the Constitution proposed certain amendments, which have since, by the necessary ratifications, been made a part of it; among which amendments is the article containing, among other prohibitions on the Congress, an express declaration that they should make no law abridging the freedom of the press.

Without tracing farther the evidence on this subject, it would seem scarcely

possible to doubt that no power whatever over the press was supposed to be delegated by the Constitution, as it originally stood, and that the amendment was intended as a positive and absolute reservation of it.

But the evidence is still stronger. The proposition of amendments made by Congress is introduced in the following terms :

“The Conventions of a number of the States having, at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstructions or abuse of its powers, that further declaratory and restrictive clauses should be added ; and as extending the ground of public confidence in the Government will best insure the beneficent ends of its institution.”

Here is the most satisfactory and authentic proof that the several amendments proposed were to be considered as either declaratory or restrictive, and, whether the one or the other, as corresponding with the desire expressed by a number of the States, and as extending the ground of public confidence in the Government.

Under any other construction of the amendment relating to the press, than that it declared the press to be wholly exempt from the power of Congress, the amendment could neither be said to correspond with the desire expressed by a number of the States, nor be calculated to extend the ground of public confidence in the Government.

Nay, more ; the construction employed to justify the Sedition Act would exhibit a phenomenon without a parallel in the political world. It would exhibit a number of respectable States, as denying, first, that any power over the press was delegated by the Constitution ; as proposing, next, that an amendment to it should explicitly declare that no such power was delegated ; and, finally, as concurring in an amendment actually recognising or delegating such a power.

Is, then, the Federal Government, it will be asked, destitute of every authority for restraining the licentiousness of the press, and for shielding itself against the libellous attacks which may be made on those who administer it ?

The Constitution alone can answer this question. If no such power be expressly delegated, and if it be not both necessary and proper to carry into execution an express power—above all, if it be expressly forbidden, by a declaratory amendment to the Constitution—the answer must be, that the Federal Government is destitute of all such authority.

And might it not be asked, in turn, whether it is not more probable, under all the circumstances which have been reviewed, that the authority should be withheld by the Constitution, than that it should be left to a vague and violent construction, whilst so much pains were bestowed in enumerating other powers, and so many less important powers are included in the enumeration ?

Might it not be likewise asked, whether the anxious circumspection which dictated so many peculiar limitations on the general authority would be unlikely to exempt the press altogether from that authority ? The peculiar mag-

nitude of some of the powers necessarily committed to the Federal Government; the peculiar duration required for the functions of some of its departments; the peculiar distance of the seat of its proceedings from the great body of its constituents; and the peculiar difficulty of circulating an adequate knowledge of them through any other channel; will not these considerations, some or other of which produced other exceptions from the powers of ordinary governments, all together, account for the policy of binding the hand of the Federal Government from touching the channel which alone can give efficacy to its responsibility to its constituents, and of leaving those who administer it to a remedy, for their injured reputations, under the same laws, and in the same tribunals, which protect their lives, their liberties, and their properties?

But the question does not turn either on the wisdom of the Constitution or on the policy which gave rise to its particular organization. It turns on the actual meaning of the instrument, by which it has appeared that a power over the press is clearly excluded from the number of powers delegated to the Federal Government.

III. And, in the opinion of the committee, well may it be said, as the resolution concludes with saying, that the unconstitutional power exercised over the press by the Sedition Act ought, "more than any other, to produce universal alarm; because it is levelled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right."

Without scrutinizing minutely into all the provisions of the Sedition Act, it will be sufficient to cite so much of section 2d as follows: "And be it further enacted, that if any person shall write, print, utter, or publish, or shall cause or procure to be written, printed, uttered, or published, or shall knowingly and willingly assist or aid in writing, printing, uttering, or publishing, any false, scandalous, and malicious writing or writings against the Government of the United States, or either house of the Congress of the United States, or the President of the United States, with an intent to defame the said Government or either house of the said Congress, or the President, or to bring them or either of them into contempt or disrepute, or to excite against them, or either or any of them, the hatred of the good people of the United States, &c.—then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years."

On this part of the act, the following observations present themselves:

1. The Constitution supposes that the President, the Congress, and each of its Houses, may not discharge their trusts, either from defect of judgment or other causes. Hence they are all made responsible to their constituents, at the returning periods of election; and the President, who is singly intrusted

with very great powers, is, as a further guard, subjected to an intermediate impeachment.

2. Should it happen, as the Constitution supposes it may happen, that either of these branches of the Government may not have duly discharged its trust; it is natural and proper, that, according to the cause and degree of their faults, they should be brought into contempt or disrepute, and incur the hatred of the people.

3. Whether it has, in any case, happened that the proceedings of either or all of those branches evince such a violation of duty as to justify a contempt, a disrepute, or hatred among the people, can only be determined by a free examination thereof, and a free communication among the people thereon.

4. Whenever it may have actually happened that proceedings of this sort are chargeable on all or either of the branches of the Government, it is the duty, as well as right, of intelligent and faithful citizens to discuss and promulge them freely, as well to control them by the censorship of the public opinion, as to promote a remedy according to the rules of the Constitution. And it cannot be avoided that those who are to apply the remedy must feel, in some degree, a contempt or hatred against the transgressing party.

5. As the act was passed on July 14, 1798, and is to be in force until March 3, 1801, it was of course that, during its continuance, two elections of the entire House of Representatives, an election of a part of the Senate, and an election of a President, were to take place.

6. That, consequently, during all these elections, intended by the Constitution to preserve the purity or to purge the faults of the Administration, the great remedial rights of the people were to be exercised, and the responsibility of their public agents to be screened, under the penalties of this act.

May it not be asked of every intelligent friend to the liberties of his country, whether the power exercised in such an act as this ought not to produce great and universal alarm? Whether a rigid execution of such an act, in time past, would not have repressed that information and communication among the people which is indispensable to the just exercise of their electoral rights? And whether such an act, if made perpetual, and enforced with rigor, would not, in time to come, either destroy our free system of government, or prepare a convulsion that might prove equally fatal to it?

In answer to such questions, it has been pleaded that the writings and publications forbidden by the act are those only which are false and malicious, and intended to defame; and merit is claimed for the privilege allowed to authors to justify, by proving the truth of their publications, and for the limitations to which the sentence of fine and imprisonment is subjected.

To those who concurred in the act, under the extraordinary belief that the option lay between the passing of such an act and leaving in force the common law of libels, which punishes truth equally with falsehood, and submits



the fine and imprisonment to the indefinite discretion of the court, the merit of good intentions ought surely not to be refused. A like merit may perhaps be due for the discontinuance of the corporal punishment, which the common law also leaves to the discretion of the court. This merit of intention, however, would have been greater, if the several mitigations had not been limited to so short a period; and the apparent inconsistency would have been avoided. between justifying the act, at one time, by contrasting it with the rigors of the common law otherwise in force; and at another time, by appealing to the nature of the crisis, as requiring the temporary rigor exerted by the act.

But, whatever may have been the meritorious intentions of all or any who contributed to the Sedition Act, a very few reflections will prove that its baleful tendency is little diminished by the privilege of giving in evidence the truth of the matter contained in political writings.

In the first place, where simple and naked facts alone are in question, there is sufficient difficulty in some cases, and sufficient trouble and vexation in all, of meeting a prosecution from the Government with the full and formal proof necessary in a court of law.

