

"An Argument on the
Right of the Constituent
to Instruct His
Representative in
Congress"

[Author unknown]

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neque enim levia aut ludicra petuntur
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An Argument on the Right of the Constituent to instruct his Representative in Congress.

THE question has been of late frequently agitated in this country, whether the members of our congress, particularly the senators, are not bound to obey the instructions of their constituents. The affirmative of the proposition, although at war both with reason and authority, has been stoutly maintained in many parts of the Union, and seems to have gained pretty general credit. We touched slightly upon this topic in our third number, and, as it is of great importance in a constitutional point of view, had resolved to give it a deliberate and thorough examination, at some future period. We have, however, the good fortune to be relieved, from the necessity of executing this task ourselves, in being enabled to lay before our readers an argument from another hand, establishing the same opinions, as those we should have endeavoured to uphold, but framed with much greater force and ingenuity, than we could have hoped to attain.

It may be recollected, that when the renewal of the charter of the Bank of the United States, was under discussion in Congress, the legislature of Virginia undertook to direct their senators to oppose the renewal, and that the instruction so given was boldly, and, in our opinion, most wisely, disobeyed, by one senator, while the right of giving it, was peremptorily denied, by the other. In consequence of this proceeding, it was proposed, in the Virginia house of delegates, at the session held during the last winter, to assert legislatively the disputed right, and to pass a vote of censure on the recusants. On the other hand, the following resolution, "That it is the opinion of this assembly, that no state legislature has a right to instruct a senator of the United States," was tendered by Charles Fenton Mercer, Esq. an eminent federal member, and supported by the preamble which we are about to publish. Those who are acquainted with the influence of party-zeal over all our public deliberations, and with the composition of our state legislatures generally, will not be surprised when they are told, that the reasoning of Mr. Mercer, clear and decisive as it is, was of no avail, and that his proposition was rejected by so great a majority as 103 to 13 votes.

The elaborate introduction to the dictatorial * resolutions

* The third was as follows:—*Resolved*, that after this solemn expression of the opinion of the general assembly, on the right of instruction, and the duty of obedience thereto, no man ought henceforth to accept the appoint-

actually adopted on the occasion, is, we think, more than commonly remarkable, for the flimsiness of the sophistry of which it consists, and for the boldness with which the authorities cited, are warped to the purposes of the writer. We could not well have imagined, before we had seen it done in this instance, that the name of Mr. Burke would have been adduced, by one pretending to be conversant with his writings, to support the right of instructions, however "soberly and deliberately given."

If the passages which Mr. Mercer has quoted from the works of this great statesman, could leave the shadow of a doubt, with respect to the decisiveness and singleness of his opinions on the subject, the ensuing must be deemed sufficient, to put the matter beyond all controversy. In the "Appeal from the New to the Old Whigs," Mr. Burke speaks thus of himself, in the third person: "He was the first man, who, on the hustings, at a popular election, rejected the authority of instructions from constituents; or who, in any place, has argued so fully against it. Perhaps the discredit into which that doctrine of compulsive instructions under our constitution is since fallen, may be due, in a great degree, to his opposing himself to it in that manner, and on that occasion."

In his speech to the electors of Bristol, he discusses the point in the following unanswerable language.

"Certainly, gentlemen, it ought to be the happiness and glory of a representative, to live in the strictest union, the closest correspondence; and the most unreserved communication with his constituents. Their wishes ought to have great weight with him; their opinion high respect; their business unremitted attention. It is his duty to sacrifice his repose, his pleasures, his satisfactions, to theirs; and, above all, ever, and in all cases, to prefer their interest to his own. But, his unbiassed opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living. These he does not derive from your pleasure; no, nor from the law and the constitution. They are a trust from Providence, for the abuse of which he is deeply answerable. Your representative owes you, not his industry only, but his judgment; and he betrays instead of serving you, if he sacrifices it to your opinion."

"My worthy colleague says, his will ought to be subservient to yours. If that be all, the thing is innocent. If government were a matter of will upon any side, yours, without question, ought to be superior. But government and legislation are matters of reason and judgment, and not of inclination; and, what

ment of a senator of the United States from Virginia, who doth not hold himself bound to obey such instructions.

sort of reason is that, in which the determination precedes the discussion; in which one set of men deliberate, and another decide; and where those who form the conclusion are perhaps three hundred miles distant from those who hear the arguments?

"To deliver an opinion is the right of all men; that of constituents is a weighty and respectable opinion, which a representative ought always to rejoice to hear; and which he ought always most seriously to consider. But *authoritative instructions*; *mandates* issued, which the member is bound blindly and implicitly to obey, to vote, and to argue for, though contrary to the clearest conviction of his judgment and conscience; these are things utterly unknown to the laws of this land, and which arise from a fundamental mistake of the whole order and tenor of our constitution.

"Parliament is not a *congress* of ambassadors from different and hostile interests; which interests each must maintain, as an agent and advocate, against other agents and advocates; but parliament is a *deliberative* assembly of *one* nation, with *one* interest, that of the whole; where, not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole. You choose a member indeed; but when you have chosen him, he is not member of Bristol, but he is a member of *parliament*. If the local constituent should have an interest, or should form a hasty opinion, evidently opposite to the real good of the rest of the community, the member for that place ought to be as far as any other from any endeavour to give it effect."

With the exception of two or three of the state legislatures, that of Virginia is said to contain more, both of talent and knowledge, than any other of the Union. We are inclined to admit this to be the truth; and yet the light, trashy stuff which is so often either promulgated or sanctioned by that body, the superficial, tawdry declamation sometimes attached to the acts of the Virginia government, would lead a judicious stranger to a very different inference. In many respects, nature has been more liberal towards the mind of the Virginians, than towards that of the inhabitants of the northern states. She has given them a quicker discernment, a more lively fancy, a more fluent elocution, greater activity of thought. Adventitious circumstances have added to these endowments, loftier feelings of personal dignity and independence. Our country at large has already, in several instances, shared in the benefits of the result, and will, doubtless, hereafter,—should Virginia, suffer our union to endure,—derive from the same quarter, if not the most solid advantage, at least its brightest illustration, and the most delectable pleasures of

the fancy. Her sons are, we think, destined to be most successful in all the arts and works of imagination; to take the lead, also, in the career of romantic enterprise and elevated patriotism. Virginia will, probably, soar higher than any other of the states, in the regions of poetry and eloquence, as she will occasionally furnish us, with the most perfect model of a magnanimous, disinterested statesman, a successful naval, or military commander. In erudition, depth, philosophical abstraction, patient research, scientific accuracy, and in both public and private morals, she will be excelled by the northern states.

With the opinion which we entertain, concerning the natural sagacity of Virginia, it would be difficult for us to comprehend, how it is, that she labours under so many gross delusions in politics, did we not know that a character of intellect, such as that we have ascribed to her, is particularly liable to error. To rely with confidence upon first impressions, and to adhere to them with obstinate pride; to look no deeper than the surface, and to decide hastily, from an impatience of labour; to be captivated and seduced by brilliant paradoxes and fine-spun theories; to thirst incessantly after exclusive power, and to pursue the object without a nice regard to the morality, or even wisdom of the means, seems to mark the history, of every people of a very lively genius and an ardent temper. Accordingly, we have seen the wild speculations in religion and politics, which were imported from the European world at the close of the last century, the dogmas of Rousseau, and Godwin, and Paine, obtain most currency and authority in Virginia. We have seen, also, the doctrines most inconsistent, with the vigour and duration of our constitution, broached and maintained, in the same state; the solid interests of the Union sacrificed to promote her fantastical schemes of policy, and to gratify her love of dominion, until, at length, the country has been not only arrested, but impressed with a retrograde motion, in the career of prosperity; plunged into a gulph of calamity and humiliation;—and that very ascendancy in the national councils, for the preservation of which, in great part, all this has been done, violently shaken, and (as we trust) seriously endangered.

Making every due allowance on the score of character, conformably to what we have said above, we are yet sometimes tempted to wonder, that Virginia has not better understood or consulted, her own proper and permanent good; that she has not examined more accurately her relative situation, and looked more steadily to futurity. After she had acquired the sway of the federal government, her true policy was, to study and gratify the interests and inclinations of the Eastern states, and to dis-

courtenance every principle and measure, which tended to weaken the federal constitution, or to accelerate its decline. The favor of the Eastern states, was necessary to the continuance of her ascendancy over the Union; and she cannot but perceive, that this ascendancy is a condition preferable to that, in which she would be placed, on a dissolution of the confederacy. Who that inquires attentively, into the character and resources of the several states, but must be sensible, that Virginia could neither maintain, nor assume the first rank, in the event of a separation?

