THE CRISIS:

OR,

ESSAYS

ON THE

Usurpations

OF THE

FEDERAL GOVERNMENT.

BY

BRUTUS,

By Robert J. 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 Cæsar.*

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NO. 14.

We do not find in the proceedings of the Convention, the word "Manufactures," or any motion relative to the encouragement of them, until the 18th of August. The Convention, having at that time, disposed of most of the clauses in the reported Constitution, as far as the end of the enumerated powers, many additional powers, were on that day proposed to be vested in Congress. Amongst them, was a power "to establish public institutions, rewards and immunities, for the promotion of AGRICULTURE, Commerce, Trades, and MANUFACTURES." On the 20th of August, another proposition was made, to wit, "that a Council of State should assist the President, to be composed of the Chief Justice, and five Secretaries, to wit, of *State, War,*" &c. The duty of the Secretary of DOMESTIC affairs, was, "to attend to matters of general police, the state of AGRICULTURE and MANUFACTURES, the *opening* of ROADS and NAVIGATION, (*internal improvements*) and the facilitating communications throughout the United States, and to recommend such *measures* and establishments, as might tend to *promote such objects.*" I do not discover in the journals, any thing else relating to Manufactures, *eo nomine*, excepting the above. Both of the above propositions having failed, we might reasonably conclude, that the Convention, refused to give to Congress the power to promote Domestic Manufactures, as well as internal improvements. But it is not from the mere failure, to have these clauses inserted in the Constitution, that we would infer a clear and unequivocal intention, that to the States alone, were to be left the regulation of the different branches of internal industry. There are other considerations which establish the fact beyond doubt.

The above propositions, made on the 18th and 20th of August, it seems, were referred to the committee of detail, together with sundry others; some relating to public seminaries of learning; some to the unappropriated lands of the United States; some to the government of the new States to be created; some to authorize the President to hold landed property for the use of forts and magazines; and last, and not least, as we shall hereafter see, was a proposition to restrain Congress from establishing a perpetual revenue under its *taxing* power. On the 22d of August, the committee made a short report, proposing, *inter alia*, that a seventeenth *enumerated* power, be added to the sixteenth clause, in these words, "and to provide, as may become necessary, from time to time, for the well managing and securing, the common property, and *general interests and welfare* of the United States, in such manner, as shall not interfere, with the governments of individual States, in matters which respect only their internal police, or for which their individual authority may be competent." Our readers may construe this report as they please, but one thing is clear, that under so general a power to provide for the general welfare, Manufactures could as well be promoted, as could any other act be done, for which there was no previous provision. This part of the report, however, was not acted upon, and on the 31st of August, we find, that all such reports as had been postponed, "and such parts of reports as had not been acted upon," were referred to a committee, to be composed of a member from each State. The next day, the 1st of September, this grand committee "reported *partially*," but did not touch the subject of science, trades, canals, or *manufactures*. On the 4th, the committee again "reported *partially*," but said nothing of manufactures. On the 5th, the committee "reported *further* and *finally*," recommending alterations and additions, in five instances. The last is, to insert this clause—"To promote the progress of SCIENCE and the USEFUL ARTS, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries." I ought to have mentioned, that in their report of the previous day, to wit, of the 4th, this same committee did propose to add to the taxing power, these words: "to pay the debts, and to provide for the common defence and general welfare. It was necessary that they should make some report on this head, because many motions had been previously made, as will be seen hereafter, to restrain the taxing power, one of which was so rigorous, as to confine it to the debts and the *necessary* expenses of the United States. I hope to shew in my next, that these words were intended as a limitation, and not an enlargement of the appropriating power. The above clause, "to promote the progress of science and the useful arts," was, as I conceive, a report of the grand committee against manufactures.

I am not conscious, that in any exposition of the Constitution, this clause has been relied on, as restraining the power of Congress, on the subject of Manufactures. In my view, it is very important. It is important, if considered in the *abstract*, but when taken in connection with the above proceedings of the Convention, I do regard it as conclusive.

And first, let us consider the clause as it stands in the Constitution. What does it amount to? It is a power to promote *science* and the useful *arts*. What are the useful arts? They are those arts or occupations, which are carried on, with a view to *profit* in contradistinction to such as are pusued for *pleasure*, which are called the *liberal* or *polite* arts. Are manufactures to be classed among the useful arts? Throughout the civilized world, *Agriculture and Manufactures*, stand at the head of the useful arts. All men must assent to this. Here then, is a clear power vested in Congress by the Constitution, to promote Agriculture and Manufactures. But is it a general, or limited power? It is a limited power. How is it limited? It is limited, inasmuch, as the mode by which these arts are to be encouraged, is not left to construction, but is expressed in words, which have a clear and a definite meaning. They shall promote the useful arts, BY *securing to ingenious men patents for their inventions.*" Now, if a power to promote a specific object, by a prescribed mode, does not exclude the power to promote it by a different, or other mode, there is no truth in the law maxim, "expressio *unius* est exclusio *alterius*." Let us familiarly illustrate this.

When the old Congress found itself inadequate to carry on the Government for the want of a direct legislation on the people, it re-

peatedly and earnestly solicited the States, at different times, for a power to raise a revenue by small imposts, to be limited in amount, as well as duration. Had an amendment been made to the Confederation, and a power been granted to that Congress, "to regulate commerce by the imposition of certain duties on West India produce, surely no one could contend, that the words of the grant, would not exclude the power to regulate commerce, by duties on European goods, and by the various modes practised by the present Government, whose power over commerce is exclusive. So, a power to raise a revenue by a capitation or other direct tax, would certainly exclude the power to lay imposts, or to come at a revenue by any means, but a direct tax. In the clause before us, as in the instances just cited, the mode of expression is indubitably exclusive. Manufactures are to be encouraged, but they are to be promoted in one way only, to wit—by the reward of an exclusive right, to the use of a new machine or invention.

The grant of power in question, is, what lawyers would term an AFFIRMATIVE PREGNANT, that is, an *affirmance* of one thing, and a *denial* of another; an affirmance of the power of Congress, to promote the progress of science and the arts, by patents and copy rights, and a *negation* of their authority, to encourage them in any other way. There are in the Constitution, other articles of a nature allied to this. For instance—Congress shall have power "to *define* and punish felonies on the *high seas*." The power here given to define a felony *at sea*, implies an admission, that if such a power were not given, Congress would be excluded the use of the power altogether; and it further implies, that the power of defining felonies on *land*, solely and exclusively belongs to the States. There are, it is true, two cases in which it can define or punish felonies on *land;* but in these cases, there are two special grants of power, by two separate clauses in the Constitution. It can "provide for the punishment of counterfeiting its *current* coin and securities;" and it has "the power to declare the punishment of treason."

In the Constitution, will be found NEGATIVES PREGNANT, as well as affirmatives pregnant. The prohibition to the States laying any "duties on *imports* or *exports*," is *one* of this kind. The restriction which prevents them laying any "duty on *tonnage*," is *another*. The prohibition to their keeping troops or ships of war in a time of peace, is a *third*. The prohibition of any interference as to the slave trade, is a *fourth*. In all these cases, though the restrictions amount to a negation to do the particular acts mentioned, yet there is an affirmance of the authority of *Congress* in the last instance, to prohibit the slave trade after 1808; and in the first instances, of the *States* to lay a land tax, an excise, a stamp duty, or any other tax, (provided it be not an impost or export duty, or duty on tonnage); and there is the same authority to levy troops or equip frigates, during a period of war. In these positions, we must all agree.

The clause for promoting manufactures by patents, is then clearly an *affirmative* pregnant. Under its peculiar mode of expression, it

cannot be conceived, that the Convention could deem it necessary to give Congress the power to promote the arts by a particular mode, if it designed to give the liberty of adopting any, and all other modes, of effecting the same object. If the meaning was not, to exclude Congress from any general power of encouraging the arts and sciences, why mention the words at all. There certainly was no necessity for it. These words, are not to be found in any of the propositions, which were submitted on the subject of patents and copy-rights. One proposition was, "to secure to literary authors their copy-rights for a limited time." A second, "to grant patents for useful inventions." A third, "to secure to authors, exclusive rights for a certain time." It would, therefore, have been sufficient for every purpose, to have reported the amendment to read, "to secure for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries," leaving out the first part of the sentence "to promote the progress of science and the useful arts.

But the reason of the committee's using the words last mentioned, is manifest. Manufactures and the sciences had been talked of—various propositions in relation to them, were before the committee; and a previous committee, had reported a *specific* power, to provide for the general welfare, so as to reach these cases. The report was not acted upon, and the subject afterwards falling into the hands of the present committee, it became their duty to report *for* or *against* science and manufactures. They do report, and recommend a power for this purpose—not, however, by seminaries of learning—not by public institutions, rewards, or immunities, as proposed, but simply by encouraging inventions to facilitate labor—as well as literary works to augment the stock of human knowledge. To promote the arts and sciences, in this way, was to confer a benefit, not upon one portion, but upon every part of the Union. It is for the benefit of each, and therefore, to the advantage of all the States, that authors and ingenious mechanics, should receive in this way, the patronage of the Government: But to give premiums and pecuniary bounties, or to prohibit the export of any material of manufactures—or to restrict the great import trade, of which the Southern States, even at that day, were so jealous, was not the intention of the Convention; it did not choose to leave the question open, whether Congress should do what it is now doing, to wit—to restrict our trade by Tariff duties, almost amounting to prohibition. As the subject was before the Convention, the members of that body, took the opportunity to express themselves, that they were averse to any national encouragement of science or manufactures, except by patents or copy-rights. The clause speaks no other language.

That the friends of science in the Convention, considered this clause, *as exclusive of any power to promote science in general*—and, that they, moreover, could not afterwards seek for it, in the appropriating power "for the general welfare," would appear, by their solicitude upon the subject. On the 14th of September, as the Constitution was about to be finished and engrossed, the motion was renewed for the third time, to add a power, to establish an University.

which motion was lost, six States to four, and one divided—there not being in the Convention, the same interest for manufactures, as there was for science—there being no *calico* printers or *woollen* weavers, occuping the benches of the Convention, as is the case in the present Congress; the Convention, in fact, being composed of men, more literary than they were avaricious, is probably the reason, why the manufacturers, like the University men, did not come again to the charge, and renew their propositions for manufactures. They, however, did not. They quietly submitted to that article in the Constitution, which limits the national protection, only to *patents* and *copy-rights*.

Three clear propositions result from what has been said: First—That there was an attempt made in Convention, to give Congress, power to promote science, agriculture, and manufactures. Secondly—That a committee reported, a specific power for that purpose, to be added to those already enumerated—which report was not agreed to. And thirdly—That an express provision was made, to protect these objects, but *only* to a limited extent. These propositions being established, upon what grounds, can a general power over the subject of *manufactures*, be assumed? "*Prohibitory*" duties *by Congress*, was a word not mentioned in Convention. The only encouragement asked for, was, public rewards and immunities Had they proposed protection by prohibitory duties, the Southern States would have taken the alarm, and expressed the same desire for a positive limitation on the powers of Congress, as they did for the *navigation interests* of the Eastern States: a great manufacturing interest to rise up in the States, was in truth, not much thought of in those days. But the *navigation interests* of the Eastern people, were before their eyes. It was this growing interest in the Colonies, of which England was so jealous, and her restrictions on which, no doubt, contributed to the revolution, more than any other cause. These *local* interests we have seen, by a former number, the Southern States consented to be provided for, by a special compromise.

NO. 15.