But in the next place, it must be obvious to the plainest minds, that opinions and inferences, and conjectural observations, are not only in many cases inseparable from the facts, but may often be more the objects of the prosecution than the facts themselves; or may even be altogether abstracted from particular facts; and that opinions, and inferences, and conjectural observations, cannot be subjects of that kind of proof which appertains to facts, before a court of law.

Again: it is no less obvious that the intent to defame, or bring into contempt, or disrepute, or hatred—which is made a condition of the offence created by the act—cannot prevent its pernicious influence on the freedom of the press. For, omitting the inquiry, how far the malice of the intent is an inference of the law from the mere publication, it is manifestly impossible to punish the intent to bring those who administer the Government into disrepute or contempt, without striking at the right of freely discussing public characters and measures; because those who engage in such discussions must expect and intend to excite these unfavorable sentiments, so far as they may be thought to be deserved. To prohibit, therefore, the intent to excite those unfavorable sentiments against those who administer the Government, is equivalent to a prohibition of the actual excitement of them; and to prohibit the actual excitement of them is equivalent to a prohibition of discussions having that tendency and effect; which, again, is equivalent to a protection of those who administer the Government, if they should at any time deserve the contempt or hatred of the people, against being exposed to it by free animadversions on their characters and conduct. Nor can there be a doubt, if those in public trust be shielded by penal laws from such strictures of the press as may expose them to contempt, or disrepute, or hatred, where they may deserve it,

that, in exact proportion as they may deserve to be exposed, will be the certainty and criminality of the intent to expose them, and the vigilance of prosecuting and punishing it; nor a doubt that a government thus intrenched in penal statutes against the just and natural effects of a culpable administration will easily evade the responsibility which is essential to a faithful discharge of its duty.

Let it be recollected, lastly, that the right of electing the members of the Government constitutes more particularly the essence of a free and responsible government. The value and efficacy of this right depends on the knowledge of the comparative merits and demerits of the candidates for public trust, and on the equal freedom, consequently, of examining and discussing these merits and demerits of the candidates respectively. It has been seen that a number of important elections will take place while the act is in force, although it should not be continued beyond the term to which it is limited. Should there happen, then, as is extremely probable in relation to some or other of the branches of the Government, to be competitions between those who are and those who are not members of the Government, what will be the situations of the competitors? Not equal; because the characters of the former will be covered by the Sedition Act from animadversions exposing them to disrepute among the people, whilst the latter may be exposed to the contempt and hatred of the people without a violation of the act. What will be the situation of the people? Not free; because they will be compelled to make their election between competitors whose pretensions they are not permitted by the act equally to examine, to discuss, and to ascertain. And from both these situations will not those in power derive an undue advantage for continuing themselves in it, which, by impairing the right of election, endangers the blessings of the Government founded on it?

It is with justice, therefore, that the General Assembly have affirmed, in the resolution, as well that the right of freely examining public characters and measures, and of free communication thereon, is the only effectual guardian of every other right, as that this particular right is levelled at by the power exercised in the Sedition Act.

The Resolution next in order is as follows :

“That this State having, by its Convention, which ratified the Federal Constitution, expressly declared that, among other essential rights, ‘the liberty of conscience and of the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States;’ and, from its extreme anxiety to guard these rights from every possible attack of sophistry and ambition, having, with other States, recommended an amendment for that purpose, which amendment was in due time annexed to the Constitution, it would mark a reproachful inconsistency, and criminal degeneracy, if an indifference were now shown to the most palpable violation of one of the rights thus declared and secured, and to the establishment of a precedent which may be fatal to the other.”

To place this Resolution in its just light, it will be necessary to recur to the act of ratification by Virginia, which stands in the ensuing form :

“We, the delegates of the people of Virginia, duly elected in pursuance of a recommendation from the General Assembly, and now met in Convention, having fully and freely investigated and discussed the proceedings of the Federal Convention, and being prepared, as well as the most mature deliberation hath enabled us, to decide thereon—DO, in the name and in behalf of the people of Virginia, declare and make known, that the powers granted under the Constitution, being derived from the people of the United States, may be resumed by them whensoever the same shall be perverted to their injury or oppression; and that every power not granted thereby remains with them, and at their will. That, therefore, no right of any denomination can be cancelled, abridged, restrained, or modified, by the Congress, by the Senate or House of Representatives, acting in any capacity, by the President, or any department or officer of the United States, except in those instances in which power is given by the Constitution for those purposes; and that, among other essential rights, the liberty of conscience and of the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States.”

Here is an express and solemn declaration by the Convention of the State, that they ratified the Constitution in the sense that no right of any denomination can be cancelled, abridged, restrained, or modified, by the Government of the United States, or any part of it, except in those instances in which power is given by the Constitution; and in the sense, particularly, “that among other essential rights, the liberty of conscience and freedom of the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States.”

Words could not well express in a fuller or more forcible manner the understanding of the Convention, that the liberty of conscience and the freedom of the press were *equally* and *completely* exempted from all authority whatever of the United States.

Under an anxiety to guard more effectually these rights against every possible danger, the Convention, after ratifying the Constitution, proceeded to prefix to certain amendments proposed by them a declaration of rights, in which are two articles providing, the one for the liberty of conscience, the other for the freedom of speech and of the press.

Similar recommendations having proceeded from a number of other States, and Congress, as has been seen, having, in consequence thereof, and with a view to extend the ground of public confidence, proposed, among other declaratory and restrictive clauses, a clause expressly securing the liberty of conscience and of the press, and Virginia having concurred in the ratifications which made them a part of the Constitution, it will remain with a candid public to decide whether it would not mark an inconsistency and degeneracy, if an indifference were now shown to a palpable violation of one of those rights—the freedom of the press; and to a precedent, therein, which may be fatal to the other—the free exercise of religion.

That the precedent established by the violation of the former of these rights may, as is affirmed by the resolution, be fatal to the latter, appears to be demonstrable by a comparison of the grounds on which they respectively rest, and from the scope of reasoning by which the power over the former has been vindicated.

*First.* Both of these rights, the liberty of conscience and of the press, rest equally on the original ground of not being delegated by the Constitution, and, consequently, withheld from the Government. Any construction, therefore, that would attack this original security for the one must have the like effect on the other.

*Secondly.* They are both equally secured by the supplement to the Constitution, being both included in the same amendment, made at the same time, and by the same authority. Any construction or argument, then, which would turn the amendment into a grant or acknowledgment of power with respect to the press, might be equally applied to the freedom of religion.

*Thirdly.* If it be admitted that the extent of the freedom of the press secured by the amendment is to be measured by the common law on this subject, the same authority may be resorted to for the standard which is to fix the extent of the "free exercise of religion." It cannot be necessary to say what this standard would be; whether the common law be taken solely as the unwritten, or as varied by the written law of England.

*Fourthly.* If the words and phrases in the amendment are to be considered as chosen with a studied discrimination, which yields an argument for a power over the press under the limitation that its freedom be not abridged, the same argument results from the same consideration for a power over the exercise of religion, under the limitation that its freedom be not prohibited.

For if Congress may regulate the freedom of the press, provided they do not abridge it, because it is said only "they shall not abridge it," and is not said "they shall make no law respecting it," the analogy of reasoning is conclusive that Congress may *regulate* and even *abridge* the free exercise of religion, provided they do not *prohibit* it; because it is said only "they shall not prohibit it," and is *not* said "they shall make no law *respecting*, or no law *abridging* it."