But we wander somewhat from our immediate purpose, which is to introduce the following masterly performance.

The general Assembly of Virginia reluctantly pronounces any sentiment, which can be construed to imply a censure of the proceedings of a former Legislature of this state, convened under the same authority, possessed of the same powers, acting under the same responsibility, and animated by the same motives with itself.

The opinions of men, however, fallible as they are, ought not to be immutable. To censure the change of opinion, on the mere ground, that it is a departure from one formerly entertained, would be to censure human nature, the errors of which it is the duty of man rather to deplore. It is, therefore, with a feeling, at peace with all the world, and, more especially, with an indulgence to the errors of its predecessors, which, it hopes, will bespeak of succeeding legislatures a like forgiveness of its own imperfections, that this Assembly undertakes to review such of the doctrines, contained in the report of a committee of a former house of delegates, as are now relied upon, to justify the instructions, relative to the bank of the United States, given to the Senators of this state, in Congress, *by the last General Assembly*; and to authorise this Assembly to censure those Senators, for having questioned or disobeyed the authority of those instructions.

It is contended, in behalf of the state legislatures, that they have a right to instruct the Senators representing in Congress, their respective states, on all points relating “either to the constitution, or the policy of the U. States;” and as a necessary consequence of this right, “that it is the duty of the Senators to obey such instructions, provided they do not require of them a violation of the Constitution of the United States, or the commission of an act of moral turpitude.”

The arguments urged in support of this doctrine, are deduced from the nature of representative government; from the right, which unquestionably belongs to the legislatures of the several

states, to elect the Senators who represent those states in Congress; and from the assumed principle, "that the state legislatures are clothed with the general attributes of the sovereignty of their respective states."

Is it to be inferred from the nature, and end of representative government, that the constituted authorities of such a government, are bound to obey, implicitly, the will of their constituents?

The people, who are the only legitimate source of all government, may, unquestionably, give to any government that they please to create, the particular form, which they themselves prefer. Whether the maxims which regulate that form, can be ascertained by custom, or have been embodied in a written constitution, those maxims, until they shall have been constitutionally altered, by the people themselves, furnish the only rule of political conduct, as well to the magistrate, as to the citizen. And wherever those maxims, furnish a solution of the inquiry, "whether a representative be bound by the instructions of his constituents?" there is an end of all further argument upon the subject. But, by the nature of representative government, is presumed to be meant, that government, reduced to practice, in its best form, and adapted to its great end, the promotion of human happiness, without regard to any particular character of it in actual existence. In this sense, the argument is, here, regarded.

The first and simplest form of government is that, in which the will of a majority of the people prescribes the rule, by which the conduct of each individual is to be regulated. So, Locke is to be interpreted, when he says, "that which begins and constitutes any political society, is nothing, but the consent of any number of freemen, capable of forming a majority, to unite and incorporate into such a society." And this, he adds, "is that, and that only, which did, or could give beginning, to any lawful government in the world." In this condition of society, if mankind, ever did so exist, it is evident, that a majority of the people, administering collectively, all the powers of government, *the relation of representative and constituent* could have no place. It is not necessary, therefore, to pause here, for a longer period, than to remark, that all legislative, judicial, and executive power would remain in the majority who governed, unlimited, and unrestrained, but by the law of nature. In the General Assembly, they would *all* be exercised, in one single act. The moment a case arose for the application of a law, it would be suggested by the feelings of the majority, and the interpretation, and execution of it, would instantly follow. As such a govern-

ment would be, but a small advance from a state of nature; and uniting all power in the same hands, would lead to a tyranny, the most intolerable, it could not very long endure.

The first step from it, however, presupposes a delegation by the majority, to some portion of the community, of the whole, or a part of that power, which they before exclusively exercised. To make such delegation of power, legal, it must be effected by the consent of the majority; and as the end of such delegation, is the happiness of the community, it must be accompanied by a condition, expressed or implied, that the power so delegated, shall not be abused by those, to whose administration it is entrusted. To whom is the trustee, or representative thus constituted, responsible? To those from whom he derived his power; the majority of the society. For whose benefit is he to exercise this power? Unquestionably, for the benefit of those, from whom he derived it.

These principles are regarded, as *political axioms*, which require only to be stated, and understood, to be universally admitted. When once admitted, it is believed, that they will furnish an easy solution of the question, under consideration.

Whether the power delegated, be executive, judicial, or legislative, it is to be exercised for the benefit of the *community*. Not for that of a part, but of the whole, or at least a majority of the whole. The responsibility of the Governor, the Judge, or the Legislator, is to that *majority*, which has deputed him *to act in their place; to represent them; to declare what shall be law, to interpret what is law, and to enforce its execution.* If the *nature* of the delegated power, does not alter the *degree of responsibility*, which attaches to its exercise; or change *the tribunal*, to whom the person exercising it, is amenable; or alter the *end*, for which it is exercised; neither can the *manner in which it is delegated*, have any such effect.

The *end*, especially, of all power, is *for ever* the same. Should the majority of the people provide that the executive magistrate shall be elected by persons, whom they depute from their own body, for that purpose, from a belief, that their deputies will be able to make a better selection, than themselves; should they, for a similar reason, provide, that their judges shall be appointed by the magistrate, so selected; will not the magistrate and the judge be equally *a servant of the people, as if immediately elected by them?*—Yet, it has never been contended, although judicial and executive power, are as derivative, as legislative, that any portion of the people has a right to instruct a judge, or an executive magistrate. The people are equally the constituents of both. Suppose they provide, that the legislative power

shall be exercised, by a certain number of persons selected by themselves; will not such legislators be bound to promote the great end of legislation, the general weal? Suppose they were to entrust the election of those legislators, to an assembly previously selected from among themselves, by their own act; would those legislators, so elected, cease to be the servants of the people? Would they be bound to regard the interests of the small assembly, by whom they were *immediately* chosen, more than those of any equal number of the people, elsewhere to be found? Suppose they required that the persons, so to be elected, should reside in different districts of the territory, inhabited by the whole people; would either the *rights* or the *duties* of the persons so elected, be altered by this provision? Suppose, that instead of having one college of electors for the whole legislative body, they were to authorize the people in each of those districts, of a certain age and sex, and having certain qualifications of property, to elect for their respective districts, one, or more members of such a legislature, would this alteration of the *mode of election*, alter the *obligations* of the particular members, or the *object of their legislation*?

Again, if the whole object of government is the happiness of the community; if all the departments of government, be but so many different means conducive to that end, which the beneficence of God, teaches man to believe is the object of his *natural*, as well as his *political* existence, what portion does the legislature contribute towards this happiness? It provides the rule, the law of his conduct? What is law? According to a Roman statesman, "Lex est summa ratio;" or in other words, "Law is the perfection of reason." An English judge defines law to be "a rule of conduct, prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong." A Grecian orator, explains the design and object of law to be, "to ascertain what is just, honorable, and expedient;" and when that is discovered, to proclaim it, "as a general ordinance, equal and impartial to all." How then, may it be asked, is the perfection of reason to be attained, how is the legislature to discover what is right and wrong, just, honorable, and expedient? Two qualities are requisite to form good laws. Wisdom and Virtue. Wisdom to discern the best means of promoting the interests and happiness of society, and Virtue to induce the employment of those means. Every modification of the legislative department; the number of branches into which it is divided; the number of members composing each branch; their qualifications; their mode of election; the duration of their service, and their rules of proceeding, all

have relation to those special objects. How did the majority of the people legislate, before they delegated to others the power of making laws for them? They assembled, they consulted together, they deliberated, and only then, finally decided what should be law. They grew in numbers; they found their assemblies too large; the heat of debate, too often, precipitated their decisions, and the deliberations which began in friendship, ended in discord. Their territory extended with their numbers; their relations multiplied as wealth and luxury spread among them; their laws became voluminous, and legislation a science of itself. Hence, arose the necessity of delegating the power of legislation to a select assembly of men, chosen for their talents, their learning, and their virtues, to do what the people, in their collective capacity, could no longer do for themselves. To consult, to deliberate, and to decide upon the interests of an extended commonwealth; interests, diversified by the manners, temper, habits, and pursuits of the people; by the climate, soil, and productions of the various districts of their country, together with all the modifications of these, by commerce, negotiation, and war, with neighbouring or distant nations. And will not these objects really require all the industry, all the talents, all the learning, and all the patriotic zeal of the wisest assembly of men, aided by consultation and deliberation among themselves? If by representation they have reduced the number of those who compose the legislative body, their obligations to promote the public good are unaltered; they are still, to *deliberate*, as well as to decide; and the happiness of the whole community continues, as it was in the assembly of the people, to be the only legitimate end of all their deliberations, and all their decisions.