It appears by the acts of the Convention, that though it was deemed unadvisable to entrust Congress with a power to promote any great local interest of particular States, yet, that it was considered, that there would be a manifest impropriety, in depriving any one State, which might choose to encourage its own Manufactures, of the means of doing so. The usual mode, by which Domestic Manufactures are encouraged, we all know, is by premiums, pecuniary bounties, and *prohibitory* duties; but all other modes are inexpedient and inefficient, when compared with *prohibition*. If Congress could not lay prohibitory duties, except for the general purposes of the Government, and the States could not impose them, to protect Manufactures, one great motive to the Union, would have been defeated, which was, that the States should not, as regarded their internal relation, or their power to regulate their own industry, be in a worse situation than before. Hence, it became necessary, that the States

should not be deprived of the power of laying prohibitory duties for the convenience of their imports or exports, or for the purpose of protecting their own Manufactures. When, therefore, that clause in the Constitution came to be considered, which restricts the States from laying duties on imports or exports, the subject of Manufactures directly came into discussion.

As this clause originally stood in the reported draft of the Constitution, the restriction was, only as to *imposts*, not exports—"No State, without the consent of Congress, shall lay imposts or duties upon imports." By this partial restriction, each State still possessed the power, to encourage its own manufactures, by duties, to prohibit the exportation of its wool, or other raw material. On the 28th of August, a motion was made to extend the prohibition to exports, which was carried; six States to five, a bare majority. The discussion on this article, brought forth LUTHER MARTIN, the deputy from Maryland, who strenuously opposed the article in all its shapes; but he could not succeed. So determined was the Convention, that the power of the States, as to import and export duties, should not be concurrent with that of Congress, and that the General Government should exclusively possess this source of taxation, that instead of softening, it was disposed to make the prohibition more rigorous. On the same day, therefore, an additional restriction, was introduced into the clause, nine States to four, that even with the consent of Congress, imports and exports were not to be taxed by the States, but "for the use of the treasury of the United States." Thus stood the clause in the revised draft of the Constitution, presented to the Convention, on the 12th day of September, five days before its adjournment. On the 13th, an amendment was proposed and carried, "that no State should be restrained from imposing the usual duties on produce, exported from such State, to pay the charges of inspecting that produce." But, on the 15th, a substitute was moved, and after two other motions for amendment, the substitute was put aside, and the clause finally agreed to as follows:—"No State shall, *without the consent of Congress*, lay any imposts or duties on imports or exports, *except what may be absolutely necessary for executing its inspection laws;* and the nett produce of all duties and imposts laid by any State, on imports or exports, shall be *for the use of the Treasury of the United States*, and all such laws, shall be subject to the revision and controul of the Congress."

Were an hundred men, to read this clause in the Constitution, I would venture to say, that ninety and nine for a while, would be ignorant of the true design of its introduction. The question, had over and over again occurred to my mind, what could the Convention intend? Mr. HAMILTON, in his Federalist, is almost silent on the subject. His reason may be conjectured from what is to follow. That the framers of the Constitution, who disputed so much as to the phraseology of this clause, intended something more, than to give the States the power to impose trifling duties to execute their inspection laws for cotton, tobacco, &c. is too evident; because, independently of the power to lay duties for their inspection laws,

which may be done, *without the consent of* Congress *previously* obtained, there is a clear and a distinct provision, that the States may, on applying for, and obtaining such consent, impose import and export duties for *other purposes*. What purposes can these be? Can it be, to give the States now and then, a chance of some little revenue. The clause itself, decidedly gives the answer. The produce of the duties, when laid, is to go into the *National*, and not into a State Treasury. Then, what does it mean? Abstractedly considered, it is inexplicable, and to me, and perhaps to others, would have remained so, had not the subject of domestic manufactures, come into discussion. The design of the clause is now at once seen. A satisfactory explanation is instantly within our reach. It was inserted, for the purpose *of enabling such States as were desirous of protecting their own manufactures*, either by *export* duties on their raw materials, or by *imposts* on foreign fabrics introduced into their limits, TO DO SO, WITH THE CONSENT OF CONGRESS. No other solution is admissible. If this was not the intent of the provision, I defy the Supreme Court or any expositor to explain it. In any other view, it is an *useless* and a *stupid* clause of the Constitution.

It is, however, most fortunate for us, that the debates of the Convention, are at hand, to rescue us from further doubt, or difficulty on the point. Let us hear Mr. MARTIN, bitterly complaining to his own State of the total injustice, in his view, of this clause. "By this same section," says he, "every State is also prohibited from laying any imposts or duties on imports and exports, without the permission of the General Government. It was urged by us, that there *might be* cases, in which it would be proper, *for the purpose of encouraging manufactures*, to lay duties, to prohibit the exportation of raw materials; and even in addition to the duties laid by Congress, on *imports* for the sake of *revenue*, to lay a duty, to *discourage the importation* of particular articles into a State, or to enable the *manufacturer here*, to supply us on as *good terms*, as they could be obtained from a *foreign market*. But the most we could obtain, was, that this power MIGHT BE EXERCISED by the STATES with, and *only* with the consent of Congress, and subject to its control. And so anxious were they, to seize on every shilling of our money for the General Government, that they insisted, *even* the *little* revenue that might thus arise, should not be appropriated, to the use of the respective States where it was collected, but should be paid into the Treasury of the United States; and, accordingly, it is so determined." *(Secret debates, page 71.)*

Thus, we have all our doubts dissipated as to this *otherwise* singular provision in the instrument; and thus too, we have a fresh instance of the wisdom of the Convention. A mode has been provided, by which, at any time, the people of any one State or number of States, may protect their manufactures, without charging the cost of such protection, to the neighbouring States. Indeed, if we reflect upon the previous acts of the Convention, we must confess, that it could not have done otherwise, than to make the provision referred

to. To have confined the import and export duties, to be laid by the States, to the simple purpose of executing their inspection laws, would have been extreme injustice. Congress had previously been prohibited, from promoting manufactures, excepting by patents; and as Congress could not, for this purpose, lay a protecting or prohibitory duty, what would become of the States, desiring to encourage their manufactures, if they also, in no event, could keep foreign fabrics out of their limits, if it was their policy so to do, in order to protect their own. Such a provision then was indispensable, and the qualification, put upon the restraint on the power of the States to lay imposts, was most judicious, both for the States and for Congress. As the clause stands, the manufacturing States, may, at any time, ask for the permission of Congress, to lay duties to protect their fabrics: but, they are properly excluded the power of imposing these duties at pleasure, and to take the proceeds, as under the pretext of protecting their manufactures, they might collect a revenue, or otherwise interfere with the resources of the General Government. But there is an inference to be deduced from this clause which is irresistible—and that is, that had the Convention believed, that in any of the enumerated powers, which it had immediately before conferred on Congress, there was *included a general power to promote Manufactures*, there never would have been held out to the States, that in any event, they could lay an import or export duty, except for the purpose of their inspection laws. On Mr. MARTIN'S urging the necessity that might arise at a future day, for the States to protect their Manufactures—and that a power ought to be at hand for such an emergency, the prompt answer would have been, the General Government is already provided with the power—and the Convention would have erased from the clause the words, "*without the consent of Congress*," and thus have restricted the power to the simple purposes of *inspection*. But the clause remaining with these words, I maintain, is conclusive to shew, that there was no idea, of any *general* power having been given to Congress, over Manufactures.—Nothing but a necessity, which could not have been avoided, could ever have induced the Convention, to consent to the States imposing, in any event, duties on imports. The members of the Convention were nearly unanimous on this point; they were uniformly opposed to any concurrence of authority respecting this fruitful source of revenue. It was early decided, that the ENTIRE Custom-House should belong to the Congress.

The course prescribed by the Constitution, for the protection of Manufactures, being thus plainly marked, Congress is the more inexcusable for usurping the power in question. If, after the duties, which, previous to 1816, had been laid for revenue, and which, at the same time, encouraged Manufactures, it was found that the infant Manufactures of any one State, stood in need of any further protection, the Legislature of that particular State, ought to have applied to Congress, for leave to impose, in all its ports, the same duties on British goods, which are specified in the Tariffs of 1816, 1820, and 1824. To such an application, Congress might have as-

sented, as the duties would still have been paid into the National Treasury; and I am certain, the Southern members of Congress in those three different years, would cheerfully have indulged these folks, and will still indulge them, with a protection in this way, as long as it will not too seriously affect the revenue. Whether Congress will now, or at any time hereafter, give up to the States the least atom of their power over imposts, I know not: But this I do know, that in refusing to give to the States, a chance now and then, of protecting their Manufactures in this way, (if the States choose to ask it,) Congress would not *honestly* execute the trust, reposed in it by the Constitution.—That, however, would not be our look out.

I am not ignorant, of the difficulty that would arise in getting the majority of the people of any one State, New-York for instance, to join in any such application; for, whilst such a scheme would suit the Manufacturers, it would interfere with other important interests: All persons in such a State, connected with commerce, such as merchants and traders, shipwrights, cordwainers, sail-makers, &c. would be seriously injured. The importation of British goods into New-York would be diminished, on account of the high and double duties, and the Custom-Houses of Charleston, and other ports, where only the national duties were to be exacted, would be filled to overflowing, to say nothing of the ruinous effects upon the overgrown commerce of New-York, to be produced in various ways, and particularly by the British taxing their produce, and exempting ours.—But the manufacturers will say, what then are we to do? Are we to have no protection, except we pay for it on these terms? The answer must be the same, as we would give to a man, who complains, that, whilst his neighbour, who carries on like himself, the wholesale trade in dry goods, has always all the retailers of the city dealing with him, he is without a single applicant. For this case, there is no remedy, but to quit the employment, or to bear the disappointment. It would not be just to say to the retailers, that they are to buy where they buy dearest. But to cease with familiar illustrations, there certainly does arise from this view of the subject, a position which is impregnable, to-wit:—If in any one State, or any number of States, in which there is a clamor for protection, there can be such a diversity of opinion or of interest, that the manufacturers, cannot in any one instance, (which I do firmly believe to be the case) succeed in a Legislative application to Congress, for leave to lay imposts, and thus to avail themselves of that article in the Constitution, expressly provided to enable such State or States, to protect their fabrics, it would incontestibly prove, that in such State or States, the MANUFACTURING interest is not the *predominant*, or PARAMOUNT interest. If it were paramount, its influence would prevail. If then, manufactures, be not a paramount interest in any one State, where there is a *cry for protection*, and the promotion of them, would injure *other* interests in such State, fully as important, A FORTIORI the promotion of manufactures, must injure in a greater degree, the interest of States, in which there are *no manufacturers*. It is only on the ground, of its being a *general* interest in the United States, that a National protection can be advocated and maintained. What is not a *general*, or a *paramount* interest in any one State of the Union, cannot, by any process of reasoning, be decided to be a *general* interest of the *twenty-four* States.

This provision of the Convention, to give the States an opportunity, of protecting their own manufactures, is in exact accordance with the immutable principles of justice. To suffer Massachusetts, for instance, to promote the success of her manufacturing establishments, by means of a *National* Tariff, would be neither more nor less, than to give to her, greater advantages, and greater power too, than she could have had, if she had not entered into the Union. If Massachusetts were to separate from the Union to-morrow, and were to decide, that manufactures was a general interest in the State, and ought to be promoted, what would be her course of policy? She would have to do, what all other nations have done before her. She would have to compel her citizens to wear the home made fabrics, by imposing high duties, so as to exclude the rival foreign articles. She could not think of demanding, that we in South-Carolina, who would be independent of her, should wear her fabrics, any more, than that England can demand of France, to use British manufactures. In England, the entire nation is enriched by manufactures, but who is it, that pays the cost and charges, by which the aggregate of British wealth, and prosperity is attained? Do not the English themselves, pay for these great advantages of protection? Upon what principle, is it then, that under a Government, which is not a consolidated one, but a confederacy of States, the Eastern man should not only have the protection, but have it without scarcely any cost to himself. What State is there, that would not rapidly acquire riches, if it could thus lay its neighbours under contribution, to support its various branches of internal industry. If Massachusetts then, will have manufactures, Massachusetts must be content to have them upon the usual terms. Her own citizens must pay the cost, whether it be, *directly*, by *taxes* for *premiums*, or pecuniary *bounties*, or *indirectly*, by a tax upon *consumption* of the home fabric. To suffer any other mode of encouragement, would be, to violate the Constitution, and to license a system of ROBBERY upon the South. If Massachusetts, is not content, to have the full power, to adopt the *same* measures, which she could take, were she *sovereign* and *independent of the whole world*, she has no right to complain. She must not be permitted to tax her neighbours. The interest she desires to have promoted at the expense of the nation, is a LOCAL interest, not half so important, as the Cotton Planting interest of the South, in which there is a far greater capital embarked, than there is in manufactures. Congress cannot promote, the great Cotton Planting interest of South-Carolina, nor can it encourage the manufacturing interest of the North. And why?—Because these are *local* interests of the States, and not the *general* interests of the Union. Congress can lay its imposts for revenue, and if in laying these imposts for revenue, it can at the same time encourage this, or that branch of local or internal indus-

try, giving at one time a little advantage to the Sugar Planters of Louisiana, and at another time, aiding the manufacturers of the North, there is no harm in this. As the impost *must be laid for revenue*, there is no tax here imposed upon one section of the Union, more than upon another. On this principle, manufactures were judiciously encouraged, till 1812, inclusive. Commerce, thereby, was not shackled or interrupted. But, since 1812, all the Tariffs have been gross usurpations of power by Congress.