The General Assembly were governed by the clearest reason, then, in considering the Sedition Act, which legislates on the freedom of the press, as establishing a precedent that may be fatal to the liberty of conscience; and it will be the duty of all, in proportion as they value the security of the latter, to take the alarm at every encroachment on the former.

The two concluding resolutions only remain to be examined. They are in the words following:

"That the good people of this Commonwealth having ever felt, and continuing to feel, the most sincere affection for their brethren of the other States, the truest anxiety for establishing and perpetuating the Union of all, and the most scrupulous fidelity to that Constitution which is the pledge of mutual friendship and the instrument of mutual happiness, the General Assembly doth solemnly appeal to the like dispositions in the other States, in confidence that they will concur with this Commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional; and that the necessary and proper measures will be taken by each for co-operating with this State in maintaining, unimpaired, the authorities, rights, and liberties reserved to the States respectively, or to the people.

"That the Governor be desired to transmit a copy of the foregoing resolutions to the executive

authority of each of the other States, with a request that the same may be communicated to the Legislature thereof; and that a copy be furnished to each of the Senators and Representatives representing this State in the Congress of the United States.”

The fairness and regularity of the course of proceeding here pursued have not protected it against objections even from sources too respectable to be disregarded.

It has been said that it belongs to the judiciary of the United States, and not the State Legislatures, to declare the meaning of the Federal Constitution.

But a declaration that proceedings of the Federal Government are not warranted by the Constitution is a novelty neither among the citizens nor among the Legislatures of the States; nor are the citizens or the Legislature of Virginia singular in the example of it.

Nor can the declarations of either, whether affirming or denying the constitutionality of measures of the Federal Government, or whether made before or after judicial decisions thereon, be deemed, in any point of view, an assumption of the office of the judge. The declarations in such cases are expressions of opinion, unaccompanied with any other effect than what they may produce on opinion by exciting reflection. The expositions of the judiciary, on the other hand, are carried into immediate effect by force. The former may lead to a change in the legislative expression of the general will—possibly, to a change in the opinion of the judiciary; the latter enforces the general will, whilst that will and that opinion continue unchanged.

And if there be no impropriety in declaring the unconstitutionality of proceedings in the Federal Government, where can be the impropriety of communicating the declaration to other States, and inviting their concurrence in a like declaration? What is allowable for one must be allowable for all; and a free communication among the States, where the Constitution imposes no restraint, is as allowable among the State governments as among other public bodies or private citizens. This consideration derives a weight that cannot be denied to it, from the relation of the State Legislatures to the Federal Legislature as the immediate constituents of one of its branches.

The Legislatures of the States have a right also to originate amendments to the Constitution, by a concurrence of two-thirds of the whole number, in applications to Congress for the purpose. When new States are to be formed by a junction of two or more States, or parts of States, the Legislatures of the States concerned are, as well as Congress, to concur in the measure. The States have a right also to enter into agreements or compacts, with the consent of Congress. In all such cases a communication among them results from the object which is common to them.

It is, lastly, to be seen whether the confidence expressed by the resolution, that the *necessary and proper measures* would be taken by the other States for co-operating with Virginia in maintaining the rights reserved to the States or

to the people, be in any degree liable to the objections which have been raised against it.

If it be liable to objection it must be because either the object or the means are objectionable.

The object being to maintain what the Constitution has ordained, is in itself a laudable object.

The means are expressed in the terms "the necessary and proper measures." A proper object was to be pursued by means both necessary and proper.

To find an objection, then, it must be shown that some meaning was annexed to these general terms which was not proper; and for this purpose either that the means used by the General Assembly were an example of improper means, or that there were no proper means to which the terms could refer.

In the example given by the State of declaring the Alien and Sedition Acts to be unconstitutional, and of communicating the declaration to other States, no trace of improper means has appeared. And if the other States had concurred in making a like declaration, supported, too, by the numerous applications flowing immediately from the people, it can scarcely be doubted that these simple means would have been as sufficient as they are unexceptionable.

It is no less certain, that other means might have been employed which are strictly within the limits of the Constitution. The Legislatures of the States might have made a direct representation to Congress with a view to obtain a rescinding of the two offensive acts; or they might have represented to their respective Senators in Congress their wish that two-thirds thereof would propose an explanatory amendment to the Constitution; or two-thirds of themselves, if such had been their option, might, by an application to Congress, have obtained a Convention for the same object.

These several means, though not equally eligible in themselves, nor, probably, to the States, were all constitutionally open for consideration. And if the General Assembly, after declaring the two acts to be unconstitutional, the first and most obvious proceeding on the subject, did not undertake to point out to the other States a choice among the farther measures that might become necessary and proper, the reserve will not be misconstrued by liberal minds into any culpable imputation.

These observations appear to form a satisfactory reply to every objection which is not founded on a misconception of the terms employed in the resolutions. There is one other, however, which may be of too much importance not to be added. It cannot be forgotten, that among the arguments addressed to those who apprehend danger to liberty from the establishment of the General Government over so great a country, the appeal was emphatically made to the intermediate existence of the State governments, between the people and that Government; to the vigilance with which they would desery the first symptoms of usurpation; and to the promptitude with which they would sound the

alarm to the public. This argument was probably not without its effect; and if it was a proper one then to recommend the establishment of the Constitution, it must be a proper one now to assist in its interpretation.

The only part of the two concluding resolutions that remains to be noticed is, the repetition, in the first, of that warm affection to the Union and its members, and of that scrupulous fidelity to the Constitution, which have been invariably felt by the people of this State. As the proceedings were introduced with these sentiments, they could not be more properly closed than in the same manner. Should there be any so far misled as to call in question the sincerity of these professions, whatever regret may be excited by the error, the General Assembly cannot descend into a discussion of it. Those who have listened to the suggestion can only be left to their own recollection of the part which this State has borne in the establishment of our National Independence, in the establishment of our National Constitution, and in maintaining under it the authority and laws of the Union, without a single exception of internal resistance or commotion. By recurring to these facts they will be able to convince themselves that the Representatives of the people of Virginia must be above the necessity of opposing any other shield to attacks on their national patriotism than their own conscientiousness and the justice of an enlightened public, who will perceive in the resolutions themselves the strongest evidence of attachment both to the Constitution and to the Union, since it is only by maintaining the different governments and departments within their respective limits that the blessings of either can be perpetuated.

The extensive view of the subject thus taken by the committee has led them to report to the House, as the result of the whole, the following Resolution:

*Resolved*, That the General Assembly having carefully and respectfully attended to the proceedings of a number of the States, in answer to their resolutions of December 21, 1798, and having accurately and fully re-examined and reconsidered the latter, find it to be their indispensable duty to adhere to the same, as founded in truth, as consonant with the Constitution, and as conducive to its preservation; and more especially to be their duty to renew, as they do hereby renew, their protest against "the Alien and Sedition Acts" as palpable and alarming infractions of the Constitution.

## LETTERS, ETC.

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TO HENRY CLAY.

MONTPELLIER, August 30, 1816.

DEAR SIR,—Mr. Dallas seems to have made up his mind to retire early in October from the Department in his hands, and the event may draw after it a vacancy in the War Department. Will you permit me to avail our country of your services in the latter? It will be convenient to know your determination as soon as you have formed it, and it will be particularly gratifying if it assent to my request.

