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*A. J. Smith*

# THE CRISIS:

OR,

## ESSAYS

ON THE

# Usurpations

OF THE

# FEDERAL GOVERNMENT.

BY

**BRUTUS,**

*By Robert S. Turnbull*

*Magna est veritas, et prevalebit.*

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

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THE CRISIS

TO

THE PEOPLE

OF

The "Plantation States,"

THESE ESSAYS

ARE

Dedicated

AS A TESTIMONY OF RESPECT,

For their Rights of Sovereignty,

BY

THE AUTHOR.

[Furnball]

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## ADVERTISEMENT.

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

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

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

Charleston, 22nd October, 1827.

THE SOUTH CAROLINIANA LIBRARY

## THE CRISIS.

*Magna est veritas, et prevalebit.*

### NO. 1.

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

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

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

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

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

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

## NO. 2.

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

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

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

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

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

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

### NO. 3.

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

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

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

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

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

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

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

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

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

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

#### NO. 4.

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

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

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

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

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

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

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

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

### NO. 5.

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

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



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

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

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

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

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

## NO. 6.

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

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

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

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

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

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

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

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

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

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

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

## NO. 7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## NO. 8.

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

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

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

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

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

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

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

## NO. 9.

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

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

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

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

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

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

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

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

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

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

\* Journals 71.

† Journals 215.

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

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

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

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

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

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



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

#### NO. 10.

The Supreme Court, in contending for its extended construction of the Constitution, would draw a distinction between that instrument and the old confederation, which certainly cannot be maintained on the grounds it assumes. It would impress upon us, that the exclusion of the word "*expressly*," in the one compact, and the insertion of it in the other, included or excluded in either, the idea of *implied powers*. The words of the 10th amendment to the Constitution are, "The powers *not* delegated to the United States by the Constitution, nor prohibited by it to the States, are *reserved* to the States respectively, or to the people." In the confederation, it is thus expressed: "Each State *retains* every power, jurisdiction and right, *not expressly* delegated to the United States."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### NO. 11.

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

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

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

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

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

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

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

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

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

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

less precise, the State Legislatures were yet not satisfied. The first care of these Legislatures to prevent dispute, was, to draw around the power of Congress, certain boundaries, beyond which, it should never, in any event, pass. "The enumeration of *certain rights*," says the Constitution, "shall not be construed to deny or disparage others *retained* by the people." And again—"The powers *not delegated* to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

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

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

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

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

## NO. 12.

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

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

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

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

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

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

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

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

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

\* Yates’ Debates, page 57.

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

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

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

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



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

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

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

### NO. 13.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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