NO. 16.

I proceed to say something on the subject of those general phrases in the Constitution, which constitute in the hands of the General Government, the great LEVER by which the State Sovereignties are ultimately to be subverted from their foundations. Congress it seems, has power "to lay and collect taxes, duties, imposts and excises, to pay the debts, and provide for the *common defence and general welfare* of the United States." It is from these words, "general welfare," that a power is claimed to open navigation between the States, to dig canals, to construct roads, and from time, to impose Tariffs, to the extent of a total prohibition of the valuable commerce of the Southern States. It is under cover of these words that the Colonization Society, with Judge WASHINGTON at its head, with the sanction of some State Legislatures, and with the prayers of many Societies and Conventions, is to march to the Capitol in December next, and to demand the aid of the Government for our flourishing and favorite Negro Colony at Liberia. It is under these same words, as the present President contends, that Congress can adopt any measure whatever, which it shall judge necessary to promote the general welfare. And also under this exposition is it, that the ultra fanatics and abolitionists of the North contend, that Congress can alter, whenever it pleases, the whole domestic policy of South-Carolina.

In this view of the subject, these words "general welfare" are becoming every day more and more important to the folks, who are now so peaceably raising their cotton and rice, between the *Little Pedee* and the *Savannah*. The question, it must be recollected, is not simply, whether we are to have a foreign commerce. It is not whether we are to have splendid national works, in which we have no interest, executed chiefly at our cost, and with a view to circulate money in the North. It is not whether we are to be taxed without end. It is not whether we are to have our Northern brethren, as our task masters, and to make bricks for them without straw. But the still more interesting question is, whether the institutions of our forefathers, those institutions under which we have been born, and under which all of us, bondmen as well as free, have enjoyed in the whole, as much of happiness as generally falls to the lot of any one nation on earth, are to be preserved according to ancient usage, free from the rude hands of innovators and enthusiasts, and from the molestation or interference of any legislative power on earth but our own? Or whether, like the weak, the dependant, and the unfortunate colonists of the West-Indies, we are to drag on a miserable state of political existence, constantly vibrating between our hopes and our fears, as to what a Congress may do towards us, without any accurate knowledge of our probable fate, and without a hope of successful resistance?

This, my fellow-citizens, is an awful question, but awful as it is, it is a question on which, sooner or later, we must all pass a final judgment.—We deceive ourselves if we think, that there can be any evasion. The time advances and advances apace, when we must either be content to go as supplicants, and prostrate ourselves before the Councils of the nation, soliciting their forbearance and their mercy, or we must there appear as freemen, demanding a recognition of our rights, with a firm and an unalterable resolution to maintain them. There is no middle course:—

Let us examine the grounds upon which the enemies of the republic would impoverish and destroy our happy country. As far as manufactures are implicated, it is immaterial what construction is given to the words "general welfare;" for, if I am correct in the position I took in the two preceding numbers, that Congress is prohibited from giving any protection excepting by patents for new inventions, the power, of course, cannot be claimed under this clause.

No clause in the Constitution, in my view, has been more perverted in its meaning than this. But it is not surprising. When the Supreme Court of the United States solemnly adjudges that the power given to Congress to pass the "*necessary* and proper laws," to execute its enumerated powers, is an *enlargement*, and not a limitation of those powers, (the contrary of which, I have demonstated to be the fact, from the journals of the Convention,) is it to be wondered, that the same mistake, should occur in the interpretation of the clause in question? The term "general welfare," I contend, was inserted in this clause, to confine the appropriating power of Congress to the enumerated objects. Should I fail in my proof, I hope I shall have given as good reasons for my constructions, as those on the opposite side, can for theirs. If I adduce facts, which even render the interpretation either way, as not conclusive, I shall have rendered some service to my country. South-Carolina is not to pay tribute money, or have her domestics insubordinate, under a disputed, and doubtful construction of the Constitution.

When the draft of the Constitution was reported to the Convention, on the 6th of August, it was generally understood, as being in conformity with the outlines agreed upon in the amended resolutions of Mr. RANDOLPH. If the committee did deviate, from the letter or spirit of the outlines so given, it could only be, from misconception of their instructions. It does not, however, appear, that they did in any one instance, misunderstand them. In their enumeration of powers, they were, by their instructions, to provide *inter alia*, a special power for every subject of *general* interest. They did so as well as they could. What escaped their notice, was afterwards provided for, by additional enumerated powers. That this committe ever intended, that the legislation of Congress should extend over any subject, which was not particularly provided for in their enumeration of powers, is contradicted by the important fact, *that they used, in their reported draft, no general phrases*, under which might be concealed a single latent power. The words "common defence," or "general welfare," or any words of similar import, are not to be found in any part of the reported draft of the Constitution, not even in its preamble; and it appears further, that those words are not, up to that date, in any part of the journals, neither in Mr. PINCKNEY's draft, nor in Mr. RANDOLPH's resolutions. In the Constitution reported by the committee of detail, the

taxing clause stood thus: "The Legislature of the United States, shall have the power to lay and collect taxes, duties, imposts and excises." In Mr. PINCKNEY's draft, referred to the committee, the words are the same.

When this clause, on the 16th of August, was in its turn, called up for consideration, a motion was made for a proviso "to restrain Congress from taxing the exports of a State." The consideration of the proviso was postponed, almost unanimously. It was an unnecessary amendment, because there was already amongst the limitations on the power of Congress, the same provision. Be this as it may, we may presume, that the clause required consideration, and that this may have been one reason for its postponement On the 18th, we find this motion, "that a clause or clauses be prepared to *restrain* the Legislature of the United States, from establishing a *perpetual revenue*," the meaning of which I understand to be, that no money should be raised by taxes, unless it should be needed for the common purposes of the government. Here then we perceive, an intention to *limit*, and not to extend the appropriating power of the government. The committee, to whom this proposition was referred, must have understood, that there was a disposition in the Convention, to limit the appropriating power, for on the 22d, they report, that the clause should read—to lay taxes, &c. for the payment of the debts, and *necessary expenses* of the United States, provided, that no law for raising any branch of revenue, except it be specially appropriated for the payment of interest on debts, or loans, shall continue in force more than —— years." This limitation of the committee, it is true, was not finally agreed to; but I introduce it to shew, that there was a jealousy in the Convention, as to the power of raising taxes, without *specifying the purposes*, for which they were intended. It was to guard against useless taxation, which might be followed by waste and extravagance in the public expenditure.

Between the time, however, that the taxing clause was first called up for consideration, to wit, on the 16th, and the time the committee of detail reported as above, on the 22d, Mr. RUTLEDGE, the chairman of that committee, had moved, that "Congress should consider the necessity, and expediency of the debts of the several States, being assumed by Congress," and a committee of eleven was appointed for this purpose. This committee of eleven had reported on the 21st, "that the Legislature shall have power to fulfil the engagements, which had been entered into by Congress, and to discharge as well the debts of the United States, as the *debts* incurred by the several States during the *late* war, *for the common defence and general welfare*." This is the first time (the 21st of August) that the words "*common defence and general welfare*," appear on the journals of the Conventions; and no doubt it was this report, as to a provision for the public debt, which caused the other committee, in their reports on the 22d, to which we have just referred, to propose to add to the taxing clause the words, "to *pay the debts* and necessary expenses of the United States," &c. In this same report, on the 22d of August, was the *specific* power proposed, as a seventeenth enumerated power, (alluded to in a preceding number) to enable Congress to provide for the *general welfare*, &c. which report I considered as made in favour of manufactures, but was never agreed to. This is the second time (the 22d) that the words "general welfare," are mentioned. On the 23d, when the taxing power was again called up, a motion was made to amend it, so as to read, "The

Legislature shall fulfil the engagements, and discharge the debts of the United States, and shall have *the power* to lay and collect taxes, duties, imposts and excises." This motion was carried. On the 25th it was reconsidered, and a motion was made to amend it by saying, "for the payment of the debts, and for defraying the expenses that shall be incurred for the common defence and general welfare;" which motion was lost. Thus the limitation voted for on the 23d remained. But on the 4th, the committee made a report, and amongst other things recommended that the clause should read, "to pay the debts and provide for the common defence and general welfare of the United States;" and it was thus finally agreed to.

If there be one inference clearer than another, from the foregoing statement of facts, it is, that there existed in the Convention a clear intention, not to suffer the appropriating power of the government, to remain subject to the possibly perverted construction, that it was to be indefinite as to PURPOSE, as well as illimitable as to *amount*. Let us recapitulate: The amendment of the 18th was a limitation on the power to tax unnecessarily. It was to provide against raising a revenue which might not be needed. The proposition of the 22d was a severe limitation as to pupose, confining the appropriation to *necessary* expenses. In that of the 23d, the *purpose* is first expressed, to wit, "to fulfil the engagements and discharge the debts;" and then follows the power to tax. Here was a clear limitation again as to *purposes*. On the 25th, the taxes are to be laid to pay "the expenses that shall be incurred for the common defence and general welfare." This again is a limitation as to *purpose*.

If such of the proposed amendments as limit the appropriating power as to its *purposes*, be attentively considered, it will be seen, that they are all more or less objectionable, and therefore were properly rejected by the Convention. For instance—1st. To confine the appropriation to the "*necessary* expenses" of the government, would be too rigorous. Every government must have some latitude of discretion, as to its expenditures for its enumerated, or legitimate objects. 2ndly. To have limited the expenditure to the "engagements and debts of the United States," would have excluded the debts of the old Confederation, and the *assumption* of the debts of the individual States. There existed moreover, another objection to this phraseology. The taxes here, are made the *means* of executing this particular power, whereas the taxing power must be the great means of executing all the powers. 3dly. To have limited the appropriation to the "expenses that shall be incurred for the common defence and general welfare," might possibly imply a doubt, whether Congress ought to lay its taxes prematurely, or before the wants of the Government should be ascertained. These last, are the words in the old Confederation. I do not recollect what the practice was in the old Congress—but I do suspect, that the States were never called upon for their supplies in money, or in flour, &c. until the expenses were ascertained, and the quota of each State adjusted. However, be the objection to this last amendment what I have stated or not, we must all agree, that if the words, now used in the Article, be words, shewing the *restrictive sense of the Convention*, as to the *construction* of the appropriating power, the clause is better expressed than it would have been, under any of the amendments. As it now reads, it gives Congress the necessary power to lay its taxes at its

pleasure, by anticipation or otherwise—but judiciously confines the proceeds, to the *general* purposes, for which the Government was established, the *public debt* being provided for, by a separate article.