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## CORRESPONDENCE WITH THE LEGISLATURE OF VIRGINIA.

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COUNCIL CHAMBER, Feb. 28, 1817.

SIR,—By a resolution of the General Assembly of Virginia, it becomes the duty of the Governor to transmit to you the enclosed valedictory address.

In the discharge of this duty it is natural for me to reflect on the astonishing contrast which this moment presents, compared with the eventful period of your administration. For a time our commerce was annihilated, our sacred rights abused, invaded and destroyed, our citizens impressed and held in bleeding bondage, and even our national sovereignty insulted and despised. *Now* we are remunerated by an overwhelming commerce, our rights inviolate, our citizens free and happy, respected at home and abroad, and our national character gloriously exalted. That you should have occupied the highest station and presided over the Union during this wonderful march of national prosperity and glory, can never cease to afford you the highest gratification. There is not a citizen, or soldier, or sailor, who, by his devotion to his country, has contributed in the smallest degree to this happy era, who will not hereafter repose upon the retrospect with joy and delight.

In this renewed evidence of approbation from the General Assembly of Virginia in behalf of the good people of your native State, at the close of your public labors, which so happily terminates an administration that was environed with all the difficulties of an untried Government, a want of unanimity in the public councils, embarrassed finances, and a war with a powerful people, who



disregarded the maxims of civilized nations—under all these circumstances, this testimony of approbation, next to an approving conscience, must be to a public servant the best reward and highest consolation; and that you may long live to enjoy it uninterruptedly is the sincere wish of your obedient, humble servant,

JAMES P. PRESTON.

His Excellency JAMES MADISON, *President of the United States.*

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WASHINGTON, March 1, 1817.

DEAR SIR,—Having received, through you, the address of the General Assembly of Virginia, of February 10th, I have to request that you will take charge of the enclosed answer to it. I must tender you my acknowledgments at the same time, for the friendly and flattering manner in which you have fulfilled the resolution of the General Assembly.

I should express my feelings very imperfectly, if, in recurring to the events which led to the present enviable condition of our country, I did not avow my admiration and profound gratitude for that series of brilliant achievements which distinguish the American arms, and offer my congratulations on the reward so dear to honorable and virtuous minds, which you have received for the part you bore in them, in the suffrages which elevated you to the important station which you fill.

Be pleased to accept assurances of my esteem and cordial respect.

JAMES MADISON.

Governor PRESTON.

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TO THE GENERAL ASSEMBLY OF VIRGINIA.

WASHINGTON, March 1, 1817.

I have received, fellow-citizens, from Governor Preston, your address of the 22d ultimo. The sentiments which it conveys are particularly endeared to me, as being those of a State with which I am connected by the ties of my birth, and of my home, and by the recollections of its confidence and partiality, commencing at an early stage of my life, and continued under different public manifestations, to the moment of my final return to the station of a private citizen. The language of the address derives a further value from the high character which the State of Virginia has justly acquired by its uniform devotion to free Government, and by a constancy and zeal in maintaining the national rights, which no sufferings or sacrifices could impair. Nor can I be insensible to the consideration, that this expression of kindness and approbation comes at the close of my public career through a period of uncommon difficulties and embarrassments.

A candid review of the entire period, of which that made a part, will always

do justice to the course of policy which, under peculiar circumstances not likely to recur, was sanctioned by the national voice and pursued by the National Councils. The review will show that the obstinate rivalship of powerful nations in trampling on our dearest rights and dearest interests, left no option but between resistance and degradation; that a love of peace and a hope of justice selected every mode of resistance short of war, in preference to war; that although the appeals made to the commercial interests and the mutual jealousies of the contending parties was, at length, not without effect in producing a relinquishment of the aggressive system, even by the Power against which war was declared, and before the declaration, yet the relinquishment was at too late a day to prevent the war; that it is strictly true, therefore, that this last resort was not made until the last hope had been extinguished, that a prostration of the national character and of the national rights could be otherwise avoided. It is on record, also, that not a moment was lost after the sword was drawn in opening the way to reconciliation; nor an opportunity permitted by self-respect, untried, till it was at length restored to the scabbard, where it now happily remains.

On the prosperous condition of our country, which has succeeded a conflict rendered peculiarly severe and peculiarly glorious, by contingent events as flattering to our adversaries as they were unlooked for by either party, I cordially unite in your congratulations, as well as in the hope that all the lessons afforded by the past may contribute to the future security and increase of the blessings we now enjoy.

Through the remaining days of a life hitherto employed, with little intermission, in the public service, which you so much overvalue, my heart will cherish the affectionate sentiments which the representatives of my native State have addressed me, and will offer its fervent prayers for the public prosperity and individual happiness of its citizens.

JAMES MADISON.

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[Pub. in Madison Papers, I. xix—xxii. App. No. 4.]

### NAVIGATION OF THE MISSISSIPPI.

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TO MR. NILES.

MONTPELLIER, January 8, 1822.

In Ramsay's History of the American Revolution, vol. 2, p. 300, 301, is the following passage :

“Mr. Jay was instructed to contend for the right of the United States to the free navigation of the river Mississippi; and, if an express acknowledgment of it could not be obtained, he was restrained from acceding to any stipulation by which it should be relinquished. But, in February, 1781, when Lord Cornwallis was making rapid progress in overrunning the Southern States,

and when the mutiny of the Pennsylvania line and other unfavorable circumstances depressed the spirits of the Americans, Congress, on the *recommendation of Virginia*, directed him to recede from his instructions, so far as they insist on the free navigation of that part of the Mississippi which lies below the thirty-first degree of north latitude; provided such concession should be unalterably insisted on by Spain, and provided the free navigation of the said river above the said degree of north latitude should be acknowledged and guaranteed by his Catholic Majesty, in common with his own subjects."

In this account of the instruction to Mr. Jay to relinquish the navigation of the Mississippi, below the southern boundary of the United States, the measure would seem to have had its origin with the State of Virginia.

This was not the case; and the very worthy historian, who was not at that period a member of Congress, was led into his error by the silence of the journals as to what had passed on the subject previous to February 15th, 1781, when they agreed to the instruction to make the relinquishment, as moved by the delegates of Virginia, in pursuance of instructions from the Legislature. It was not unusual with the Secretary of Congress to commence his entries on the journal, with the stage in which the proceedings assumed a definitive character; omitting, or noting on separate and informal sheets only, the preliminary steps.

The delegates from Virginia had been long under instructions from their State to insist on the right of the navigation of the Mississippi, and Congress had always included it in their ultimatum for peace. As late as the 4th of October, 1781, [see the secret journals of that date,] they had renewed their adherence to this point by unanimously agreeing to the report of a committee, to whom had been referred "certain instructions to the delegates of Virginia by their constituents, and a letter of May 29 from Mr. Jay, at Madrid," which report prohibited him from relinquishing the right of the United States to the free navigation of the river Mississippi, into and from the sea, as asserted in his former instructions; and, on the 17th of the same month, October, [see the secret journals of that date,] Congress agreed to the report of a committee explaining the reasons and principles on which the instructions of October the 4th were founded.