The majority of the people, therefore, in forming their constitution of government, delegate, with the power of legislating, that of deliberating, which every act of sound legislation imperiously requires; and whatever, therefore, tends, in any degree, to impair the perfect freedom of such deliberation, is a plain and manifest violation of the right of the people to have the government administered, in the spirit, in which they gave it being. Does the nature of such a government comport with the doctrine, "that, where the *members* of a legislative body are severally elected, by the people of the districts in which *they* respectively happen to live; each member is implicitly bound to obey the instructions of those who immediately elect him? Is it not utterly impossible, in a very extensive commonwealth, embracing very many and much diversified interests, that any one district of small extent, can wisely legislate for the whole community? If, which is readily conceded, it always knows what

will best suit itself, can it be equally apprised of what will best suit the rest of the community?

Legislation, if not always, at least in a commonwealth so extended, is ever founded on a system of compromise; such, especially, is the origin of the numerous laws relative to commerce, and taxation or revenue. But the instructions of a particular district can be grounded only upon the knowledge possessed by the inhabitants of such district, and cannot provide for the complex provisions of any such compromise. Hence, if each representative be instructed, and bound by such instructions, there could, in many cases, be no legislation whatever; and the assembly of deputies would disperse from the theatre on which they met, like so many ambassadors, who, having each a separate ultimatum, according precisely with none other, could agree on no treaty whatever. Such, evidently, would *not* be the situation of the majority of the whole people, if collectively assembled for the purpose of legislation. The will of the majority would be collected, on every question submitted to the general assembly; such will, would be, truly, the foundation of law. But if one district has a right to instruct its members, so has every other: all may do so, and the assembly will cease to be a deliberative body.

It may be asked, if the representative be not bound by the instructions of a single district, why is he elected by a single district? It might be replied, that this is not universally true, and the theory of representative government, leaves the subject to be provided for, by the peculiar constitution of each state. In the large state of Georgia, all the members of one branch of the federal legislature, are elected by a general vote throughout the state. In Maryland, the members of the state Senate are elected by a body of electors personally chosen by the people. These, as has been shewn, are but various modes, devised by a majority of the people, for the purpose of electing those, to whom they delegate their legislative power. The representative is still the representative of the people; although, in the latter case, the *manner* of his election is more complex than usual. But there are, nevertheless, very strong reasons, wholly independent of the obligation of instructions, why a representative of the people in an extensive republic, should be chosen by the people of a district of moderate extent.

The people to whom he is best known, will be best qualified to select him, in the first instance, and to inspect and watch over his conduct afterwards; so as to render him amenable to that tribunal, which frequent elections are designed to create. The representatives coming from every portion of the commonwealth,

will bring along with them, a knowledge of the situation and circumstances, habits, feelings, and opinions of the whole people; to which the laws of every country should be made to conform. They will come charged with the grievances of each part of the commonwealth, and will be bound, not only to make them known, but to see them redressed, in a manner consistent with the great object of all legislation, the general weal. They will constitute one great deliberative assembly; one political person; and not so many ambassadors, representatives of distinct sovereignties, and possessing qualities inconsistent with the law of society, that each, shall be bound by the will of a majority of the whole.

Will this course of legislation be inconsistent with the maxim, that no man can be bound by laws, to which he has not given his assent? It is by his assent, that is, by the assent of a majority of that people of which he is a component part, that the legislative body has existence, that all laws are made.

Is it urged, that the representative, who disobeys, sets up his judgment against that of those who immediately elect him? It may be replied, that he who implicitly obeys their instructions closes his ear to the knowledge, and wisdom, and reason of the residue of the whole legislature. He is "part of the legislative organ of the nation," but the *whole organ* has, for its original, the creative power of *the majority of the whole people*.

There is no question but that the people, who are the only legitimate spring of all governments, may so modify a representative government, as to retain the power of instructing, not only their legislature, but their executive magistrates, and their judges. They may retain an appellate or an original jurisdiction over all or either of them; but, if the constitution which they adopt makes no such reservation, none such can exist, until that constitution is changed, as it may be, at any time, by those who made it. And this doctrine is in strict conformity with that of the concluding paragraph of the "Essay concerning the true original extent and end of civil government," the author of which has been already named, and to name whom is sufficient praise. "To conclude," says Locke, "the power that every individual gave the society, when he entered in it, can never revert to the individuals again, as long as the society lasts, but will always remain in the community; because, without this, there can be no community, no commonwealth, which is contrary to the original agreement: So also, when the society hath placed the legislative power in an assembly of men, to continue in them, and their successors, with direction and authority for providing such successors, the legislative power can never

revert to the people, whilst that government lasts; because, having provided a legislative assembly, "with power to continue for ever, they have given up their political power to the legislative assembly," and cannot resume it. But, if they have set limits to the duration of their legislative assembly, and made this supreme power, in any person, or assembly, only temporary: or else, when, by the miscarriages of those in authority, it is forfeited; upon the forfeiture, or at the determination of the time set, it reverts to the society, and the people have a right to act as supreme, and continue the legislative power "in themselves; or erect a new form; or, under the old form, place it in new hands, as they think good."

It does not, therefore, follow, as a necessary consequence of the prevalent mode of election, by districts, either in England or America, that it is consistent with the present constitution of the House of Commons, or that it was the intention of the framers of our representative system, that the representative should be bound by the instructions of the people of the particular district, who, by the constitution, are authorized to elect him.

These doctrines are known to this assembly not to be new. They are neither hostile to the genius, nor inconsistent with the practice of freedom—and they have been sustained, by its most distinguished champions, in the nation from whom was derived the model of the American constitutions. They are corroborated, not only by the best expositions of the theory and practice of the English government; by the most elaborate researches into its history, whether by Blackstone, the ablest commentator, who has written on English law, or De Lolme, to whose eloquent treatise on the Constitution of England, even Junius cheerfully accords the rare reward of his jealous praise; but by the theory and practice of her most illustrious statesmen, and her most popular orators.

The opinion of the first of those distinguished jurists has, indeed, been questioned; but the credit almost universally attached to the results of his unwearied researches into every branch of the English law, whether constitutional or municipal, leaves him, at this day, the uncontested occupant of the highest ground of authority, in every controversy relating to either. "It is wisely contrived," says this able writer, "that in so large a state as ours, the people should do that, by their representatives, which it is impracticable for them to perform in person; representatives chosen by a number of minute and separate districts; wherein all the voters may be easily distinguished. And every member, though chosen by one particular district, when elected, and returned, serves for the whole realm. For the end of his coming

thither is not particular, but general; not barely to advantage his constituents, but the commonwealth. And, therefore, he is not bound, like a deputy in the United Provinces, to consult with, or take the advice of his constituents, unless he thinks it proper or prudent to do so."

Lord Coke defines the word "parliament," (which was introduced into the English language about the reign of Henry 3d.) in his own quaint way; but which sufficiently discloses his opinion of the duties of a member. "It is called Parliament, because every member of that court should sincerely and directly "*parler la ment,*" speak his own mind for the good of the commonwealth."

It is somewhat remarkable, that the commentaries on the laws of England, which abound with the most eloquent encomiums of freedom, should have attracted the resentment of its ardent friends, especially at a time when no system had been, anywhere, reared for its security more perfect than the English constitution. This hostility, it is believed, would be best explained by the circumstances of the times, which apply to the author, rather than to his work. But, it would be much more remarkable, if the writings and speeches of Edmund Burke were to be so construed, as to leave in doubt his opinion of the authority of instructions. At a period when this erudite scholar, profound statesman, and unrivalled orator, was a member of the association called the Whig Club, consisting of those friends of British freedom most resplendent for genius and patriotism, and, when his popularity was at its zenith, he hazarded his political existence, by pursuing, in the House of Commons, a course directly opposed to the positive instructions of his immediate constituents, the corporation of the city of Bristol. This great man, the friend of freedom and reform, and let it not be forgotten, the friend, also, of America, in the hour of her severest trial, stood at the hustings of Bristol, and plead his justification, to an indignant people, whose suffrages he solicited in a much contested election then depending.