Those who reject this rational construction, that the words "general welfare" were intended to restrict the appropriating power of Congress, to the enumerated objects, will find themselves reduced to the awkward dilemma, of maintaining a very absurd position, to wit—that when a power is given to raise money, without any expression of limits, as to *amount*, or as to *purpose*, it is an *augmentation* of such a power, as soon as the purposes of the appropriation are expressed. The case before us is precisely of this kind.—Mr. PINCKNEY proposed, by his draft, to give Congress a power "to raise taxes, duties, impost and excises." The Committee report a similar power—This power, though apparently illimitable, as to *purpose* or *amount*, was not so in fact. Under a general power to raise taxes, Congress can no more appropriate money, to any purpose foreign to the wants of the Government, than any trustee who has an unlimited power to raise money by loans or otherwise, can legally appropriate the money when borrowed, to any other than the purposes of the trust which are expressed in the deed which confers the money raising power.

But, let us give the opposite argument every advantage.—Here is a power reported by the Committee, which is indefinite every way. It must occur to every mind, that to make any addition to a power to raise money, which already is so expressed, as *possibly* to be construed to be unlimited as to the *purpose*, as well as to the amount of the appropriation, is in fact to *limit that power*. That which apparently is already unlimited, needs no additional words to strengthen it; every amendment is likely to weaken it considerably. The history of the clause in question, shews this to be the case. In all the trials to which it was exposed, it was always weakened—sometimes more, sometimes less, according to the proposed amendments. As the clause originally stood, who can doubt, but that Congress might, under its phraseology, have pretended to more power than it now claims—though, substantially, there is no difference between the two clauses. Under such an unlimited power as the words convey, the vote for the relief of the distressed emigrants from St. Domingo, and that of 100,000 dollars to the inhabitants of Carracas, might have been said to be justified. When this appropriation was voted, it was unconstitutional, because it was not for the general welfare of the citizens of the United States, to which the restriction confines the appropriations of the Government. Under the clause too, as it originally stood, a million of dollars might, under some colour of authority, be given to the Greeks; as much more to the South-American Patriots; millions might be voted to extend Christianity in heathen countries, or to civilize that quarter of the globe which is becoming so very interesting to an American Congress—the continent of Africa. But who would now contend, that we could give money to the Greeks, or to the South-American Patriots. And how is it, that we cannot be thus generous, when there is no express prohibition in the Constitution—The answer is a plain one. It is the additional words "general welfare" to the original clause. If then it is the amendment to the original taxing clause, that prevents Congress from now doing, what it might have had a pretext to do, before such an amendment was made—that amendment, must of necessity be a limitation on the appropriating power. It is the limitation

as to the purposes of appropriation, which the words "general welfare" have affixed to a power, which, from its phraseology, might have been assumed to be unlimited, that restricts Congress to such appropriations only as can be referred to the common defence and general welfare of the States. If, then, the words constitute a limitation in this sense, they cannot enlarge the appropriating power. What is intended as, and operates as a limitation, cannot be construed into an additional or a new power.

The words "general welfare," were in truth added to the clause, not because the members of the Convention believed, that, without such a clause, the money appropriating power would in strictness and in truth, be without limits as to the *purposes* for which money might be voted away. They could not have thought so, for there were amongst them too many sound lawyers. They could not believe, that the words conferred a right to give away money except for national purposes. The words were inserted, *ex abundante cautela*. The same extreme caution here prevailed, which influenced them to give a power to Congress to pass the necessary laws to execute its powers, and which also induced them to give as substantive powers, those which were incidental to the execution of other powers. There was a fear, that the clause would be liable to misconstruction, if some words were not added to it, to shew the restricted sense in which they would have it considered. The journals of the Convention decidedly shew this. Had these words not been inserted, to a certainty, large sums of money, or frigates, would have been voted to the Greeks a few years ago, when there was such an enthusiasm on the subject amongst the influential members of Congress. And, to a certainty also, pecuniary bounties and premiums would, ere this, have been voted away by Congress, to encourage agriculture, trade, and manufactures; and even money might have been voted for State purposes. As the clause now stands, no appropriation can be justified, excepting it be for the national objects included in the enumeration of powers.

NO. 17.

Mr. M'DUFFIE, who, in *his* exposition, of the general phrases in the Constitution, agrees with ALEXANDER HAMILTON, and who, in the debate in 1824, has gone so very *far* in his ideas, of the power of the Government, as to internal improvements, seemed to regard it as a matter of considerable triumph, when some of his adversaries in the debate, had incautiously contended for a principle, which I agree could not be maintained, and which I regret was ever advocated.—He thanked them for the admission, that the words, "general welfare," were intended to *limit* a power, which, otherwise, would have been *illimitable* without them, because he thought, it led to the irresistible conclusion, that the discretion of the National Legislature was not to be restricted within any bounds, short of the "common defence and general welfare."

Mr. M'DUFFIE's argument in support of this doctrine, is so excessively refined, that it is always unsafe for an antagonist, who is not his

compeer in metaphysics, to enter the field of controversy with him. The danger is, that he may be blown "sky high," from the ground that he occupies. Like the Chief Justice of the United States, he so states his propositions, that they seem to be almost self-evident. In an instant, our previous impressions vanish, and for a while, we acquiesce, without knowing why or wherefore, in doctrines, which our mature judgment had always regarded as unsound. The promptness too, with which Mr. M'DUFFIE seizes an advantage, incautiously given him by his adversary, and the dexterity with which he manages his subsequent movements, is most remarkable. It is the novelty of his plan of attack, and the boldness with which he pushes forward his game, that gives him his superiority in debate. His speech on internal improvements, is a master piece of the powers of reasoning. It is by far the greatest effort which was made in Congress, during that discussion, and, it therefore is not surprising, that this speech should have been so long considered, as settling the question in favour of the power of Congress to appropriate money for roads and canals. But Mr. M'DUFFIE's doctrines, like those of the Supreme Court, have been orthodox, because they never have been thoroughly examined. They were promulgated at a period, when it was deemed a kind of heresy, not to fall into the general views of our politicians at Washington, as to the character which our Government ought to assume. It was to encourage a selfish and sectional feeling, to think of differing from men, who, so far from recollecting, that the General Government was designed to be a Government altogether external in its operations, conceived the enlarged and brilliant scheme, of making it a most splendid edifice, *within* and *without*, as calculated to attract notice from its ornaments, as well as its utility.

Had Mr. M'DUFFIE's antagonists joined issue with him on proper pleadings, they might have insured for themselves a successful competition: but, as it was, they were the weak in the hands of the strong. They did not meet him on the true BATTLE-GROUND, or they might have wounded this *Achilles* in the debate, in more places than one. The campaign was badly conducted, both by his friends and his adversaries. Whilst his colleague, Mr. CLAY, was employed in contending, that the power over Internal Improvements, might justly be referred to the power "of regulating commerce," and Mr. M'LANE supported the construction, that to "*facilitate*" commerce, was substantially to *regulate* it: Whilst some would deduce the power in question, as a consequence from the *right to make war*, and others, from the "right to establish Post Roads;" whilst in fact, all his colleagues were contending, that Congress could make roads, and exercise its sovereignty in this way legitimately, and whilst they were all occupying positions, from which they could easily be dislodged: Mr. ARCHER, from Virginia, on the other side, instead of contending for the position taken in the preceding number, that the words "common defence and general welfare," were declaratory, and inserted from extreme caution, rather to shew the restrictive sense in which the Convention would have the taxing

power considered, than from any doubt, that in fairness, any power could be claimed to appropriate money, except for the enumerated objects, most unfortunately admits, that if the words had been omitted, the taxing power would have been *unlimited* in every way.—The eagle eye of Mr. M'DUFFIE, who, ere this, had not made a single movement to the right or to the left, perceives the opening in the enemy's line, and it is at this critical moment, that he advances with the whole force of his mighty intellect, and occupies a new position, only hinted at by his prototype, ALEXANDER HAMILTON, presenting himself in such views, as to strike his friends and his adversaries with amazement, and with consternation. "As the power under consideration, would have had *no limit* without the words "common defence and general welfare," it *results of necessity*," says Mr. M'DUFFIE, "that we must look to *these words alone*, for the limitation."—He therefore sets out with the proposition, that the discretion of the Legislature is *within* its bounds, as long as its appropriations are for the *general welfare;* and, that he may not be in the difficulties of his colleagues, who, if they should fail to refer the exercise of sovereign power contended for, to some or other of the enumerated objects, must surrender at discretion, he carefully disclaims all pretensions to *construct* roads and canals, as an *exercise of sovereignty:* As a sovereign power, he considers the appropriating power as *ending in itself*. When the money is raised and appropriated, sovereignty, he says, ceases; and whatever else is to be effected, if it cannot be done by the agency of money *merely*, it cannot be done at all. If the aid of any sovereign power be at all necessary, to effect the object to which the money is to be applied, he admits, that in such case, the appropriation cannot be made, without such power is found amongst the enumerated objects.

Mr. M'DUFFIE accordingly maintains, that the *spending* of the money, after it is appropriated by law, even if it be an hundred million of dollars, on roads to be opened with the consent of States, is no more an act of sovereignty, than the purchase of a horse, for a messenger of either house of Congress, would be an act of sovereignty, or the making of a road through a State by an individual, with the consent of the Legislature, would make that individual a sovereign.

Now, to a man of plain sense, it would seem to be a matter of some consequence, as between a State and the United States, that when Congress opens a road through such a State, with its consent, it does not thereby exercise sovereignty, in that particular State, because no State would permit its sovereignty to be interfered with; but really and truly, to the people of the United States at large, it can make no difference, if a hundred million of dollars is to be expended, whether the expenditure of this vast treasure on roads, is, technically speaking, an act of sovereignty or not, because, if the appropriation can be constitutionally made, the money must come out of their pockets, if it be forthcoming at all. But to spend a hundred millions, under a power to appropriate it for the very purpose for which it is actually expended, is, at any rate, to possess a prodigious influence, even if it be not sovereignty. Mr. M'DUF-

FIE's mode of stating the question, is therefore, most imposing; and those who desire to combat him on the ground of metaphysics, or who would not yield to him this position, that to effect any object, however important, by money merely, even if it be an hundred millions, is not to exercise sovereignty, must expect to be *hors du combat*. We must meet him then on other grounds.

Let us say, that he is correct, that to give a million of dollars towards a canal in a State, and with the consent of its Legislature, is not an exercise of sovereign power; and let us further admit his grand position, that the appropriating power has no limits, but the common defence and general welfare. There is yet more than one sophism in his entire argument. The first sophism consists in his supposing, that an unlimited power to raise money for the general welfare, is honestly executed, if the money be applied to the *purposes* of the Government, and not to local or State purposes. The only answer to this argument which I have met with, is that given by Mr. LEGARE, in his speech on Mr. PRIOLEAU's resolutions, in our State Legislature, in 1825. Mr. LEGARE demonstrates, that a Government of limited powers, has no greater right to divert the funds of the Government, beyond the enumerated objects, because it has an unlimited power to appropriate for the general welfare, than a trustee who has an unlimited power by deed, to raise money on the trust estate, can divert those funds to any other purposes of the estate, than are expressed in the different trusts. Every lawyer knows, that a trustee may, under a general power, in a trust deed for that purpose, sell part of the trust estate, and he may apply the proceeds, to purposes which he may deem generally beneficial to the estate. In such a case, though the legality of the sale, and the appropriations could not be disturbed, yet, in equity, the trustee would be adjudged to have departed from his duty, as having abused the trust, and would be compelled to refund. So is it with the Government of the United States. It is a Government of sovereign, but of limited powers. These powers are conferred on it, to enable it to perform certain trusts. These trusts are defined with the utmost precision, in an instrument called the Constitution, but which is neither more nor less, than the great Trust Deed between the States and the United States. The General Government then, is a trustee, and the power which it receives from the States, is a power coupled with a trust. Would any lawyer say, that in construing the power of the Government, unaided by other lights to guide us, all the rules for construing powers, coupled with a trust, should be put aside; those rules, which are not merely the rules of common law, but of common sense. I should hope not. Is it reconcileable with common sense, that a power given by deed, by A. to B. to mortgage the estate, and to apply the proceeds to the purposes of the trust estate, could authorize the appropriation to purposes, not specified or referable to any of the numerous trusts, with which the deed may abound. I should say not. Then, upon what principle, can a Government, instituted to effect certain national objects, which are clearly defined, appropriate the general means, placed in its hands, for a purpose, which it is admitted on the opposite side, has no relation to any of those objects. Such a Government may think proper to assume the principle, that the Government being National, it may effect objects which are National, though not enumerated. What is this but to say, that when the Convention precisely defined the purposes, for which we should be National, the Congress shall undertake to say, we shall also be National for other purposes.