Shortly after this last measure of Congress, the delegates of South Carolina and Georgia, seriously affected by the progress and views of the enemy in the Southern States, and by the possibility that the interference of the great neutral Powers might force a peace, on the principle of *uti possidetis*, whilst those States, or parts of them, might be in the military occupancy of Great Britain, urged with great zeal, within and without doors, the expediency of giving fresh vigor to the means of driving the enemy out of their country, by drawing Spain into an alliance, and into pecuniary succours, believed to be unattainable without yielding our claim to the navigation of the Mississippi. The efforts of those delegates did not fail to make proselytes till, at length, it was ascer-

tained that a number was disposed to vote for the measure, sufficient without the vote of Virginia, and it happened that one of the two delegates from that State concurred in the policy of what was proposed. [See the annexed letter of November 25, and extract of December 5, 1780, from J. Madison to Joseph Jones.]

In this posture of the business, Congress was prevailed on to postpone any final decision until the Legislature of Virginia could be consulted; it being regarded by all as very desirable, when the powers of Congress depended so much on the individual wills of the States, that an important member of the Union, on a point particularly interesting to it, should receive every conciliatory mark of respect, and it being calculated, also, that a change in the councils of that State might have been produced by the causes producing it in others.

A joint letter, bearing date December 13, 1780, [which see annexed,] was accordingly written by the delegates of Virginia to Governor Jefferson, to be laid before the Legislature then in session, simply stating the case and asking instructions on the subject, without any expression of their own opinions, which, being at variance, could not be expressed in a letter to be signed by both.

The result of these communications from the delegates was a repeal of the former instructions, and a transmission of different ones; the receipt of which, according to an understanding when the decision of Congress was postponed, made it incumbent on the two delegates to bring the subject before Congress. This they did by offering the instruction to Mr. Jay, agreed to on the 15th of February, 1781, and referred to in the historical passage above cited.

It is proper to add, that the instant the menacing crisis was over, the Legislature of Virginia revoked the instruction to her delegates to cede the navigation of the Mississippi; and that Congress seized the first moment, also, for revoking theirs to Mr. Jay.

I have thought a statement of these circumstances due to truth. And that its accuracy may be seen to depend, not on memory alone, the copies of contemporary documents verifying it are annexed.

In the hope that this explanation may find its way to the notice of some future historian of our revolutionary transactions, I request for it a place, if one can be afforded, in your REGISTER, where it may more readily offer itself to his researches, than in publications of more transient or miscellaneous contents.

With friendly respects,

JAMES MADISON.

[COPY.]

PHILADELPHIA, Nov. 25, 1780.

DEAR SIR,—I informed you some time ago that the instructions to Mr. Jay had passed Congress, in a form which was entirely to my mind. I since informed you that a committee was preparing a letter to him, explanatory of the principles and objects of the instructions. This letter also passed in a form equally satisfactory. I did not suppose that anything further would be done on the subject; at least, until further intelligence should arrive from Mr. Jay. It now appears that I was mistaken. The delegates from Georgia and South Carolina, apprehensive that a *uti possidetis* may be obtruded on the belligerent Powers by the armed neutrality in Europe, and hoping that the accession of Spain to the alliance will give greater concert and success to the military operations that may be pursued for the recovery of their States, and likewise add weight to the means that may be used for obviating a *uti possidetis*, have moved for a reconsideration of the instructions, in order to empower Mr. Jay, in case of necessity, to yield to the claims of Spain on condition of her guaranteeing our independence and affording us a handsome subsidy. The expediency of such a motion is further urged from the dangerous negotiations now on foot, by British emissaries, for detaching Spain from the war. Wednesday last was assigned for the consideration of this motion, and it has continued the order of the day ever since, without being taken up. What the fate of it will be I do not predict; but whatever its own fate may be, it must do mischief in its operation. It will not probably be concealed that such a motion has been made and supported, and the weight which our demands would derive from unanimity and decision must be lost. I flatter myself, however, that Congress will see the impropriety of sacrificing the acknowledged limits and claims of any State, without the express concurrence of such State. Obstacles enough will be thrown in the way of peace, if it is to be bid for at the expense of particular members of the Union. The Eastern States must, on the first suggestion, take the alarm for their fisheries. If they will not support other States in their rights, they cannot expect to be supported themselves when theirs come into question.

In this important business, which so deeply affects the claims and interests of Virginia, and which I know she has so much at heart, I have not the satisfaction to harmonize in sentiments with my colleague. He has embraced an opinion that we have no just claim to the subject in controversy between us and Spain, and that it is the interest of Virginia not to adhere to it. Under this impression, he drew up a letter to the Executive to be communicated to the Legislature, stating, in general, the difficulty Congress might be under, and calling their attention to a revision of their instructions to their Delegates on the subject. I was obliged to object to such a step, and, in order to prevent it, observed, that the instructions were given by the Legislature of

Virginia on mature consideration of the case, and on a supposition that Spain would make the demands she has done; that no other event has occurred to change the mind of our constituents but the armed neutrality in Europe and the successes of the enemy to the southward, which are as well known to them as to ourselves; that we might every moment expect a third Delegate here, who would either adjust or decide the difference in opinion between us, and that whatever went from the delegation would then go in its proper form and have its proper effect; that if the instructions from Virginia were to be revised, and their ultimatum reduced, it could not be concealed in so populous an assembly, and everything which our minister should be authorized to yield would be insisted on; that Mr. Jay's last despatches encouraged us to expect that Spain would not be inflexible if we were so; that we might every day expect to have more satisfactory information from him; that, finally, if it should be thought expedient to listen to the pretensions of Spain, it would be best, before we took any decisive step in the matter, to take the counsel of those who best know the interests, and have the greatest influence on the opinions, of our constituents; that, as you were both a member of Congress and of the Legislature, and were now with the latter, you would be an unexceptionable medium for effecting this; and that I would write to you for the purpose by the first safe conveyance.

These objections had not the weight with my colleague which they had with me. He adhered to his first determination, and has, I believe, sent the letter above mentioned by Mr. Walker, who will, I suppose, soon forward it to the Governor. You will readily conceive the embarrassments this affair must have cost me. All I have to ask of you is, that if my refusing to concur with my colleague in recommending to the Legislature a revision of their instructions should be misconstrued by any, you will be so good as to place it in its true light; and if you agree with me as to the danger of giving express power to concede, or the inexpediency of conceding at all, that you will consult with gentlemen of the above description and acquaint me with the result.

I need not observe to you that the alarms with respect to the inflexibility of Spain in her demands, the progress of British intrigues at Madrid, and the danger of a *uti possidetis*, may, with no small probability, be regarded as artifices for securing her objects on the Mississippi. Mr. Adams, in a late letter from Amsterdam, a copy of which has been enclosed to the Governor, supposes that the pretended success of the British emissaries at Madrid is nothing but a ministerial finesse to facilitate the loans and keep up the spirits of the people.

This will be conveyed by Col. Grayson, who has promised to deliver it himself; or if anything unforeseen should prevent his going to Richmond, to put it into such hands as will equally insure its safe delivery.

I am, dear sir, yours, sincerely,

J. MADISON, JR.

The Hon. JOSEPH JONES.