He is first charged with having neglected to visit his constituents, during a period, when, against their wishes, he was advocating "peace with America." "It was a time," says he, "when all who wished for peace, or retained any sentiments of moderation, were overborne or silenced; and this city (and, probably, with more management, because I was one of your members) was led, by every artifice, to distinguish itself by its zeal for that fatal cause. In this temper of yours, and of my mind, I should sooner have fled to the extremities of the earth, than have shown myself here, I, who saw in every American victory,

(for you have had a long series of these misfortunes) the germ and seed of the naval power of France and Spain, which all our heat and warmth against America, was only hatching into life. I should not have been a welcome visitant with the brow and the language of such feeling. When, afterwards, the other face of your calamity was turned upon you, and showed itself in defeat and distress, I shunned you full as much."

The closing sentences of this paragraph are already in the possession of this assembly, and it will readily perceive how little they can warrant the inference, attempted to be deduced from them, that the orator, who delivered them, considered himself bound by any will of his constituents, however expressed, which militated with the deliberate conviction of his own judgment.

He tells them, in answer to the second charge, of having disobeyed their instructions, that the just criterion of the merit of a representative "is the whole tenor of his conduct." "Gentlemen," says he, "we must not be peevish with those who serve the people. Depend upon it, that the lovers of freedom will be free. If we degrade and deprave their minds by servility, it will be absurd to expect that those, who are creeping and abject towards us, will ever be bold and incorruptible asserters of our freedom. No! human nature is not so formed; nor shall we improve the faculties, or better the morals, of public men, by our possession of the most infallible receipt in the world, for making cheats and hypocrites. Let me say, with plainness, I, who am no longer in a public character, that if, by a fair, by an indulgent, by a gentlemanly behaviour to our representatives, we do not give confidence to their minds, and a liberal scope to their understandings; if we do not permit our members to act upon a very enlarged view of things; we shall at length infallibly degrade our national representation, into a confused and scuffling bustle of local agency."—If "the popular member" be "narrowed in his ideas, and rendered timid in his proceedings.—If the people should choose their servants on the principles of mere obsequiousness, and flexibility, and total vacancy or indifference of opinion, on all public matters, then no part of the state will be sound, and it will be in vain to think of saying it."

"What, gentlemen, was I not to foresee, or foreseeing, was I not to endeavor to save you from all those multiplied mischiefs and disgraces? Would the little, silly, canvass prattle of obeying instructions, and having no opinion but yours, and such idle senseless tales, which amuse the vacant ears of unthinking men, have saved you from "the peltings of that pitiless storm," to which the loose improvidence, the cowardly rashness of those

who dare not look danger in the face, so as to provide against it in time, have exposed this degraded nation, beat down and prostrate on the earth, unsheltered, unarmed, unresisting?"

"Instead of requiring it from me, as a point of duty, to kindle with your passions, had you all been as cool, as I was, you would have been saved disgraces and distresses that are unutterable.—It is not your fond desires or mine, that can alter the nature of things; by contending against which, what have we got, or shall ever get, but defeat and shame? I did not obey your instructions! No, I conformed to the instructions of truth and nature, and maintained your interest against your opinions, with a constancy that became me. A representative, worthy of you, ought to be a person of stability. I am to look indeed to your opinions; but to such opinions, as you and I must have five years hence. I was not to look at the flash of the day. I knew that you chose me, in my place along with others, to be a pillar of the state, and not a weathercock on the top of the edifice, exalted for my levity and versatility, and of no use, but to indicate the shiftings of every fashionable gale."

Towards the conclusion of this speech, again adverting to the charge of having disobeyed instructions, he says, "As to the opinion of the people, which some think, in such cases, is to be implicitly obeyed, near two years of tranquillity, which followed the act, (meaning the act for the relief of the Roman Catholics,) and its instant imitation in Ireland, proved abundantly, that the late horrible spirit, was, in a great measure, the effect of insidious art, perverse industry, and gross misrepresentation. But suppose that the dislike had been much more general than I am persuaded it was, when we know that the opinions, even of the greatest multitudes, are the standard of rectitude, I shall think myself obliged to make these opinions, the standard of my conscience."

He anticipates with firmness, an unfavourable event of the depending election. Alluding to the threat of the day, he adds—"But if I possess all this impolitic stubbornness, I may chance never to be elected into parliament! It is certainly not pleasing to be put out of the public service. But I wish to be a member of parliament to have my share of doing good, and resisting evil. It would therefore be absurd to renounce my objects, in order to retain my seat. I deceive myself indeed most grossly, if I had not much rather pass the remainder of my life, in the hidden recesses of the deepest obscurity, feeding my mind even with the visions and imaginations of such things, than to be tantalized with a denial of the practice of all which can make the greatest situation any other than a curse."

It is indeed true that he was not re-elected. He had alarmed the commercial jealousy of a city near the shore of the Irish channel, by extending to a bordering and oppressed kingdom, commercial privileges, which had been long most unjustly withheld; he had extended to the persecuted Catholics, some relief from the intolerance of the Church of England, and alarmed the pride and offended the bigotry of high-toned churchmen. He had done more than all; he had offended the pride of opinion.

Such were the opinions, and such was the conduct of Edmund Burke, in relation to the doctrine of instructions, from which it cannot be inferred, that he admits the authority of instructions; however "soberly and deliberately given."

To this authority, on which this Assembly has dwelt at greater length, because much of the argument, in which it is found, corroborates the general doctrine laid down in an early part of this preamble, it cannot forbear adding, that of the elder William Pitt, once the favourite of this nation, as his memory is still, and ever will be, honoured and revered, by every friend of rational liberty. It was under peculiar circumstances, and somewhat different from those which attended the situation of his copatriot Edmund Burke, that William Pitt denied the authority of the instructions of the Corporation of Bath. It was in the year 1763, when his virtue had been, and continued to be tried, by the only infallible test, adversity. Speaking of this interesting period of his life, one of his biographers relates, "We have seen the end of this man's brilliancy, as a minister. We now view him in the character of a single member of the legislature; accompanied by no influence, nor followed by one individual of that obsequious crowd of representatives, who had lately given him unlimited confidence, and unbounded praise. He retired from office an indigent man. From all his places, he acquired no possessions, and the first duty of his retirement was a retrenchment of his household." The tide of popular favour, which so recently lifted him to the skies, by a sudden ebb, had left him stranded on the rocks of a cold and barren shore. Prosperity had tried, but found him incorruptible; and adversity now folded him in her iron grasp, as if to bend his sturdy spirit, but found that spirit to have the erectness of truth and the stability of virtue.

The nation was exulting at the termination of the seven years war, when his constituents, the Mayor, Aldermen, and Common Council of the city of Bath, transmitted to him, and his colleague, Sir John Seabright, an address, to be by them presented to the king, congratulating and humbly thanking him, for the disgraceful peace which had just closed the memorable war, in

the conduct of which, this great statesman had covered himself, and his country, with unfading glory. Not satisfied, with permitting his colleague to present the address alone; a circumstance which he was apprized, had not attracted the notice of his constituents; and which therefore, to a mind of less delicacy, might have seemed to require no further consideration, he wrote to one of the corporation two letters, from which the following paragraphs are extracted:

"Having declined accompanying Sir John Seabright, in presenting the address from Bath, transmitted to us jointly, by the town clerk, I think it, on all accounts, indispensably necessary, that I should inform you of the reasons of my conduct. The epithet *adequate*, given to the peace, contains a description of the conditions of it so repugnant to my unalterable opinion concerning many of them, and fully declared in parliament, that it was as impossible for me to obey the corporation's commands in presenting the address, as it was unexpected to receive such a commission. As to my opinion of the peace, I will only say, that I formed it with sincerity, according to such lights as my little experience and small portion of understanding could afford me. This conviction must remain to myself the constant rule of my conduct, and I leave to others, with much deference to their better information, to follow their own judgment. Give me leave to desire to convey, through you, to Mr. Mayor and the gentlemen of the corporation, these, my free sentiments; and with the just sense of their past goodness towards me, plainly to confess, that I perceive, I am but ill qualified to form pretensions to the future favor of gentlemen who are come to think, so differently from me, on matters of the highest importance to the national welfare."