To tax the people, that money may be appropriated beyond the enumerated objects, is a constitutional exercise of power, because the taxing power is unlimited. So is the sale of part of the estate by a trustee legal, because a power is given for that purpose. In either case, the money once appropriated, must remain so appropriated. But equity will adjudge the misapplication of the money, as an illegal act. It is an abuse of the trust. It would be no answer in Mr. M'DUFFIE, to repeat what he has already said, "that construe the Constitution as we will, our principal security must depend upon the discretion of Congress, and that we are not more exposed, by Congress appropriating its *money* at its discretion, under the taxing power, than if it were wastefully expended, with reference to any of the enumerated objects, where the discretion is admitted to be unlimited." The difference, however, is essential. A wasteful expenditure of money, in building fortifications, and raising armies and navies, when there may be no need of them, is not an unconstitutional act, any more than it is an illegal act, for a trustee, who is appointed to take care of an infant, to allow him so liberally, as to enable him to run through his estate, and to come to ruin before he comes of age. In these cases, there is no relief, because it is money expended upon the objects of the trust, under an unlimited discretion so to do. The manner of executing the trust, is here matter of discretion. But very different is the case, where the discretion claimed to be exercised, is not as to the *quantity* of money, which is to be applied to a specific purpose, demanding such an application of money, but to the *purpose* itself of the application.

Congress cannot promote objects which are not enumerated, even where money alone can effect them. It is repugnant to the whole plan and spirit of the Constitution Is there no distinction between a discretion as to the *quantity* of means, or money, necessary to execute a particular trust, and a discretion as to the *subject* or *trust*, upon which money is to operate? The distinction, in my mind, is most manifest. The Constitution affords many examples of the one, but it furnishes none of the other. For instance, Congress can raise money to any amount, by taxes or by loans, whether the public exigencies require it or not. It can, in time of peace, as well as of war, raise troops, and build and equip frigates, without number.—It can coin money without end.—It can appoint seven or seventy Judges of the Supreme Court.—It may ordain and establish a hundred new inferior tribunals of Justice. All this Congress can do. But in doing all these things, it is still strictly within its own sphere. It may do wrong, but it does so at the expense of *the people* at large, considered as *its constituents*. It cannot possibly *impinge* upon, or interfere with,

or, affect in any manner, the sovereignty or concerns of the *States*, either directly or indirectly. Not only its *powers* are exercised within due bounds, and directed to their proper objects, but its *influence* too. Members of Congress are not forming schemes and projects to meddle with the concerns, and disturb the peace of their neighbours, *indirectly*, when they dare not do so directly. In short, the General Government, in thus exercising its discretion, remains what it was created for, and does not become a pragmatical, offensive, and dangerous power, the object of alarm and jealousy to the States. Its discretion is the only rule of its conduct. Such a discretion is indispensable to it, and it has it by the terms of the grant. But who can point to any clause in the Constitution, which gives the least discretion whatever, as to the SUBJECT, upon which the national legislation is to operate. The bare idea of the Government, being a Government of *limited powers of legislation*, one would suppose, would be a sufficient discouragement to any one, from undertaking so arduous a task. If we look at the instrument, the objects or subjects of legislation, are all enumerated. The very specification of the *objects*, on which the *legislative power* is to operate, *ex vi termini*, excludes the idea of discretion, as to any object, not included in such specifiation. If there is to be discretion, the very object of the enumeration is defeated. It was wisely ordained by the Convention, that the subjects for the legislative powers of Congress, should be fixed and settled, and that there should be no discretion in Congress, as to what subjects it should, or should not legislate on. For what is discretion? According to the opinion of one of the greatest men, who ever sat on the English Bench, "Discretion is the law of TYRANTS." In the *best* of men, it is sometimes folly, oftentimes caprice. In the *worst*, it is every vice and crime, of which human nature is capable."

But our *Achilles* must not be permitted to drag us along in triumph, as he would a vanquished Hector, by saying, that amongst the specified subjects for legislation, there is one, to wit, the appropriating power, in which, from its peculiar phraseology, a discretion as to the *objects*, (as well as to the amount) is implied, for that would be to say, that whilst the whole instrument clearly manifests a design, and *studiously perfects* a scheme, to exclude all subjects for legislation, which are not particularly specified, giving to Congress the few *defined*, and reserving to the State the numerous undefined powers of legislation, yet, that by certain *doubtful* and *indefinite* general phrases, the like of which, are to be found in the most common power of attorney, a power of appropriating money shall be claimed by *implication*, which, in its exercise, shall embrace almost every object of human legislation. What is this, but to say, in the language of Mr. LEGARE, "that whilst *all other* means, necessary and proper for executing the enumerated powers of the Government, are limited by the nature of those powers, the levying and disposing of money, the UNIVERSAL means, is to be restrained by no other condition, than that it should not be thrown into the sea, or bestowed on individuals who have no claim on the public."

Let us now show where the fallacy of this part of Mr. M'DUFFIE's argument consists.

NO. 18.

The fallacy of Mr. M'DUFFIE's argument in this particular, lies, in his supposing, that the promotion of the "common defence and general welfare" by money *merely*, is the *end* for which the whole first clause was inserted. If there was no discretion, he thinks, in Congress, as to the appropriation of its revenues beyond the specific powers, "there would have been *no necessity* for an express delegation of power, to raise and appropriate money; because every one of the enumerated powers would carry with it as an *incident*, the power of appropriating the money necessary to its execution," and that, adds he, "can hardly be a just construction which would thus convert the leading clause of the Constitution, into mere surplusage."

In this last position, we perfectly coincide. The construction, which would cause any one of the enumerated powers in the instrument to be mere surplusage, I agree, must be faulty. It is precisely on this principle of reasoning, that I have protested against the decision of the Supreme Court in *M'Culloch* vs *The State of Maryland;* for I have shewn, in my eleventh number, that not one, but nearly a dozen of clauses in the Constitution, must be rank surplusage, if the position taken by the Court in that case, be a sound one.

But whilst we so perfectly agree in a joint protestation against a rule of interpretation so unsound, yet I must now turn aside, and separately protest against our own statesman, for the unsound inference which he has drawn, to wit, that had the intention been, to limit the appropriations within the enumerated powers, the necessity of an express delegation of power to raise money, would have been superseded. With such an inference as this, it is not be wondered, that Mr. M'DUFFIE should fall into a snare. Mr. M'DUFFIE is now to be informed, that so far from the *general* power to tax, being inserted for the special purpose of enabling Congress to appropriate its revenues beyond the enumerated objects, the clause stood at the head of the enumerated powers in Mr. PINCKNEY's draft, submitted to the Convention as soon as it was organized for business, and it stood also in the reported draft of the Constitution, long before the general phrases were thought of or suggested. The words "common defence and general welfare" were not added as an amendment to the clause, until the 4th of September; and then, as I already have stated in my sixteenth number, with a view to express, the *sense* of the Convention, that the appropriating power was to be *limited to the enumerated objects.* The taxing clause, was a clause, which the Convention would have retained above all other clauses in the instrument, and under every variety of aspect, of which its intentions might possibly be supposed to be susceptible. The taxing power was the principle, which was to give life, and health, and vigour to the new Government. It was the want of this vital principle, which caused the old Congress to possess an huge, but yet an useless mass of powers. The idea is perfectly inadmissible in any shape, that the Convention, with so much experience before its eyes, of the embarrassments which had been felt, for the want of this active and living power to sustain the fabric of the Confederation, would have omitted to provide by an express grant, for the most paramount of all the powers which can be conferred by a people on its rulers, and have left the new Government to claim the money raising power, by *implication* of law.

There is yet another reason, why in the enumeration of powers, such a clause could not be dispensed with—The States were about to part with a considerable portion of their sovereignty, and confer it on a Government, which, for certain purposes, was designed to be supreme. To avoid a clashing, or repugnance of authority in laying and collecting their respective revenues, it was most essential to state the subjects of taxation over which the General Government should possess authority. The taxing power, therefore, became of the utmost consequence; it was a subject which was uppermost in the minds of the members—and it was a subject too, which did not admit of very easy arrangement. The Convention had to choose between two modes; *one* of which was, to *separate* the subjects of taxation, so as to give some to the Union, and the remainder to the States; whilst the *other* plan proposed, was not to separate the objects of Revenue, but to give the States *concurrent* jurisdiction, in general, in the article of taxation. Mr. HAMILTON in his Federalist (No. 35) justifies the position finally taken by the Convention, "that a CONCURRENT jurisdiction in the article of taxation, was the only admissible substitute, for an *entire* subordination, in respect to this branch of power, of State authority to *that* of the Union."

We now perceive the indispensable necessity of the taxing clause, a clause so judiciously constructed, that whilst under its phraseology, no exclusive grant of sovereignty over subjects of revenue can possibly be claimed by Congress—there is at the same time a reservation of State sovereignty, under that NEGATIVE PREGNANT in the Constitution—to wit: the *restriction on the power of the States* to lay duties on imports, exports and tonnage. Does not Mr. M'DUFFIE see, that a clause, which according to Mr. HAMILTON, has the "merit of reconciling, an indefinite Constitutional power of taxation in the Federal Government, with an adequate and independent power in the States to provide for their own necessities," is amongst the most important clauses in the Constitution, and that it justly merits the position it now occupies, to wit—at the head of all the other powers. Must he not confess his oversight, when he did not perceive, that the taxing power was indispensable, as the great sovereign means of executing al the other powers, and that he was greatly in error, when he imagined, that had the intention been, to apply the proceeds of the taxes to the enumerated powers, "there would have been NO NECESSITY, for an *express* delegation of power, to raise and appropriate money." Had Mr. M'DUFFIE not indulged in the Utopian scheme, that a fundamental *dissimilarity* of interests between twenty four States, embracing a portion of the globe larger than Europe, and differing so much in climate, soil, and productions, and in their institutions and their laws, could ever be altered or destroyed; but have contemplated all the schemes of internal improvement, as all rational men do, merely as calculated to add influence to the Supreme Government, and to take it from the subordinate sovereignty, and thus finally to merge the one into the other; had he looked into the Constitution, not with the visionary eye of an ardent enthusiast, for a splendid Government, but with that of the calm and philosophical statesman, he would have known, that it is a work so admirably contrived, as to bear upon its very face and front, the irrefragable evidence, that its whole scheme and design is opposed to *constructive* powers—that the giving away little *odd parcels* of power, which were the incidents to other powers be-

fore given, was purposely, to impress upon the minds of future generations, that nothing was to be claimed which was not given; and from this he would have learnt what I hope I have established to the satisfaction of all; to wit, that the taxing power was given, not as *he* believes, to accomplish the *particular end* of *spending* money towards the common defence and general welfare, beyond the enumerated objects, at the *discretion* of Congress; but that it was, of necessity, given for other and higher purposes, to wit, the accomplishment of the enumerated objects, for which the Government was instituted.

The fallacy of Mr M'DUFFIE's argument being thus shewn, I pass over those observations of his, in which he would shew, that if his view of the appropriating power of the Government be not correct, every Congress has been guilty of habitual violation of the Constitution. No argument founded on precedents can have weight, where the question at issue is, whether the Government has, or has not usurped its powers. Mr. M'DUFFIE cannot seriously believe, that in the instances which he has cited, of the appropriations to the St. Domingo sufferers, under Gen. WASHINGTON's administration, and of that to the inhabitants of Carracas under Mr. MADISON's, there was an application of money to the "general welfare" of the people of the United States. These were remarkable instances, of the triumph of generous feelings, over sober legislative caution. But there is an argument, drawn from the precedent in the case of the purchase of Louisiana by Mr. JEFFERSON, which does merit a particular reply.