*Extract of a letter from James Madison to Joseph Jones, dated December 5th, 1780.*

“We had letters yesterday from Mr. Jay and Mr. Carmichael, as late as the 4th and 9th of September. Mr. Jay informs us that it is absolutely necessary to cease drawing bills on him; that 150,000 dollars, to be repaid in three years, with some aid in clothing, &c., is all that the court will adventure for us. The general tenor of the letter is, that our affairs there make little progress; that the court is rather backward; that the navigation of the Mississippi is likely to prove a very serious difficulty; that Spain has herself been endeavoring to borrow a large sum in France, on which she meant to issue a paper currency; that the terms and means used by her displeas'd Mr. Neckar, who, in consequence, threw such discouragements on it, as, in turn, were not very pleasing to the Spanish minister; that Mr. Cumberland is still at Madrid, laboring, in concert with other secret emissaries of Britain, to give unfavorable impressions of our affairs; that he is permitted to keep up a correspondence by his couriers with London; that if negotiations for peace should be instituted this winter, as Spain has not yet taken a decided part with regard to America, England will probably choose to make Madrid, rather than Versailles, the seat of it. However unfavorable many of these particulars may appear, it is the concurrent representation of the above ministers that our disappointment of pecuniary succor at Madrid is to be imputed to the want of ability, and not of inclination, to supply us; that the steadiness of his Catholic Majesty is entirely confided in by the French ambassador; and that the mysterious conduct of Mr. Cumberland, and of the court of Spain towards him, seems to excite no uneasiness in the ambassador. The letters add, that, on the pressing remonstrance of France and Spain, Portugal had agreed to shut her ports against English prizes, but that she persisted in her refusal to accede to the armed neutrality.

“The receipt of the foregoing intelligence has awakened the attention of the Georgia delegates to their motion, of which I informed you particularly by Col. Grayson. It has lain ever since it was made undisturbed on the table. This morning is assigned for the consideration of it, and I expect it will, without fail, be taken up. I do not believe Congress will adopt it without the express concurrence of all the States immediately interested. Both my principles and my instructions will determine me to oppose it. Virginia and the United States in general are too deeply interested in the subject of controversy to give it up as long as there is a possibility of retaining it. And I have ever considered the mysterious and reserved behaviour of Spain, particularly her backwardness in the article of money, as intended to alarm us into concessions rather than as the effect of a real indifference to our fate, or to an alliance with us. I am very anxious, notwithstanding, to have an answer to my letter by Grayson.”

[COPY.]

PHILADELPHIA, December 13th, 1780.

His Excellency THOMAS JEFFERSON, Esq., *Governor of Virginia* :

SIR,—The complexion of the intelligence received of late from Spain, with the manner of thinking which begins to prevail in Congress, with regard to the claims to the navigation of the Mississippi, makes it our duty to apply to our constituents for their precise, full, and ultimate sense on this point. If Spain should make a relinquishment of the navigation of that river on the part of the United States an indispensable condition of an alliance with them, and the State of Virginia should adhere to their former determination to insist on the right of navigation, their delegates ought to be so instructed; not only for their own satisfaction, but that they may the more effectually obviate arguments drawn from a supposition that the change of circumstances, which has taken place since the former instructions were given, may have changed the opinion of Virginia with regard to the object of them. If, on the other side, any such change of opinion should have happened, and it is now the sense of the State that an alliance with Spain ought to be purchased, even at the price of such a cession, if it cannot be obtained on better terms, it is evidently necessary that we should be authorized to concur in it. It will also be expedient for the Legislature to instruct us in the most explicit terms whether any, and what extent of territory, on the east side of the Mississippi and within the limits of Virginia, is, in any event, to be yielded to Spain as the price of an alliance with her. Lastly, it is our earnest wish to know what steps it is the pleasure of our constituents we should take in case we should be instructed in no event to concede the claims of Virginia, either to territory or to the navigation of the above-mentioned river, and Congress should, without their concurrence, agree to such concession.

We have made use of the return of the honorable Mr. Jones to North Carolina to transmit this to your Excellency, and we request that you will immediately communicate it to the General Assembly.

We have the honor to be, with the most perfect respect and esteem, your Excellency's most obedient and humble servants,

JAMES MADISON, JUNR.  
THEO'K BLAND.

TO ROGER C. WEIGHTMAN, MAYOR OF WASHINGTON, AND CHAIRMAN OF THE  
COMMITTEE OF ARRANGEMENTS.

MONTPELLIER, June 20, 1826.

DEAR SIR,—I received, by yesterday's mail, your letter of the 14th, inviting, in the name of the Committee of Arrangements, my presence at the celebra-



tion in the Metropolis of the United States of the fiftieth anniversary of American Independence.

I am deeply sensible of what I owe to this manifestation of respect on the part of the committee; and not less so of the gratifications promised by an opportunity of joining, with those among whom I should find myself, in commemorating the event which calls forth so many reflections on the past, and anticipations of the future career of our country. Allow me to add, that the opportunity would derive an enhanced value from the pleasure with which I should witness the growing prosperity of Washington and of its citizens, whose kindness, during my long residence among them, will always have a place in my grateful recollections.

With impressions such as these, it is with a regret readily to be imagined that I am constrained to decline the flattering invitation you have communicated. Besides the infirmities incident to the period of life I have now reached, there is an instability of my health at present which would forbid me to indulge my wishes, were no other circumstance unpropitious to them.

This explanation will, I trust, be a sufficient pledge that, although absent, all my feelings will be in sympathy with the sentiments inspired by the occasion. Ever honored will be the day which gave birth to a nation, and to a system of self-government making it a new epoch in the history of man.

Be pleased to accept, sir, for yourself and the committee, assurances of my respectful consideration, and of my best wishes.

JAMES MADISON.

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TO HENRY CLAY.

MONTPELLIER, March 24, 1827.

DEAR SIR,—After your kind offer I make no apology for inclosing another letter, which I wish to have the advantage of a conveyance from the Department of State. Its object is to obtain from Mr. Gallatin a small service for our University, and that with as little delay as may be.

While I was charged with the Department of State, the British doctrine against a neutral trade with belligerent ports, shut in peace and open in war, was examined at some length, and the examination published in a stout pamphlet. I have been applied to by several friends for a copy, which I could not furnish, nor do I know that they are attainable, unless obsolete copies should remain in the Department. If this be the case, I should be thankful for the means of complying with the application.

Mrs. Madison joins in offering to Mrs. Clay and yourself assurances of cordial regards and best wishes.

TO HENRY CLAY.

MONTPELLIER, January 6, 1828.

DEAR SIR,—I have duly received the copy of your Address politely forwarded to me. Although I have taken no part in the depending contests, and have been led to place myself publicly on that ground, I could not peruse the appeal you have made without being sensible of the weight of testimony it exhibits, and of the eloquence by which it is distinguished.

Having occasion to write to Mr. Brougham \* on a subject which interests our University, I take the liberty of asking your friendly attention to the letter which I inclose. I hope it may find an early conveyance from the Department of State, with despatches about to be destined for London. Should this not be the case, Mr. Brent will save you the trouble of giving the intimation, that a duplicate may seek some other channel. It is desirable that the letter should reach Mr. Brougham with as little delay as may be.

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TO HENRY CLAY.

MONTPELLIER, March 13, 1832

J. Madison, with his best respects to Mr. Clay, thanks him for the copy of his speech "in defence of the American System," &c. It is a very able, a very eloquent, and a very interesting one. If it does not establish all its positions, in all their extent, it demolishes not a few of those relied on by the opponents. J. M. feels a pleasure in offering this tribute to its merits. But he must be pardoned for expressing a regret that an effusion of personal feeling was, in one instance, admitted into the discussion.