In a second letter to the same person, written three days after the preceding, he tells him, "Knowing how much you approve an ingenious proceeding, I trust that you will see the unfitness of my concealing from my constituents, the insurmountable reasons, which prevented my obeying their commands. As *their servant*, I owe to these gentlemen *an explanation of my conduct on this occasion.*"

To add to the weight of these authorities, if possible, would be superfluous. They are derived from a period of British history, when the house of commons, assembled in early times at the pleasure of the monarch, for the sole purpose, of supplying, by grants of money, his wants, or his extravagance; had long held the rank of a co-ordinate branch of the English Parliament. They are, moreover, furnished by two of the most resplendent luminaries of a constellation of talents, learning, and

eloquence, unrivalled in any preceding or subsequent age of British history; and it is proper to remark too, *by* men whose attention throughout their lives, was constantly directed by the current of events, which *they* sometimes guided, and which sometimes carried *them* along, to the spirit and maxims of the constitution of government, under which they lived. The first speech which William Pitt delivered against the memorable stamp act, discloses a prevalent discrimination, among English statesmen, between taxation and legislation, which, when applied to the true character of the House of Commons, in the early age of its existence, and to that of similar assemblies which arose in various parts of Europe, from the same cause, about the same period of time, will reconcile to the doctrines here contended for, all the antient authorities which seem to militate against them. To comment upon those of more recent date, after the authorities already cited, can scarcely be required. To account for the various opinions, or the still more discordant speeches and votes of members of parliament, of little note, without knowing the particular circumstances under which they were delivered, and the concurrent or dissentient opinions and practice of their cotemporaries, can lead to no safe conclusion on this great constitutional question. It was a saying of the wisest man who ever lived, and in a comparatively early age of the world, that "there is nothing new under the sun;" and at an æra long subsequent to his, but yet also of remote antiquity, a Roman philosopher, statesman, and orator remarked, that "there was no doctrine which had not found a defender."

In reply to the argument, which deduces a fortiori from the presumption, that the authority of instructions is established, in its application to the house of commons in England, that it must prevail in the representative governments of America; it may be justly remarked, that there are considerations, pleading for its existence there, which do not here apply; at least in the same force. In England, an hereditary, irresponsible monarch, with numerous prerogatives and vast powers; and a body of hereditary nobles of immense wealth, exclusively possess all executive, and it may be said, all judicial, while they share with the people equal portions of the legislative power; and the parliament, which these three orders compose, is moreover omnipotent. Here, the people are universally acknowledged to be sovereign. Not only their right to "change, alter, or abolish" their constitution of government is admitted in theory, but has been repeatedly reduced to practice, with so little danger to the public tranquillity, as to afford a complete refutation of the tyrannical dogma, "that man is incapable of self-government." Every department

of every government, in the United States, derives its existence from the will of the people, and has impressed on its features, the character of delegated power. Power, and responsibility, are every where united together.—Legislation is exercised by assemblies of men, in virtue of semi-annual, annual, biennial, or at most, and in very few instances, hex-annual elections by the unbiassed suffrages of the people.—Those who *make the laws*, become every where, *in their turn*, the *subjects* of the laws. Legislation with open doors; an uncontrolled press, and a speedy and intimate communication of intelligence, to the like extent, unexampled in any other quarter of the globe, give wings to knowledge. The same instrument, which enables the constituted authorities to explain, recommend, or vindicate their public conduct to their constituents; subjects that conduct, to the severest scrutiny of the constituent body. The interest of the representative, which usually lies in the district which elects him; his desire of fame; his affection for the circle of his family, and friends; his gratitude to the people who elect him, for their confidence in his integrity, talents, and patriotism; that patriotism itself, which binds him, with additional force, to his fields, his dwelling, and the ashes of his forefathers; these securities for his fidelity, are all fortified by the qualification of residence. A qualification required by most of the American constitutions, as it was, originally, by that of the English house of commons; though in England, *always* dependent upon custom, in latter times disused; and, finally, dispensed with by law. *Here*, it identifies the representative with his immediate constituents; while in England, he may be an alien to them, in his *interest*, *his home*, and *his heart*. He may indeed have no constituents whatever, except such as he acquires by purchase. In England, he may think of his constituents, but once in seven years. In America, there is some danger of his running into the contrary extreme, and forgetting, in his devotion to their peculiar interests, the duty which he owes to the community at large. The authority of instructions, therefore, if ever usefully exerted, must be less necessary in America, than in England.

Turning its view to the constitution, and practice of the government of this state, and of the United States, this assembly can discover, in neither, more conclusive evidence on this subject. The general character of representative government, could not, indeed, depend for its verification, on particular facts. This assembly has been forcibly impressed, however, with this remarkable circumstance—That the right of instruction, has been more frequently assumed by the legislatures of the different states, than exercised by the people themselves; although the

constitutions of three of the *old*, and two of the *new* states expressly assert, "that the people have a right, in an orderly and peaceable manner, to assemble and consult upon the common good; give instructions to their representatives; and to request of the legislative body, by way of petition or remonstrance, a redress of the wrongs done them." It is proper to remark here, that the constitutions of several other states of the old confederation, and others who came into existence, at a long subsequent date, have the same clause with the preceding, except, that the right, to "give instructions to their representatives," is omitted.

This assembly is neither required, by the subject on which its attention is at present bestowed, nor is it at all disposed to deny to the people of this commonwealth, the right of instructing its own members. The discretion, prudence, and good sense of the people of Virginia have furnished, for many years past, no instance, within the knowledge of this assembly, of an exercise of that right. But it can feel no hesitation, and it deems itself bound by every consideration of attachment, and fidelity to its constituents, to disclaim for itself, and to deny to the legislatures of the other states, a right to instruct the senators of the United States. Can such a right be legitimately inferred from that, which is secured by the constitution of the United States, to the state legislatures, of electing the senators who represent their respective states in Congress? Have those legislatures, in the election of a senator, any other character than that of an organ, selected by the people to perform an office, which they could not so conveniently, or so beneficially execute themselves? The constitution gives to them the power of election: but, by whom was the constitution of the United States established? It answers for itself. "*We the people of the United States*, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves, and our posterity, do ordain and establish this constitution for the United States of America." The formation of a constitution of government, that which lays the foundation of political society, is an act of *sovereign power*. It is, truly, an act of "the people in their *highest sovereign capacity*," a phrase, which has been used, and for various purposes, but which this assembly can understand, in but one sense, to mean the people in their collective capacity, or, in language yet more simple, *the people themselves*.

It has been contended, that the people of the United States did not, in their collective character, form this constitution; because they did not compose one society, at the time of its forma-

tion, but existed, as members of separate and independent states. Do either of these considerations, really militate with the doctrine just asserted? Could men have ever formed a society, a nation, if the first of those positions be correct? And is not the last, utterly inconsistent with the union of any two nations into one? Can it be necessary to resort to authority, in order to corroborate so plain a truth? In deference to its predecessors, this Assembly will proceed, in each step of this argument, to consult the treasures of recorded learning, where they are accessible. "Whoever," says Locke, "out of a state of nature, would unite into a community, do so, by barely agreeing to unite into one political society, which is all the compact that is, or needs be, between the individuals that enter into, or make up a commonwealth." Now, although the people of one of the United States, may, in respect to those of another, have been regarded, before the existence of the federal constitution, as in a state of nature, that is, of mutual independence, yet nothing was necessary, but their consent, to form a commonwealth, or nation, of which, after such consent, they would become fellow-citizens.

Have the people of the United States given such consent? Of this, the existence of the federal government is a sufficient proof. That it is a *national* government, is likewise evident, from the objects on which it operates. A work, perhaps the ablest that has ever appeared, on the science of representative government, published at the same æra, which witnessed the ratification of the federal constitution; written expressly to expound its principles, and recommend them to the people of the United States; written, too, by three of the ablest men, America has produced; and two of the authors members, and very active members, of the general convention which framed the constitution; such a work may, justly, be regarded, as high authority, in an inquiry like the present. "The United States," in their "collective capacity," says Publius, "are the object, to which all general provisions, in the constitution, refer." To know what is meant, by "*the United States in their collective capacity*," let us inquire, what was their capacity, before the constitution was formed? "The great and radical vice in the construction of the existing confederation," says Publius, "consists in the principle of legislation for states, or governments, in their *corporate or collective capacities*, and as contradistinguished from the *individuals of whom they consist*." It was to remedy this vice, that the constitution was formed, and hence, the above phrase must be deemed to apply to the *people of the United States*, or the *individuals of the United States, in their collective capacity*. If further authority be required to establish this position, it is furnished,

by one of the only three numbers of this work, which were each the joint production of two of its authors; and the authority of which is, therefore, entitled to the greater weight. "The important truth," they say, "which experience unequivocally pronounces, in the present case, (that is, in relation to the defects of the old confederation) is, that a sovereign over sovereigns, a government over governments, a legislation for *communities*, as contradistinguished from *individuals*, as it is a solecism in theory; so in practice, it is subversive of the "order and ends of civil polity." "If we still adhere to the design of a national government," says Publius, "we must extend the authority of the Union to the *persons of the citizens*—the only proper objects of government." It is, however, needless to advert to particular passages in an elaborate treatise, which abounds with the most incontestible evidence that the authors of it, regarded the general government about to be created, as a *national* government, and the people as parties to it.