Mr. M'DUFFIE would here exultingly ride over his opponents, by supposing them to take a ground, which, in my view is wholly indefensible.—"It will be said," says he, "that the purchase of Louisiana, was made by virtue of the Executive power to make treaties, and what follows? That there is an unlimited power in the Executive Government, not only to authorize Congress to appropriate money, but to impose upon it all the obligation, which can grow out of the treaty, to make the appropriation."—This, Mr. M'DUFFIE triumphantly exclaims "puts an end to the argument, which limits the power of appropriating money to the other *specific* grants to Congress embraced in the enumeration of its powers;" for, says he, "it would be an extraordinary supposition, that the framers of the Constitution intended to limit, by the most jealous restrictions, the power of the popular branch of the Government, in selecting the objects calculated to promote the general welfare, and at the same time, to vest in the Executive Government, the most unlimited discretion on the same subject."

But the whole of this is a fallacy. Mr. M'DUFFIE here makes up a "man of *straw*," that he might tear him into pieces. Who would contend, that every treaty made by the President, and ratified by the Senate, is obligatory upon the House of Representatives, or upon the States, or the people. A treaty stands upon no better footing than a law of Congress. In either case, it is only the "Supreme law of the Land," when made "in pursuance of the Constitution." If the President and Senate ratify a treaty, in which there are stipulations, which violate any express article in the Constitution, Mr. M'DUFFIE ought to know, that such a treaty would not be binding. Suppose a treaty to be made in which the United States are pledged to an *alliance* with England or France, *offensive* and *defensive*, such a treaty would be void, because it would enable the Exe-

cutive, and the Senate to put the United States at war with a foreign power, when it is Congress alone in which the power is vested, "to declare war." Many cases might be put, where not only express articles of the Constitution might be violated, under such a construction as this, but certain unalienable, though undefined rights of the States may be impaired and surrendered. This was clearly illustrated some years ago, in a pamphlet called "*Caroliniensis*" In the debates on Mr. JAY's treaty, a treaty in which it was not pretended, that there was any violation of the Constitution, it was even there doubted, whether the House of Representatives was bound to carry it into effect. The purchase of Louisiana, is not then to be justified, on the ground of its being made by virtue of the Executive power to make treaties. The President and Senate have the unquestionable power to make treaties, as far as those treaties relate to subjects, within the scope of the enumerated objects, for which the General Government was established, but no farther. They have no Constitutional right, to negociate to purchase territory for the United States, as territory *merely*.

Because Louisiana was purchased by Mr. JEFFERSON, Mr. M'DUFFIE concludes, that the purchase was justified, under his favourite doctrine, of "the power to appropriate money for the general welfare, as money merely." I differ totally from Mr. M'DUFFIE, since the purchase of this Territory, is to be defended on the proper, and the only ground of its being a *war* measure—most decidedly a war measure. I can well recollect the causes which led to the treaty of cession: A right of deposit was denied us at New-Orleans, by the Spanish authorities, and there arose from this aggression, such an excitement throughout the Western country, in consequence of this violation of subsisting treaties, that it became necessary, that the Government should adopt immediate measures of negociation, or war. There existed a powerful party in Congress, who were for taking New-Orleans by force, at the head of which were many distinguished *members*, amongst whom was Mr. Ross, from Pittsburg. In this critical posture of affairs, when war or submission was unavoidable, Mr. JEFFERSON, whose policy was that of peace, conceived the sublime project of purchasing it, so as to avoid hostilities. But Spain, in the mean time, transferred the Province to France, and Mr. JEFFERSON being still unwilling to have a collision with BONAPARTE, and being given to understand, that it might be purchased, the purchase was accordingly made. Had we gone to war, and acquired Louisiana by *conquest*, and retained it after a treaty of peace, no one would have doubted our right to hold it, nor can it be denied, but that it would have cost us some blood, and the expenditure of treasure fully equivalent to the purchase money. It would be refining too much to say, that when we are on the eve of war with a neighbouring power, and negociations are entered into, and on the one side a *cession of territory* takes place, and an *equivalent* is stipulated on the other, that there is any substantial difference between such a case, and that, where, after actual war, the same treaty is made. I conceive the money expended for Louisiana, as much applied to a purpose strictly national, both in its character and its consequences, as if it had been invested in the armies, or fleets, or other warlike preparations, which would have been indispensably requisite, had not the cession taken place. Instead of its being a cession, in a treaty of peace, *after* an expensive war, it was a treaty *before*, and IN SUBSTITUTION of WAR. It was a measure having a direct and natural relation to war. It was then substantially A WAR measure. It was clearly within the enumerated objects in the Constitution, and therefore Constitutional. I will close this part of my examination of Mr. M'DUFFIE's doctrines, by inserting an extract from Mr. MADISON's celebrated report of 1799, which is so much better than any thing I can urge to the same point, that, perhaps, I merit reproach for not inserting it earlier. Says Mr. MADISON, "Whether the phrases in question be construed to authorize every measure relating to the common defence or general welfare as contended by some, or every measure only in which there might be *an application of money* as suggested *by others, the effect must substantially be the same*, in destroying the import and force of the phrases in the Constitution. For it is evident, that there is not a single power whatever which may not have some reference to the common defence and general welfare; nor a power of any magnitude, which in its exercise, does not INVOKE or ADMIT an application of money. The Government, therefore, which possesses power, in either *one* or the *other* of these extents, is a Government WITHOUT THE LIMITATIONS, formed *by* a particular ENUMERATION of powers, and consequently the meaning and effect of this particular enumeration is destroyed by the exposition given to these general phrases.—The true and fair construction of this expression, both in the *original* and *existing* federal compacts, appears to the committee too obvious to be mistaken. In *both*, the Congress is authorized to provide money for the common defence, and general welfare. In *both*, is subjoined to this authority, an enumeration of the cases, to which their power shall extend. Money cannot be applied to the general welfare, otherwise than by an application of it, to *some particular measure* conducive to the general welfare. Whenever, therefore, money has been applied to a particular measure, a question arises, whether the particular measure, be within the enumerated authorities vested in Congress. If it be, the money requisite for it may be applied to it. If it be not, no such application can be made. This fair and obvious interpretation coincides with, and is enforced by the clause in the Constitution, which declares '*that no money shall be drawn from the Treasury, but in consequence of appropriations by law.*' An appropriation of money to the *general welfare*, would be deemed rather A MOCKERY, than an OBSERVANCE of this Constitutional injunction."

NO. 19.

Let us now meet Mr. M'DUFFIE on the true ground, upon which this controversy must finally be decided. The taxing clause, it is said, gives the power to Congress, to appropriate its revenues at its discretion, "to provide for the common defence, and *general welfare* of the United States." Be it so. The expenditures of the Government must still be applied to *national* purposes, and to no other. It cannot be pretended, that the clause, as it is now expressed, means either more or less than this. Indeed, Mr. M'DUFFIE's reasoning completely establishes this point. But here the question obtrudes itself upon us. What shall we call a *national* purpose? for until we can arrive at some precise definition of *nationality*, it will be in vain to carry on the contest. I will, therefore, give my view as to what constitutes a purpose to be *national* in its *character*, as distinguished

from one which is *local*, and I hope to sustain *my* definition, upon the most solid of all grounds, the grounds of the Constitution itself.

We must never forget, that there is a distinction between the term "national," as it may be used in *general*, and the sense in which it must be understood, with reference to *American* affairs. Were all the State sovereignties abolished, and the people of the United States under one consolidated Government, there could not possibly be a difference of opinion, as to what is meant by the term, "the *general welfare* of the United States." But it is, because we present to the world, an *anomaly* in politics and in civil government, that the whole difficulty arises. We understand terms, in the sense, in which from time immemorial, we have been accustomed to use them, forgetting that, however correctly they may be applied in such a sense, to Governments in general, yet, that they can have no influence as regards a country, where has been introduced, an order of political institutions, totally distinct from any thing that ever did, or probably ever will occur again, in the history of the world. In England therefore, or in France, the term "national," is correctly understood to be synonimous with the words "*public*" or "*general*." *There*, any undertaking by the supreme authority, is called a national undertaking, and any money applied to *public* purposes, by the same authority, consitutes the appropriation to be "for the general welfare." The general welfare of the British Isles, is the *national* welfare of Great Britain, for, let the *public* acts of the Imperial Parliament, be what they may, they operate upon the English, Irish and Scotch, as one entire people, and are properly regarded, and felt by them, as national acts.

But when we come to speak of *American* affairs, where the *same* people are partly governed as *one* entire nation, and partly, in *twenty-four* separate sovereignties or nations, terms, which hitherto have received an undisputed import, now begin not to be so definite, or so easily understood. To give a character of nationality to a measure in America, something *more* is requisite, than would suffice in England. To be *general*, or *public* as to its *effects*, throughout the United States, and to proceed from the *supreme authority*, the Congress, is not of itself, sufficient. It must also be adopted by that authority, within the *sphere of its own prescribed powers*. If it be not done in the exercise of its lawful sovereignty, however the particular measure may serve to promote the general welfare of the people, yet, in strictness and in truth, it is not a measure national in its character. It is an act of usurped authority, operating *beneficially* upon the great mass of the people; and *so far*, is a measure for the public and *general* welfare; a case which sometimes occurs. A Despot may be so kind, and impartial to all his subjects, as to render his Government, a paternal and an happy one.

The only mode by which we are permitted to test the character of any measure, as to *nationality*, is to bring it to the standard, provided by the *people* themselves. That standard is the Constitution To this, and this alone, we must all come, for a DESCRIPTION, of the objects and measures, which are national. It is in this great

deed of covenant, that are expressed, the sole purposes, for which we became ONE ENTIRE nation, and no judiciary tribunal on earth, by any ingenuity of construction, can *lawfully* decide, that the people of these States, are an entire nation, for any *other* objects, than the *deed itself* specifies. If any one object, can be deemed a national object, which is not there expressed, any other may be equally deemed to be national, and the deed itself, becomes a piece of useless parchment. To abandon the description of the objects of the Federal Government, as set forth in the Constitution, and to take up any system of construction, and thence to deduce objects, and to call them national, is neither more nor less, than to make us a nation, *not* for the purposes agreed upon, but for any, and every purpose, which human ingenuity can suggest; for who can affix limits to the imaginations of men? It is to be set adrift, on a perilous and boundless ocean, without a chart or a compass.

We are now making some progress towards a sensible, and a correct definition of nationality. A measure to be national, must then have a reference to the *expressed* purposes, for which the United States Government was created as a Supreme Government. If there be in the State Legislatures, ANY CONCURRENCE of jurisdiction, or authority over any one of the objects, to promote which, Congress has *power to legislate*, THAT object cannot be a *national* object. To constitute any one object of civil government, in these States, to be national, it is indispensably necessary, that it be an object, to promote which, the States can no more exercise lawful authority, than could France or England. The MERE fact of the United States Government not being supreme as to that object, by the terms of the grant, DECIDES IT TO BE LOCAL. It would be a manifest absurdity to maintain, that the same people, could desire to exist as ONE nation, for an *especial* or a designated object, and at the same time, to exist as TWENTY-FOUR distinct nations, for the *self-same* object.

I hope I am now fully understood. EVERY THING is national in its character, over which, by the terms of the Constitution, the United States Government can exercise *exclusive* sovereignty; and NOTHING is national, which the States can *legitimately* make the subject of their legislation. It is impossible that any definition, more accurate than this, can be given of nationality. It is a definition, which results from the very nature of the anomalous structure of our civil Government. That it is truth itself, may be thus demonstrated.