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CORRESPONDENCE WITH THE VIRGINIA NATIONAL REPUBLICAN STATE CONVENTION.

At the late session of the Virginia National Republican State Convention at Staunton, among other proceedings, the following resolutions were adopted:

"*Resolved*, That this Convention will not close its deliberations without a unanimous expression of their highest approbation of, and grateful acknowledgments to, the venerable ex-President James Madison, of Orange county, for his many and distinguished services to his country, considering him as one of the Fathers of the Constitution, the faithful expounder of that instrument, the benefactor of mankind, and the able advocate of civil liberty.

"*Resolved*, That the President of this Convention address a letter to Mr. Madison, and tender to him the respectful consideration of this Convention, and the homage of their best wishes, with their united hope that his exemplary life may be preserved to enjoy the blessings of our free Government, which he, in so eminent a degree, contributed to establish.

"*Resolved*, That a copy of these resolutions be forwarded in said communication."

\* Since Lord Brougham.

The following is Mr. MADISON's answer to the letter of the President of the Convention, transmitting him copies of the above resolutions:

MONTPELLIER, 26th July, 1832.

DEAR SIR,—I have duly received your letter communicating the resolutions in which “the National Republican Convention of Virginia, at Staunton,” has been pleased to express its approbation of my public services, and its kind wishes for my personal welfare. I cannot be insensible to the value I ought to place on opinions so favorable, and sentiments so friendly, coming from a body rendered so respectable by the members composing it; and I tender all the acknowledgments which I feel to be due from me.

If it was my lot to be in any degree instrumental in promoting the substitution of our present Constitutional system for the inadequate one which preceded it, my participation in the great work, conscious, as I am, of its being overrated by the partiality of the Convention, could not fail to be an increasing source of gratifying recollection, as the fruits of the change have been signalized in the prosperity of our country.

For the obliging terms in which you made the communication, I pray you to accept my thanks, with assurances of my esteem and good wishes.

JAMES MADISON.

CHARLES JAMES FAULKNER, Esq.,

*President of the National Republican Convention of Virginia.*

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TO HENRY CLAY.

MONTPELLIER, April 2, 1833.

DEAR SIR,—Accept my acknowledgments for the copy of your speech on the bill modifying the tariff. I need not repeat what is said by all on the ability and advantages with which the subject was handled. It has certainly had the effect of an anodyne on the feverish excitement under which the public mind was laboring; and a relapse may happily not ensue. There is no certainty, however, that a surplus revenue will not revive the difficulty of adjusting an impost to the claims of the manufacturing and the feelings of the agricultural States. The effect of a reduction, including the protected articles, on the manufacturers, is manifest; and a discrimination in their favor will, besides the complaint of inequality, exhibit the protective principle, without disguise, to the protesters against its Constitutionality. An alleviation of the difficulty may, perhaps, be found in such an apportionment of the tax on the protected articles most consumed in the South, and on the unprotected most consumed in the North, as will equalize the burden between them and limit the advantage of the latter to the benefits flowing from a location of the manufacturing establishments.

May there not be a more important alleviation in embryo—an assimilation

of the employment of labor in the South to its employment in the North? A difference, and even a contrast, in that respect, is at the bottom of the discords which have prevailed, and would so continue, until the manufacturers of the North could, without a bounty, take the place of the foreign in supplying the South; in which event, the source of discord would become a bond of interest, and the difference of pursuits more than equivalent to a similarity. In the mean time, an advance towards the latter must have an alleviating tendency. And does not this advance present itself in the certainty that, unless agriculture can find new markets for its products, or new products for its markets, the rapid increase of slave labor, and the still more rapid increase of its fruits, must divert a large portion of it from the plough and the hoe to the loom and the workshop? When we can no longer convert our flour, tobacco, cotton, and rice into a supply of our habitual wants from abroad, labor must be withdrawn from those articles and made to supply them at home.

It is painful to turn from anticipations of this sort to the prospect, opened by the torch of discord, bequeathed by the Convention of South Carolina to its country; by the insidious exhibitions of a permanent incompatibility, and even hostility of interests between the South and the North; and by the contagious zeal in vindicating and varnishing the doctrines of nullification and secession; the tendency of all of which, whatever be the intention, is to create a disgust with the Union, and then to open the way out of it. We must oppose to this aspect of things confidence that, as the gulf is approached the deluded will recoil from its horrors, and that the deluders, if not themselves sufficiently startled, will be abandoned and overwhelmed by their followers.

As we were disappointed of the expected visit last fall from yourself and Mrs. Clay, we hope the promise will not be forgotten when the next opportunity occurs. For the present, Mrs. Madison joins in cordial regards and all good wishes to you both.

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[TO AARON VAIL.]

FEB. 3, 1834.

DEAR SIR,—Your letter of ————— was duly received, and the enclosed paper complies with the request which it makes. With friendly respects and good wishes,

J. M.

It being understood that an autographic specimen from me, as from some others of my countrymen, would be acceptable for a collection which the Princess Victoria is making, these few lines, with my signature, though written at a very advanced age and with rheumatic fingers, are offered for the occasion. They will be an expression, at least, of the respect due to the young Princess,

who is understood to be developing, under the wise counsels of her august parent, the endowments and virtues which give beauty and value to personal character, and are auspicious to the high station to which she is destined.

JAMES MADISON.

FEB. 1, 1834.

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EXTRACT FROM MR. MADISON'S WILL, DATED APRIL 15, 1835.

"I give all my personal estate of every description, ornamental as well as useful, except as hereinafter otherwise given, to my dear wife; and I also give to her all my manuscript papers, having entire confidence in her discreet and proper use of them, but subject to the qualification in the succeeding clause. Considering the peculiarity and magnitude of the occasion which produced the Convention at Philadelphia in 1787; the characters who composed it; the Constitution which resulted from their deliberations; its effects during a trial of so many years on the people living under it; and the interest it has inspired among the friends of free Government; it is not an unreasonable inference, that a careful and extended report of the proceedings and discussions of that body, which were with closed doors, by a member who was constant in his attendance, will be particularly gratifying to the people of the United States, and to all who take an interest in the progress of political science and the cause of true liberty. It is my desire that the report as made by me should be published under her authority and direction; and, as the publication may yield a considerable amount beyond the necessary expenses thereof, I give the net proceeds thereof to my wife, charged with the following legacies, to be paid out of that fund only," &c., &c.



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  41. Neither a Federal Government, created by the State Governments, like the Revolutionary Congress, nor a consolidated Government, as the term is now (1830) applied, created by the People of U. S. as *one community*, and

as such, acting as a numerical majority of the whole, IV, 75.

42. The Constitution was created by the PEOPLE: but by the People as composing distinct States, and acting by a majority in each, 75, 95, 240, 241.

43. Our Governmental system a compact, not between the Government of U. S. and the State Governments, but between the States as sovereign communities, stipulating, each with the other, a surrender of certain portions of their respective authorities to be exercised by a common Government, and a reservation, for their own exercise, of all their other authorities, III, 223.

44. That it is what it proposes to be, a real Government, and not a nominal one only, is proved by the fact, that it has all the practical attributes and organs of a real, though limited, Government: a Legislative, Executive, and Judicial Department, with the physical means of executing the particular authorities assigned to it, on the individual citizens, in like manner as is done by other Governments, IV, 47.