As the federal constitution, "issued from the sovereign authority of the people" of the United States, and its operation is upon *them*, it must be regarded to the *full extent of its powers*, as the constitution of government of one nation, or of one people. It has been however, and still is contended, that inasmuch as the constitution, was submitted for its final ratification, to the conventions of the several states, the states themselves, in their separate capacities, are to be regarded as the only parties to the compact. What is this but an assertion, that the *manner* of submitting any plan of government to the people, determines who are the parties to it? In every attempt either to alter the government of one large state, or to unite several independent communities into one, it is difficult to conceive how the sense of the people can be taken, but by using, as instruments for that purpose, the corporations existing at the time. But this employment cannot make them, the parties to the new government. If the converse be true, then the *legislatures of the several states*, who provided, as they were required by the constitution, for the election of the conventions by which it was ratified, and who were, so far, instrumental in collecting the sense of the people, were parties to the constitution. And were a convention to be now called, to alter the constitution of this state, the counties and boroughs, who would elect the members of the convention, would also, in their corporate capacities, be the parties to the new constitution. Premises which lead to such conclusions, cannot be correct.

It has already been stated, and it is a position susceptible of proof, "the people in their highest sovereign capacity, are the people themselves collectively taken." A convention of deputies

electd by the people, are as much the *servants* of the people, as the members of an ordinary legislature. For, like such a legislature, they have a *superior* in the people by whom they are deputed to act. Every other capacity than that, in which the people act by *themselves collectively*, must be secondary; must be factitious, or conventional. A doubt has already been expressed, whether any people ever did act in their former capacity: in other words, whether, in the progress of political society, there ever was a people, who retained in their own hands, to be exercised by a majority of themselves, all legislative, executive, and judicial power. It may be even questioned whether, in the formation of any political society, the will of a majority of the people composing that society, was ever regularly, fairly, and soberly taken, before the existence of the American constitutions: and of all those constitutions, that of the people of the United States, ratified by the conventions of nine states, as it was required to be, by the convention who submitted it to the people, has the fairest claim to that sanction.

Few people have ever had an opportunity of acting with *perfect freedom* in their *highest sovereign capacity*. The customs, laws, and institutions of man, whatever be their source, whether wisdom, fraud, or violence, hold him in society; the forms of which become so interwoven with his very existence, that no revolution can suddenly and entirely change them, nor can any revolution be effected, for the improvement of that condition, without their aid. Still, however, the legitimacy of every such revolution must depend, for its test, on the great principle, *that the people are sovereign*. A doctrine, to which this Assembly owes its existence; this commonwealth its freedom, and these United States their independence, the people of America will never yield but with their lives. No state legislature, therefore, has a right to tell this people, that they did not make a constitution of government, which they have, *themselves, solemnly declared, that they did make* "to secure the blessings of liberty to themselves, and to their posterity."

And if the people of the United States are the parties to this constitution, the question, "whether any particular state has a right to instruct its representatives in the Senate of the United States?" may be easily solved, by an application of the principles maintained in an early part of this argument. Before that application is made, it will be more convenient, first, to dispose of another view of this question. Let it, therefore, for the present, be conceded, that the states have a right to instruct their respective Senators in Congress. Let it be further conceded, that the states, as separate communities, are parties to the constitution of

the United States, and have the right, which is asserted for them, to expound the meaning, and limit the operation of that compact.

Does it follow, as a consequence from these concessions, which yield as much, as has ever been demanded by the advocates of the doctrine here impugned; that the *state legislatures* are the *states*?—That the legislatures have a right to furnish such instructions; that *they* are the parties to the compact? They do represent their respective states, it is true; but they represent them in their *ordinary legislative capacity* only; which is at most, but *one* of their *sovereign capacities*. They do *not* represent the states in their *highest legislative capacity*. Have the people of Virginia authorized this assembly, to “alter or abolish” the constitution of the state? Can this be done but by a convention? And is not the capacity, in which a people change their very bond of union, higher than that, in which, they enact ordinary laws for its welfare? There is no state in America wherein those capacities are regarded as of like dignity. It is competent for several of the state legislatures, to amend the constitutions of their respective states, but never by an ordinary act of legislation. Some of the state constitutions require a periodical appeal to be made to the people, to know if they desire a revision of their constitution of government. The constitution of Vermont provides, that in order “to preserve the freedom of the commonwealth, for ever inviolate,” there shall be septennially elected “a council of censors,” with power to call a convention, if they deem it necessary. So that the power even to call a convention, is here denied to a state legislature, by more than mere implication. And it may be asked, if the legislature of a state has not a right even to submit to the people, the revision of that constitution of government, under which, it exercises the whole legislative authority, how does it acquire that, of expounding the constitution of the United States?

Is there really, “no tribunal, above the authority” of the state legislatures, to decide, in the last resort, whether the compact, “made by their respective states,” has “been violated?” Much to the honour of the general assembly of Virginia, it has frequently acquiesced in decisions of the state judiciary, pronouncing its own laws unconstitutional: and there is no doctrine more universally admitted in this state, at the present day, than that, which recognizes the constitutional authority of such decisions. In conformity with this just recognition of one of the most salutary restraints, provided by our republican system, upon the usurpation of power, by that branch of the government, whose power is least susceptible of precise limitation, it would seem,

that the judiciary of the United States is “a higher tribunal,” than the legislature of a single state, and it is unquestionably much better adapted, by its structure and organization, to the purpose of testing, by the constitution itself, the constitutionality of a law. The committee very fairly admit this objection to the doctrine for which they contend, and state in reply, that “the proper answer to the objection is,” that the judicial department also, “may exercise or sanction, dangerous powers beyond the grant of the constitution;” and that the particular resolution of the general assembly, which they seek to vindicate, “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 committee, here most evidently suppose a case of extreme character; such, as no constitution of government can provide for; a case, wherein all the constitutional safeguards of liberty, having been won over by corruption, or subverted by force, it becomes the duty of every man to take care of himself, under the sanction of the sacred truth, that “resistance to tyranny is obedience to God.” In such an awful condition of things, the legislatures of the several states would be criminally negligent, if they did not exercise the power, which Rome, in similar extremities, gave to her dictator, “to see that the commonwealth sustained no injury.” And this is the power, which Publius ascribes to the states, when he says “it may be safely received, as an axiom in our political system, that the state governments will, in all possible contingencies, afford complete security against invasions of the public liberty by the national authority.” In the last number of those learned, classical, and eloquent essays, which are coeval, in their production, with our admirable constitution of government, and bid fair to travel down with it to future ages, and to render the names of their illustrious authors, as immortal, as that liberty, which their labours essentially contributed to preserve and to perpetuate, there is this further allusion to the checks, provided by the constitution, upon the spirit of encroachment. “The executive and legislative bodies of each state, will be so many centinels over the persons employed in every department of the national administration; and, as it will be in their power to adopt and pursue an effectual system of intelligence, they can never be at a loss to know the behaviour of those, who represent *their constituents* in the national councils, and can readily communicate that knowledge to the *people*.” This assembly considers this paragraph, as a volume of authority, on the question before it. It will add, that neither in this, nor in any other contemporaneous exposition of the constitution of the United States,

assailed, as it most zealously and eloquently was, on the ground, that it tended to annihilate the state governments, or, in the language of the day, to *consolidation*, can there be found an allusion, however distant, to the right of a *state executive*, or a *state legislature*, to *instruct the senators in congress* of its particular state. Had such a doctrine found a place even in the imagination of the numerous and zealous friends of the new constitution, would they have failed to avail themselves of so powerful an argument, in order to reconcile the proposed plan of government to the jealous pride of the states?

And if the sages of the convention, among whom, for his wisdom was of early growth, was the distinguished author of the report, which has been just reviewed, never thought of this doctrine; or claimed for it, the potent efficacy now sought to be given to it, it may also be remarked, that it was left for one of the authors of the *Federalist*, to sustain by argument, ten years after the constitution had been in operation, this novel doctrine, and by repetition to confirm its practice. It had not, for its origin at that time, any defect of confidence in the senators, by whom this state was then represented, in the congress of the United States. Not only the memorable report itself, forbids such a surmise; but their well known conformity in opinion, with the assembly which instructed them, forbids it likewise. The authority of instructions, was not then exerted by the *legislature*, for the purpose of controlling the free exercise of the judgment of the representatives of the state, but, as has been observed, "only to add the greater weight to *their* opinions."