There is no one object, which can be mentioned, which we all agree to be *decidedly* national, for which there is not a provision in the Constitution, that Congress, as to that particular subject, shall be supreme; and, on the other hand, there is not an object which, with one consent in the States, we term local, over which the States do not *exercise* sovereignty, *by the terms of the compact*, in *exclusion* of the power of Congress. I, of course, exclude the subject of "*taxation*," when I am considering the objects, for which the Federal and State Governments were created. This being the vital princi-

ple of all Governments, must be possessed by the one, as well as the other, as a *means* to promote the objects of each; and, hence, of necessity, there must be a *concurrence* of sovereignty over *subjects for taxation* in general. With this qualification to my position, which I state rather to prevent *cavilling*, than from any fear, that any candid reasoner would avail himself, of what might appear to be an oversight, let us now proceed to test our definition of nationality, by citing some few instances on each side.

In "*declaring war*," we constitute one consolidated nation. Why? Because Congress has the power to declare war, and no State can even "engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." In *preparing for war*, by military and naval establishments, we are an entire nation. Why? Because the States are expressly forbidden by the compact, to raise troops or build fleets, *except* in *actual* war. In "*coining money*," we are a nation. Why? Because amongst the limitations on the power of the States, it is said, "No State *shall coin money*." In *regulating* foreign and domestic *commerce*, and our intercourse with the Indian tribes, we are one nation. Why? Congress, under the Constitution, exclusively possesses the right. In "*foreign negociation*," we are one nation. Why? "No State shall enter into agreement or compact with a foreign power." In the *regulation of coin*, foreign and domestic, in establishing *uniformity* in *weights* and *measures*, and in *bankrupt* and *naturalization* laws, and in conferring *patents* and *copy-rights*, we are one nation. Why? Because, the *necessarily* exclusive nature of the grants on the subjects, sweeps away the whole power, and precludes the States from legislating on them.

Thus, we see, that every object, universally admitted to be national, coincides with the definition we have given of *nationality*, which means an ENTIRE subordination of the subject, to the *undivided sovereignty* of Congress, by the *terms* of the Constitution. Let us now cite, some instances on the opposite side, of subjects, which are confessedly local in their character. Let us begin with the numberless capital offences against the peace of society.—Here is a subject of legislation strictly local. Why? The States are in the constant practice of this species of legislation—and Congress, with the exception of cases provided for in the compact, cannot *define* and *punish* felonies on *land*, its jurisdiction extending no further than to "define and punish felonies committed on the high seas."

Why are all laws, on the subject of free schools, descents, sale and transfer of property, of escheats, executors and administrators, and guardians, and a thousand such—why is this species of legislation local? Because, from time immemorial, the States have regulated all such objects, and Congress has no specific grant of any such power—but on the contrary, "all powers *not delegated* to the United States by the Constitution, nor prohibited by it to the States, shall be *reserved to the States*, or to the people, respectively."

If there be now, one single object of Government, universally admitted amongst us to be local, or national, in its nature or character, which will not readily fall in with, and sustain the definition

herein given, of nationality, let the ingenuity of the Bar point it out. I cannot imagine it.

When I speak, however, of what is necessary, to constitute any measure to be national, I must not be understood to mean, that the particular measure, must be *written down* in the Constitution, as a subject for the exclusive sovereignty of Congress—and that, if it be not there found, it is not national. All I mean to inculcate is, that the measure must have such a *simple*, and such a *direct* relation, to some one of the enumerated objects, that in its absence, that particular object of the Government, could not well be accomplished. But even in this case, it is indispensably requisite, that the particular *non-enumerated* measure is one, on which the States *cannot* act in *any way whatever*. For instance—The UNITED STATES establishment at WEST POINT, is a measure national in its *character*, though no power for such an establishment is to be found in the Constitution. Why is it national? For the plain reason, that though a State can promote military science, yet no State can establish a similar institution, conferring military rank, pay, and subsistence, *bona fide*, with a view to a regular army, without violating that part of the Constitution, which forbids the States from keeping up military and naval establishments, in time of peace. So the establishment of a NATIONAL MINT is not expressed in the Constitution. But it is national. Why? Because no State "can coin money." So also, all legislation on the subject of privateers, fitting out in our ports, to cruise against a belligerent with whom we are at peace, is not once mentioned in the Constitution. But it is nevertheless, entirely national. But what gives it this character of nationality? It is the *alienation* of State sovereignty on the same subject, under that clause in the instrument, which gives to Congress, the power to "define and punish offences against the law of nations." A power, which, if it were left to the States to exercise, "might put it in the power of any indiscreet member to embroil the confederacy with foreign nations."

This is one of the cases, in which an authority is granted to the Union, "to which, a similar authority in the States, would be absolutely and totally *contradictory* and *repugnant*," and which, according to the Federalist, is sufficient to make any power *necessarily exclusive* in its character—an exposition undeniably sound, and very properly maintained by the Supreme Court. It is on the same principle, that the power to regulate commerce, to establish *uniformity* in bankrupt laws, naturalization, weights and measures, &c. is *necessarily* exclusive. There could be no UNIFORMITY on such subjects, unless one Supreme Government is to prescribe the rule. (See Federalist, Nos. 31 and 42.)

With so just, and so unerring a standard before our eyes, for estimating what is national, and what is local in its character, a standard purposely provided in the Constitution, the question can now at once be settled, whether CANALS, in general, are *national* or *local* in their character. Who is he that now hesitates in his opinion? If he cannot, after what has been said, decide in an instant,

he never can decide. Tell him, it CANNOT BE NATIONAL, because, so far from their being any grant to Congress, of a *particle of sovereignty*, much more of exclusive sovereignty over the subject of internal improvement, such a power was proposed to be given to Congress, and refused. Is it then local? UNQUESTIONABLY IT IS LOCAL, because the States have hitherto exercised the *undisputed* power, to the exclusion of Congress. But, without the aid of our unerring test, to say whether canals are in their character, national or local, we might long since have agreed with Governor GILES of Virginia, that "The peculiar character of the power to make internal improvements, is LOCALITY—locality in its MOST LIMITED form, and therefore *peculiarly unsuited* to to the jurisdiction of the General Government, which is GENERAL in its character, and *peculiarly suited* to the jurisdiction of the State Governments, whose jurisdiction is intended for LOCAL objects.

I do not deny to the Government the power, even to *construct* roads and canals under peculiar circumstances. It has the right *flagrante bello*. But, the digging of a canal in actual war, would no more make this a measure national in its character, within the meaning of the Constitution, than to cut down trees across a road, or to burn the public bridges, or to inundate a certain district of country to stop the ravages of an enemy. The ground of justification on which such acts must rest, is, that they are as much the lawful means of war at the time, as if the United States' troops were to take possession of a man's plantation or house, and to use it as an entrenchment. When the enemy is in the city, the first thing to be done is to drive him out. *Salus populi suprema lex.* There is then no time to talk, of this or that power under the Constitution. *Silent leges inter arma.* The United States' troops may do many acts in war, which they could not do in peace, without being violators of the public peace.

But, I do deny the right of the Government, to make a military road or canal, in time of peace, and for the unanswerable reason, that on a power to make military roads, and also canals, being proposed to be invested in Congress, the first was not agreed to, and the second rejected by the vote of the Convention. Independent, however, of this, the *insertion* in the enumerated powers, of all the great means of carrying on a war, and the *omission* of the single one of military roads and canals, would of itself shew, that the power was not designed to be given. And the power was most properly withheld, for, as undoubtedly necessary, as military roads and canals may be in Europe, where, if it were not for their fortified towns, at short distances, a kingdom might be overrun in a few days.—Yet, in a country like ours, where, in most parts, every tree is a fortification, and every hunting path a military road for our militia, it would be premature, in the present state of the country, it would be a waste of the public money to imitate Europe in this particular.—The Convention was, no doubt, well satisfied that the *extent* of our country, was a security against a foreign enemy, and that the principal points of attack, would be the sea coast, in the vicinity of

which, there would always be found roads, and that the country could be sufficiently defended by armies and navies, forts, &c. trusting, that as the settlements extended, and the country became more populous, the States would, from necessity, have sufficient roads and canals, for commercial purposes. But, the material objection at that day, no doubt was (and a solid objection it was) that, to grant a power to make roads and canals, even for military purposes, would involve, as a matter of course, a right of *exclusive jurisdiction* on Congress, over SOIL and TERRITORY, which the States were resolved not to permit, even as to their forts, &c. without their express consent. They could not be ignorant, that if Congress could construct, thousands and thousands of miles of roads and canals, it could exact tolls thereon, and pass laws to punish persons who should wilfully injure the public works, and thus exercise local *dominion* in the States. It is absurd to believe, as I have already shewn, that Congress and the States, can be copartners in Legislation over any one object of Civil Government. It must belong entirely to Congress, or not at all. Who can read the Constitution and say, that the States ever intended, that Congress should have exclusive jurisdiction, excepting at the Seat of Government, and in its forts, dock-yards, &c.? But the making of *necessary* military roads and canals, in actual war, is a very different thing. It is free from all these objections. At the conclusion of peace, it would be as strange for the Government to claim jurisdiction over such roads and canals, as it prepared for the passage of troops, as it would be for it, to hold jurisdiction over a citizen's plantation, which its army occupied the whole war, as an entrenchment. The want of good roads, which was felt in the late war, as to the operations on the Canada frontier, is no reason, why the power ought to be claimed by Congress. Mr. M'DUFFIE's argument here, if it means any thing, means this. That wherever an occasion has occurred, which proves, that the Government, in any of its operations on that occasion, might have done better, if it had possessed certain, or more extensive means, that such means necessarily must belong to it.—This might be an argument, on a *motion* to amend the Constitution, so as to give Congress a power to make military roads; but it can have no weight, in any other point of view. Congress has limited powers. The power to make military roads and canals is as SUBSTANTIVE a power, as that of raising armies and navies. A substantive power cannot be exercised by construction.

If the propositions herein laid down be true: 1st. That money cannot be appropriated but for national purposes; and 2ndly, That no measure is national in its character, which refers to a subject over which the States, under the Constitution, can *lawfully* exercise their sovereignty, it will be for Mr. M'DUFFIE now to explain, how Congress can legitimately take the subject of internal improvement, under its consideration. The error into which Mr. M'DUFFIE has unhappily fallen, is, that he has not been careful to distinguish those clauses in the Constitution, which *declare the* PURPOSES for which the people exist as *one* nation, from the two first clauses in

the enumeration, which simply confer the POWER to *execute* those purposes. He has not been careful to distinguish between a POWER *coupled* with a TRUST, and A NAKED power. The distinction between the one and the other, is in equity, most marked and obvious. "A mere power is never imperative. It leaves the act to be done, at the will of the party to whom it is given," and hence full discretion is implied. "A trust is always imperative, and is obligatory upon the consciences of the party entrusted." But where trusts and powers are blended, as where a man may be invested with trusts to be effected by the execution of a power, as is the case where a power is given by a will to trustees to sell an estate, and to apply the money upon trust, here, though the legal estate, until the execution of the power is in the heir at *law;* yet, on the power being defeated at law, by the death of the trustees, Equity acting upon the trust, will compel the heir, to join in the sale of the estate for the execution of the trusts. (See *Sugden* on Powers.) Mr. M'DUFFIE has lost sight of this, and strangely regards the levying and appropriating power of Congress, as *one* of the purposes or trusts for which the Government was created; whereas that clause, and the succeeding one, that of "borrowing money on the credit of the U. States," is not an end, but simply the great means, by which all the enumerated objects, or trusts, are to be accomplished. It is the Power coupled with the Trusts. To be asked to demonstrate this, is as if we were called upon to prove, that any one problem in Euclid is true. I will, however, endeavour to make it plain to those who are not lawyers.

The distinction between the levying and appropriating power of the Government, and all the other enumerated powers, is most manifest. In the other enumerated powers, there is not a *single* clause, which does not contain within itself, some one of the many *definite purposes* for which Civil Government generally exists; whilst in the *two money raising* clauses, there is no definite purpose whatever expressed. Nothing is easier, or more natural, than to imagine, that a people should desire to constitute ONE nation for *war*, for *foreign Negotiation* and *Commerce*, (under which general heads all the trusts in the Federal compact may be included) but it is extremely difficult to make a man of common sense *believe*, that a people already associated in thirteen regular Governments, should desire to be consolidated into one supreme sovereignty, merely for the pleasure of BEING TAXED; and to possess the power to SPEND those taxes. The laying and appropriating power, is therefore no more, than the POWER of the Government, *coupled* with the TRUSTS. It is only a MEANS. A means cannot be a *purpose*, or an *end*, nor can it be greater than an end.