45. The term "national" was suggested by the national features contradicting the proposed Government from the Confederacy which it was to supersede. 1. It being established, not by the authority of State Legislatures, but by the original authority of the People: 2. In its organization into Legislative, Executive and Judicial Departments: 3. In its action on the People of the States immediately, and not on the Governments of the States, as in a Confederacy, IV, 287, 320, 321.

46. The People might, by the same authority and by the same process, have converted the Confederacy into a new league or treaty: or have embodied the People of their respective States into one People, Nation or Sovereignty: or, as they did by a mixed form, make them one People, Nation or Sovereignty for certain purposes, and not so for others, IV, 293.

47. The Constitution of U. S. organizes a Government into the usual Legislative, Executive and Judiciary Departments: invests it with specified powers, leaving others to the parties

to the Constitution: makes the Government operate directly on the People; places at its command the needful physical means of executing its powers: and finally proclaims its supremacy and that of the laws made under it, over the Constitutions and laws of the States: the powers of the Government being exercised, as in other elective and responsible Governments, under the control of its constituents, the People and Legislatures, of the States, and subject to the Revolutionary rights of the people in extreme cases, IV, 293, 294.

48. The operation of the Constitution is the same, whether its authority be derived from the People collectively, of all the States, as one community, or from the People of the several States, who were the parties to it, 294.

49. Without an annulment of the Constitution itself its supremacy must be submitted to, 294.

50. The only distinctive effect as between the two modes of forming a Constitution by authority of the People is, that if formed by them, as embodied into separate communities, as in the case of Constitution of U. S., a dissolution of the Constitutional compact would replace them in the condition of separate communities, that being the condition in which they entered into the compact; whereas, if formed by the People as one community, acting as such by a numerical majority, a dissolution of the compact would reduce them to a state of nature, as so many individual persons, 294, 391, 392.

51. But while the Constitutional compact remains undissolved, it must be executed according to the forms and provisions specified in the compact, 294.

52. As the Government of the Confederacy operated, within the extent of its authority, through requisitions on the Confederate States, and rested on the sanction of State Legislatures, the Government to take its place was to operate, within the extent of its powers, directly and coercively on individuals, and to receive the higher sanction of the People of the States, III, 520, 521.

53. The two vital characteristics

of the political system of U. S. are, *first*, that the Government holds its powers by a charter granted to it by the People: *second*, that the powers of Government are formed into two grand divisions — one vested in a Government over the whole community, the other in a number of independent Governments over its component parts, IV. 138, 139.

54. Neither a simple Government nor a mere league of Governments, but essentially different from both, 61.

55. The Constitution divides the sovereignty: the portions surrendered by the States composing the Federal Sovereignty over specified subjects: the portions retained forming the Sovereignty of each State, over the residuary subjects within its sphere, 61, 96.

56. It has created a Government in as strict a sense of the term as the Governments of the States created by their respective Constitutions, and with the same attributes. Its operation is to be directly on *persons* and things in the one Government, as in the others, 62, 75. It has, like them, the command of a physical force, for executing the powers committed to it, 75, 96.

57. It is a Constitution which makes a Government: a Government which makes laws: laws which operate, like the laws of all other Governments, by a penal and physical force, on the individuals subject to the laws: and finally laws declared to be the Supreme law of the land, any thing in the Constitution or laws of the individual States notwithstanding, 419, 420.

58. The powers of the Federal Government exceed those ever allowed by the Colonies to G. B., particularly the power of taxation, 208.

59. The Constitution of U. S. being a compact among individuals as embodied into States, no State can at pleasure release itself the reform and set up for itself. The compact can be dissolved, only by the consent of the other parties, or by usurpations or abuses of power justly having that effect, 64, 96.

60. Being derived from the same source as the Constitutions of the

States, it has within each State the same authority as the Constitution of the State, 75, 96.

61. Being a compact among the States, in their highest Sovereign capacity, and constituting the People thereof *one People* for certain purposes, it is not revocable nor alterable at the will of the States individually, as the Constitution of a State is revocable and alterable at its individual will, 75.

62. It was proposed to the People of the States as a whole, and unanimously adopted by the States as a *whole*, on reciprocal concessions: it being a part of the Constitution that not less than *three fourths* should be competent to make any alteration in what had been unanimously agreed to, 102, 103.

63. In two cases *unanimity* is required: 1. That no amendment made prior to the year 1808, shall affect the provision in the first clause, in section 9 of Art. I., respecting the migration or importation of such persons "as any of the States now existing shall think proper to admit;" and the provision in the fourth clause of the same section and article concerning "a capitation, or other direct tax." 2. "That no State, without its consent, shall be deprived of its equal suffrage in the Senate." 102, 103.

64. Question, to be determined by time, as to the tendency of the Constitution to an oppressive aggrandizement of the General Government, or an anarchical independence of the State Governments, III. 246.

65. Considerations arising from the size of the States, the number of them, the Territorial extent of the whole, and the degree of external danger, 246, 247.

66. Whether the centripetal or centrifugal tendency of the Government of U. S. be the greater, is a problem which experience is to decide; but it depends, not on the mode of the grant, but on the extent and effect of the powers granted, IV. 423, 424.

67. Success, hitherto, of the new and compound polity of U. S. beyond any former one, 424.

68. Its beneficent operation, for a long period, in its twofold character of a Government for the Union and a



Government for each of the States, is evidence of its having solved propitiously for the destinies of man the problem of his capacity for self government, 348.

69. No defects in it, as yet discovered, which do not admit of remedies compatible with its vital principles and characteristic features, 424, 425.

70. To deny the possibility of a system partly Federal and partly Consolidated, and to attempt to convert the Government of U. S. into one either wholly Federal, or wholly Consolidated, is to aim a deadly blow at the last hope of true liberty on the face of the earth, 425.

70. The Constitution is too strong in its text, in the uniformity of official construction, and in the maturity of public opinion, to be successfully assailed by the attempts of party zeal, &c., III. 601.

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78. Controversies respecting the boundaries of power between the General Government and the State Governments, to be decided by the Supreme Court of U. S., IV. 19.

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80. This distinction is the same within the several States, 206.

81. The final appeal must be to the *whole*, 425. This view was taken while the Constitution of U. S. was under the consideration of the People, 425. It dictated the provision in Art. 6, declaring that the Constitution and laws of U. S. should be the Supreme law of the land, any thing in the Constitution or laws of any of the States to the contrary notwithstanding, 425.

82. And also the provision in Article I, prohibiting certain acts and powers to the States: among them any laws violating the obligation of contracts, 425.

83. The same view dictated the appellate provision in the Judicial Act passed by the first Congress under the Constitution. [*Act to establish the Judicial Courts of U. S., September 24, 1789. Sec. 25. Stat. L. I. 85, 86.*] IV. 425.

84. This view will be permanently taken of it, with a surprise hereafter that any other should ever have been contended for, 425.

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91. Precedents where the line of separation between these powers has not been sufficiently regarded, 495.

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\* In Jefferson's Writings, published by Congress in 1854, is a "statement from memory of a letter I wrote to James Madison: copy omitted to be retained, Monticello, January, 1, 1797." Also "Statement from memory of a letter I wrote to John Adams, copy omitted to be retained." IV. 153—156.

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