It is believed by this assembly, that the first exercise of the power of instruction, for the former purpose, occurred in the last session of the general assembly; and then, from no want of respect for the senator who disobeyed those instructions, for he had been recently elected to the high station, which he occupies, by the almost unanimous suffrage of the preceding legislature; but from a belief, that the instructions, about to be given, would change the vote, which, if at liberty, he would otherwise pronounce upon the momentous question, then depending in the congress of the United States. And for this reason, if for no other, it has appeared to this assembly, proper to give the doctrine of instructions, at the present time, a consideration, worthy of the important consequences which might result from its frequent practice.

To proceed with this inquiry, therefore, this assembly asks of the advocates of the doctrine, against which it contends, to show (under the concession which has been made, with a view to the further progress of this argument, that the states, as *communities*

of individuals, are parties to the Constitution of the United States,) how those individuals have disposed of the power of instruction, which, it is said, the nature of representative government requires that they should possess? Does it suffice to answer, "that they give their *general attributes of sovereignty* to their state legislatures?" This surrender must have been made, at the time when the constitution of the state, the instrument of the grant, was notified by the people. But, at that time, the Constitution of the United States did not exist; and a power to control one of its legislative organs could not have been then conveyed, for this, if for no other reason. It is in vain, therefore, to search into the constitutions of the general and state governments, for any such express grant. If claimed, by implication, in behalf of the legislature of the state, "because the *power of legislation is a sovereign power*?" the reply is obvious. All power, uncontrolled by a superior, is *sovereign*; that is, *supreme*. The *power of interpreting* or the *power of executing* the law is as much a *sovereign power*, as that of *making the laws* themselves. And the whole sovereign power of a nation, as has been shown, in a former part of this inquiry, embraces every possible subject of legislation, and can be restrained only by the law of nature, or of God. Of this sovereign power, the people of the United States have delegated to the general, or national government, *one part*; to the governments of the particular states, belong *as much* as the people, distributed into communities, or states, have respectively thought proper to give them; and the *other part* retained by the bills of rights of the different state constitutions, or reserved by the whole people, to those several communities, by the constitution of the United States, remains in the people themselves, where *their sovereignty*, in virtue of which, all those delegations of power have been made, *for ever* resides.

Of that *portion of sovereign power* delegated by the people of the several states, to the state governments, and secured to those governments, by the constitution of the United States, the act of the whole people, the legislatures of the respective states, possess *but a part*. The state judiciaries, and the state executives have also, their portions of *sovereign power*, or of *sovereignty*, if those expressions are deemed synonymous. Each power, moving within the orbit prescribed to it by the people, is sovereign, that is, liable to no other control than that of the constitution, the act and law of the people themselves. The power of instructing the senators of the United States as it has been already remarked, has been expressly delegated, by the people, to none of those state authorities. If assumed by implication,

because any such authority possesses a sovereign or uncontrolled power, it must belong either to all of them, conjunctively, or to each of them, separately. Is it to be exercised by the joint act of all, or by each? It is not contended that a concurrence of all is necessary, to make instructions binding on a senator of the United States; still less is it admitted, by the advocates of the doctrine of instructions, that each has a right to instruct, which would, moreover, be absurd; because, as each instruction, it is said, would be binding, the senator might be subjected to three distinct and interfering rules of conduct.

The advocates for the right of instruction limit its exercise to the legislative branch of the state government, to the exclusion of the other two branches. Whereas, if analogy and implication were both to be respected, their theory would appear more consistent, if in relation to interpretations of the constitution and laws of the United States, the state judiciaries were allowed to be the popular organ of instruction; if in relation to the conduct of the executive, the state executives; for the Senate of the United States has executive as well as legislative power; and to the legislatures of the state, the power of instruction would be consistently confined to its operation on questions of expediency, occurring in the course of national legislation.

It is believed by this assembly, that every authority exercising, under a state government, a power unrestrained, except by the constitution of such state, has, what is commonly denominated, a sovereign power, and as the constitution of this state provides, that "the legislative, executive, and judiciary departments shall be "separate and distinct," each department has the same "general attributes of sovereignty" which belong to either of the other two departments.

Having closed this view of this interesting question, this assembly will resume the point, which it conceded, and regarding the *people* of the United States as the parties to *their* constitution of national government, it will briefly consider the other argument, on which, "the right of the state legislatures, to instruct the senators of the United States," has been grounded. Does the constitution of the United States, by requiring that the senators in congress shall be elected by the legislatures of the several states, give to those legislatures, the right to instruct the senators, who respectively represent those states? The people are as much the constituents of the senate of the United States as they are of the president. Are they not the constituents of the latter? Speaking of the possible corruption of a president of the United States, Publius closes a train of animated remark in these words, "he might make his own

aggrandizement the price of his treachery to his *constituents*." Speaking of the utility of his qualified veto against the passage of an iniquitous law, "his fortitude would be stimulated, by the probability of the sanction of his *constituents*." What constituents? Unquestionably, the people of the United States; for the existence of the "colleges of presidential electors" ceases with the election of the officer, as has been justly remarked. In like manner, the senate of a neighbouring state is elected by the instrumentality of deputies chosen for that purpose. But it has never been even imagined, that the senators of that state were liable to be bound by the instructions of their immediate electors. Those senators are regarded as the representatives of the people, who have, by their constitution of government, provided that mode of electing them, either for convenience, or to render the two branches of their legislature, intended as mutual checks upon one another; less "homogeneous."

But it does not appear, if the right of instruction be deemed coincident with the right of election, that the single college which elects the senators of Maryland, or the numerous colleges which elect the president and vice president, can be, consistently, denied the right of instructing the authorities, whom they must, in this sense, be deemed, respectively, to constitute. The exception which has been taken to this parallel, that no *one electoral body* appoints the president, does not apply to the election of the Senators of Maryland, who are all elected by *one assembly* of deputies; and it is not perceived, how the *number* of the electoral colleges, employed in the choice of a president of the United States, *absolutely disqualifies them* for giving him instructions. They all meet at the same period of time; and it would suffice, to settle any proposition among them, that it be, at that time, propounded to them all. Where the *two branches* of a state legislature elect by *concurrent vote*, the senator is not elected by one body; and those who claim for each congressional district, consisting of many counties, the right of instructing its representative in congress, will not contend, that the counties shall not instruct him, because no one county elects him, or because the sense of the people, on any such instruction, must be taken in the separate counties of the district. It is, moreover, very obvious, that the act of electing a senator of the United States, performed by a state legislature, is as completely a *final act of election*, as that by which the whole senate of Maryland is elected by one college, or the president and vice president by many colleges of electors. And, although the electors, in the latter case, usually disperse after the election is over, yet the doctrine, for which the advocates of instructions

contend, would warrant their longer continuance together. The duration of the sessions of a state legislature arises from its having *other duties* to perform, in relation to *its own constituents*. Will it be contended, that if any *other duties* had been required, by the constitution, of the colleges of presidential electors, which could have had the effect of protracting their sessions beyond the date of the election, such additional duties would have carried with them the *right of instructing* the president of the United States? It would, further, seem to be required, if this assembly undertakes to instruct the senators of Virginia, in congress, that it should be done by resolution adopted by joint ballot of the two houses; in pursuance of the mode of election, required by the state constitution; which has not yet been suggested.

Hence it appears, that, at the end of every inquiry, the doctrine recurs with additional force, that the *people* are the *constituents of the legislative body*, however they may vary the *mode of election*; to whatever voices, for the sake of utility or convenience, they may commit the exercise of the power of election; and, however elected, the senator is to be regarded as a representative of the *whole people*, of whose *deliberative* council he is a member. If this doctrine be deemed inconsistent with the policy and interest of the *smaller states*, who are entitled, by the constitution, to the benefit of equal representation in the senate with the larger—If it be urged, that this apportionment of representation is a benefit, of which, even by a change of the constitution, no state can be deprived without its consent, and, therefore, that a particular importance is to be attached to it,—the answer is obvious. *It is a most important provision to the smaller states*. For, however free may be the deliberations of the senate, each senator will look to the state in which he resides, and where he beholds the organ of his appointment. It is unnecessary here to repeat all the considerations which the general theory of representative government suggests, to lead to the conviction, that the representative of a particular district, in which he is required to reside, elected by the people of that district, or by persons deputed by them to whom he is also responsible, through regular periodical elections, will be sufficiently devoted to their interests, to avail himself of every proper occasion to promote them. And that he will think much less of the interests of the residue of the community, in proportion as he thinks more of those of his immediate constituents. This, therefore, is a feature of the constitution, the result, unquestionably, of a compromise of interests, of which the *large states* have most reason to complain. But it does not prove, that *any state*

has a right, in consequence of it, to suspend or control the deliberations of the senate, by instructing its senators.

If the states, in their separate capacities, be again regarded as the parties to the constitution of the United States, they have all an equal interest in the character and rights of those who compose the senate of the United States. As a branch of the legislature, it cannot perform its constitutional functions, without *deliberating*, as well as *deciding*. There is no question, but the arrest of a senator by an armed force, and the confinement of his person, so as to prevent his attendance on his public duty, would be a gross invasion, not only of the rights of the injured senator, but of that branch of the national legislature, who would be thus suddenly deprived of his services; and although, where he is simply instructed, the character of the act, by which his faculties are chained, while his person is at liberty, may be less obnoxious to himself, it is not less detrimental to the assembly, of which he is a member.

If it be contended, that all the state legislatures possess this right, and are thus placed on the same footing of equality; it has been already denied, that any of them possess the right. But if they *all* did, it could not be equally enjoyed by all. An accidental coincidence of time between the sessions of a state legislature and of the senate, would afford one state an opportunity of instructing its senators by its legislature, which could not be exercised by another state differently circumstanced. To the disparity thus arising, from temporary or accidental causes, must be added the irremediable inequality growing out of the geographical position of the states around their common political centre. What would be the similitude, in this respect, between the advantages of the state of Maryland, the seat of whose government is but a day's journey from the metropolis of the United States, and those of the states of New Hampshire and Georgia, on the Atlantic; of the trans-Allegany states of Kentucky, Tennessee, and Ohio; or those just rising into existence, at the mouth, or at the sources, of our western waters? If this right be exercised at all by the latter, it must often be after the occasion has passed, which alone could give it importance; and when the instruction, instead of furnishing, as required, a rule of conduct to the senator, will have no effect whatever. While it is not easy to conceive, how, among *co-ordinate states*, a right can belong to *one*, which all cannot exercise, it must, in this view, be greatly deplored, that the assumption of such a right by any, will very disproportionately increase the influence of the particular states in the vicinity of the seat of the national government; and, in so doing, excite, of necessity, the jealousies of those whose geo-

graphical position removes them further from it; an effect, the same in quality with that, against which the constitution of the United States sought to guard, by giving to the national government *exclusive legislation* over the territory which it makes the seat of its deliberations.

If it be asked, what further injury can result from the exercise of this right by the legislatures of the respective states? The answer will be found, in an attentive consideration of the powers of legislation, which the people have delegated to the national legislature; in a view of the peculiar structure of the senate, in relation to those powers, and the policy of that structure. The nature of this inquiry precludes such a view of this part of the subject, as its importance merits. Let it suffice, therefore, to remark, that the objects which induced the establishment of the national government are all of a character to require the *steady pursuit of consistent councils*; and that the attainment of that stability and consistency is well secured by the constitution of the United States, through the medium of a senate, consisting of members, all of whom are above thirty years of age; have been nine years, at least, citizens of the United States; have been chosen from the whole population of the states of which they are respectively the inhabitants, by the legislatures thereof; who, when elected, are entitled to serve for six years; and who are, moreover, so classed, in relation to the period when their times of service expire, as to prevent the introduction of new members from producing, at any one instant, an entire change of their whole body. On this subject, Publius, who cannot be too frequently consulted, on whatever relates to the intention of the authors of the constitution of the United States, remarks, "that the mutability in the public councils, arising from a rapid succession of new members, however qualified they may be, points out, in the strongest manner, the necessity of some *stable institution* in the government. Every new election in the states," he adds, "is found to change one half of the representatives.—From this change of men must proceed a change of opinions; and from a change of opinions, a change of measures." But he concludes, with great truth, "that a continual change, even of good measures, is inconsistent with every rule of prudence, and every prospect of success."

If the state legislatures, therefore, exercise an absolute control over the deliberations of that branch of the national legislature, by the peculiar structure of which, this essential quality "of stability," was designed to be imparted to the national government, there is an end to all hope that such will be the result. The majority who instruct a senator *may not* be, will scarcely

ever be, the same by whom he was elected; the instructions of one legislature may be countermanded, varied, or contradicted by its immediate successor. Is this improbable? Have not two of the largest states been known, in one year, to anathematize, and, in the very next, to eulogize, the very same federal administration, for the very same measures? And how often does it happen, in all legislative assemblies, that the success of the most important measures of national policy turns upon a few votes? The appropriations for carrying into effect a treaty, solemnly ratified by the president and senate, and that president "the father of his country," passed the house of representatives, in committee of the whole, by a majority of one, and in the house, by a majority of three votes. The very question, which has given rise to this investigation, "whether the charter of the Bank of the United States should be renewed?" was lost, in the senate, by the *ex-official* casting vote of the vice president.

Setting aside the influence which the legislature of a single state, the least in the Union, or a mere majority of the state legislatures, might thus acquire in extending or reducing the constitutional powers of congress, which can be done, legitimately, only by amendments, sanctioned by a concurrence of three fourths of the whole number of legislatures; and then, only, where congress shall prefer to "conventions," that mode of taking the sense of a majority of the whole people; what will be the effect of this interference and absolute control of the legislatures of the states upon measures of national policy? To carry on a successful war, how many nicely adjusted and mutually dependent operations are required? Each of such operations may be regarded as a link in a chain of causes and effects. It is a chain, beginning in truth, and binding to heaven the destinies of the nation. Let a link but break, and the nation sinks. And shall the unskilful hand of one improvident legislature be allowed to endanger such an issue?

It is utterly impossible, that the members of an assembly, gathered from the comparatively narrow limits of a single state, can be well acquainted with the interests of the whole United States. With *capacity* to acquire such knowledge, which is not denied to them, they cannot be expected to combine the leisure and meditation necessary for *its* successful exertion. The very numerous, extremely minute, but highly important details of state legislation, if not neglected, in pursuit of distant objects beyond their sphere of action, will alone suffice to consume as much time as they can afford to spare, from their domestic avocations. If they insist upon legislating, *by instructions*, for the nation, they must neglect *to make laws* for the state. And to

use the language of Washington, applied to a similar subject, their instructions will be, "the miniature of ill-concerted and incongruous projects, rather than the organs of consistent and wholesome plans digested by common councils, and modified by mutual interests."

What will become of the character of the senate, of the feelings and character of its members? All responsibility of that branch of the legislature to the nation at large, will, at length, be utterly destroyed; as must be, in fine, all sensibility, among its members, to public opinion. The failure of any system of policy, from whatever cause it may originate, will be imputed to the interference of external control. The love of glory will cease to inspire men, who set out in a course of political action, not knowing when the mandate of instructions may overtake and arrest them.

What will become of the national government, and, indeed, the cause of freedom itself? Fluctuating councils, equally unsuited to peace as to war, have ever been the forerunners of national ruin. Should an unsteady policy distinguish the only fair experiment which has ever been, or is likely to be made, on a great scale, of representative government; how great will be the dismay of its friends, how great the exultation and triumph of its enemies! How many free governments have been already driven from the moorings of provident foresight, and cast by the tempest of passion on the gloomy and sullen shore of despotism!

To conclude, this assembly will remark, that, if many of these evils strike not the apprehension of a state, wherein the balance of party never fluctuates, where a preponderating influence in a settled majority, is capable of imparting a steady course to public measures, let its attention be aroused to the possibility of realizing, when this generation shall have passed away, another order of things, a new and more equal organization of parties; when, by the incessant fluctuations of the state councils, the same evils will be extended to those of the national government, where the operations of war and negotiation require equal firmness and consistency. When hostility to an existing administration, private pique and resentment, the love of power, the corruption of foreign influence, the ignoble speculations of sordid avarice, or the daring enterprise of a criminal ambition, the passions of a few individuals, but artful and insidious, and possessed of abilities and eloquence, may become the hidden springs of a majority of a legislature, however well disposed themselves; and, in the short compass of a few days, or a few hours, the

whole policy of ages may be undone, the national character degraded, the nation itself enslaved and ruined.

Resolved, therefore, that it is the opinion of this assembly, that no state legislature has a right to instruct a senator of the United States; and that, if instructed, no senator is bound to obey such instruction.