Suppose that Mr. M'DUFFIE, as a lawyer, was to have submitted to him a deed from A. to B. in trust for various uses, and with many limitations therein expressed, and his opinion was solicited as to the real intent of the donor; to what part of the trust deed would he look, for the purposes for which he estate was created? Would he look to those clauses in the instrument, *declaring the trusts*, or would he read the general power in the

deed, enabling the trustee to raise money without limit, for the general benefit of the estate, by sale or mortgage of the estate, or otherwise? The answer is, he would assuredly look to the *trust clauses*, as the only means, by which he could come at the objects, for which the estate was given by A. and he would scarcely cast his eye on the general power to raise money, such a power being a matter of course. Precisely the same must it be with the Constitution of the United States. If we would ascertain, for what purposes we exist as one nation, so as to decide, whether any particular object is a *national* object, or a *local one*, it would be as useless to look (as Mr M'DUFFIE does) at the two first clauses, giving the power "to raise a revenue by taxes and loans, and to appropriate it to the general welfare," as it would be, to look at the *general* power in the trust deed above referred to. These two clauses in the Constitution must then be put aside. They actually ought to have no more influence in an inquiry, as to the purposes which are meant to be embraced in "the general welfare," than that clause in the Constitution, which says, that "each House shall be the judge of the elections of its own members." Construe these clauses as we will, they speak no other language than that the Government shall raise money by taxes, and by loans—and that the proceeds shall be applied to the purposes, for which we *became a nation*, and, to no other. Where shall we seek for these purposes—In the brains of ingenious politicians, or in the enumeration of the specific objects or trusts. In the latter unquestionably. *Id* CERTUM *est quod certum* REDDI *potest.*

No part of the foregoing view can be confuted, unless some reasoner more ingenious than sound, should insist, that the words to lay taxes to *pay the debts* and provide for the general welfare "*of the United States,*" give to this clause a character of *specification* as to purposes. The answer to this is simple. The words "to *pay the debts*" here, mean no more, than to pay the expenses of the government, or debts contracted by loans, &c. to carry into execution the specified objects. Referring to the 6th Article of the Constitution, we shall see that provision is expressly made, that the new Government is to assume *all the debts of the Confederation*, and thus constitutes those debts, as *one* of the trusts to be executed. The trust being already created, and in its proper place, it would be strange to imagine that the words "to pay the debts" mean any thing more than the contracts of the Government.

We are now to consider some of the extravagances and absurdities, to which *any other definition* of "nationality" than that herein given may carry us, and in this way we shall see the real difference between money applied to the "general welfare," and that used for the *national welfare.*

NO. 20.

Mr. M'DUFFIE, it must be remembered, contends, that the power of Congress, to expend money for the general welfare, *beyond the enumerated objects*, is unlimited. As he cannot conceive "upon what principle, the *judiciary* can pronounce any road *unconstitutional,*" even if Congress, "under the *pretext* of making military roads and canals, were to make them for purposes not military," though he admits that "such would be an act of usurpation," we are therefore to have, in the opinion of Mr. M'DUFFIE, no other security too, against appropriations manifest-

ly unconstitutional, than this, "that the *conscience* of every member, *is* to be the *tribunal* before which, he must justify his vote, in each particular exercise of the power in question.

Let us see how this doctrine would work. Say that Congress shall *annually* appropriate a million of dollars, to the support of free schools, in every Parish of the United States, and for that of a College in every State. As much more for a deaf and dumb institution, and a lunatic asylum, in the capital of each State. The same, for a splendid hospital for invalids, in each State, upon the plan of that in Paris, and for infirmaries for the diseases of the eye, and the ear. A million for churches and chapels, from Maine to Cape Florida, for the use of all religious denominations, without distinction. A million to increase the funds, and stimulate the efforts of associations, to suppress duelling, and of societies for the suppression of gambling, drinking, profaning the Sabbath, and vice of all kinds. As much more to philanthropic societies, whose objects are to improve prison discipline, and to restore drowned persons to life: and then an appropriation of four millions, to objects of *general* concern, which we have not here room to enumerate. According to Mr. M'DUFFIE's exposition of the Constitution, all these appropriations, can be constitutionally made by the National Legislature, *though they cannot be referred to the enumerated objects* of the Government. That they are all measures, which promote the general welfare and the happiness of the people, no one can doubt; and if we regard them, as to their *effects* upon the general community, they are unquestionably *national* in this point of view. But can Congress constitutionally make these appropriations? Let those who, in this particular, agree with Mr. M'DUFFIE be told, that they maintain this most extraordinary of all positions; that amongst the MANY purposes, for which a people, already governed in thirteen regular State Governments, covenanted, to become one entire people under a Supreme Government, ONE GREAT END to be promoted, was, that ten millions of dollars, or ten times that sum, if deemed expedient, should be annually TAKEN from their pockets, by imposts and other taxes, with no other view, than that it should be RETURNED to them again, and under an *utter impossibility* of their receiving it, in the same proportion, in which it was drawn from the several States; and this too for the *laudable* purpose of accomplishing objects, to which the States were SEPARATELY COMPETENT, if the money was kept at home.

Here is a most wonderful exposition of the Constitution. The Convention, after two months deliberation, as to the great outlines of the Government, solemnly decides, in the sixth amended resolution of Mr. RANDOLPH, that Congress is to possess *legislative* rights in cases "to which *the States are* separately *incompetent*." A committee in detail forms a Constitution under these instructions; they exclude all such cases from the enumeration of the legislative powers of Congress. An effort is made to "give additional powers to legislate, on the subject of agriculture, manufactures, science, and internal improvements." Canals and Universities are proposed. All efforts to give jurisdiction over these subjects, so *confessedly local*, failed in the Convention; and yet we are told AGAINST the internal evidence of the deed itself, AGAINST the lights of the public journals and secret debates of the Convention, and

AGAINST the *written* statement of LUTHER MARTIN, who may be well compared, to a witness who sits at the bedside of a testator, and takes down his words in writing; that *though* Congress cannot dig a canal without violating the compact and the sovereignty of a State; *though* it cannot create a great manufacturing company, with exclusive privileges as to monopoly; *though* it cannot, even according to the decision of *M'Culloch* vs. *The State of Maryland*, incorporate and take under its charge, Free Schools, Deaf and Dumb Institutions, &c. because they do not refer to any of the specified objects, which Congress are to regulate; yet, that the great ends which the above are the means of accomplishing, may be promoted by Congress in other ways. Monopolies to the manufacturers *cannot* be created by an act of Congress, without a departure from the Constitution, and *yet they may be given* in the shape of *protecting* and *prohibitory* duties, because Congress "has the power to lay imposts." Canals *cannot* be dug in the States, or military roads constructed, because it is to exercise sovereignty over soil and territory, and yet *money may be voted* for the *same* objects, because Congress can promote the "general welfare." National establishments of Deaf and Dumb institutions, with incorporated powers, are unconstitutional—and yet all such institutions may be *most liberally endowed* out of the National Treasury. What is all this but to say, that Congress shall be permitted to approach *indirectly*, a subject for its legislation, which it is admitted it has no power to approach directly, contrary to that most excellent maxim of the law—"*Quando aliquid prohibetur fieri Ex DIRECTO, prohibetur per OBLIQUUM.*"

The evils of such a construction as Mr. M'DUFFIE gives to the appropriating power, may be most tremendous. For instance—The writers in the Monthly Journal of the Colonization Society, admit, that a power in Congress "to emancipate and remove Slaves within the limits of a State, would be a most alarming interference, with the rights of a State, and of individuals,"—but yet they contend, (and they entrench themselves behind Mr. M'DUFFIE's exposition) that an authority to create a fund, as proposed by Mr. RUFUS KING, to aid the gradual emancipation and removal of the Slaves in the United States, would be constitutional—because, say they, "the power of appropriation, is limited only by the general interests of the country;" and the removal would not "interfere with the rights either of the States or individuals." Not interfere! The purchase of the Slaves, and their transportation to Africa, would not merely deprive us of the only labourers, who can cultivate our soil; but it would have the effect, of altering the Constitution of the United States, in a most material point. It would change the whole representation of the Southern States. Remove the Slaves from South-Carolina—three-fifths of whom are represented in Congress—and South-Carolina instead of sending *nine* Members to the House of Representatives, will send *five*, and perhaps not two from depopulation—and the other States will lose in about the same proportion.

It is to me most amazing, that Mr. M'DUFFIE should freely admit, "that in determining what *sovereign* powers belong to Congress, Congress has NO DISCRETION, the Constitution being the inflexible land mark;" and yet, that he should not himself perceive, that in selecting for the appropriation of its revenues, any object whatever, which it *chooses*

to designate as an object of *general* concern, Congress *does thereby exercise*, that *high* sovereign power, not included in its grant of powers, to wit: of legislating *indirectly* upon subjects, and attaining objects, which belong to the States to regulate, and which, from the very nature of the subjects, the States are not only "separately competent," but *more competent* to manage, than the General Government. There is a strange fallacy in that reasoning, which would say, that Congress is limited as to the subjects, upon which it can exercise its *utmost* power of sovereignty, and yet unlimited as to objects, on which its sovereignty is to be *indirectly* applied. I say sovereignty indirectly exercised, for according to the Constitution, the purpose for which money is given, must be specified in the act of Congress, and this act of legislation, constitutes the sovereignty which is to accomplish the object.

It seems then, according to this exposition, that the General Government is not Supreme within the sphere of its own powers, and when it is accomplishing the purposes for which it was created. If I understand the argument, it is substantially this. There are TWO kinds of purposes, for which we consented to become *as one nation*, as distinguished from twenty-four nations. First; those which are agreed upon, and particularly specified. These we readily comprehend. And secondly; those which are equally agreed upon, but not enumerated. This is not so easy of comprehension—it requires explanation, how a new Government is to be created, with undefined objects, though it is easy enough to understand, that undefined powers may be reserved to an old Government, from which some powers are withdrawn. For the enumerated objects, and all measures thereto appertaining, it appears, that Congress is a Supreme Government. It can approach its objects, *honestly*, *fairly* and *directly*. But for all the *undefined* (MOST WISE) purposes for which we act as one people, and which purpose are embraced in the appropriation power, under the term "general welfare," Congress has not the full power of a nation, over a vast variety of these, which it may choose to make the subject of its legislation. For instance—Roads and Canals. Congress is not now Supreme. If it wishes Roads and Canals, it cannot construct them—it is not sovereign enough for this, but it can bring its *imperfect* sovereignty (something new) to bear upon the measure, in some other way. Whatever is now to be accomplished, must be done, to use a vulgar adage, by *whipping the Devil round the stump*, unless, says Mr. M'DUFFIE, some "other *sovereign* power besides that of appropriating the money be necessary to accomplish the particular object," in which case, I understand that partial sovereignty must not be resorted to, and the *Devil is to be let alone*, and the purpose cannot be accomplished.

According to this theory, what becomes of the States? I always heard, until now, that there were *State* Governments, as well as a Federal Government. That we existed as one nation for certain designated purposes, and that for all other purposes, (and these are few enough, God knows) there are two express articles in the Constitution, which say, that we remain twenty-four separate nations. But it seems that we are all wrong. Congress can lawfully take what belongs to it, under the *express* grant, and it may constantly be *cribbing* power from the States, by *imperfect* sovereignty without committing a gross trespass on the rights of the people. There is no boundary line, it seems, between the defined

powers of Congress, and many of the undefined purposes of Civil Government, reserved to the States, for Congress can accomplish both. The one by *direct*, and the other by indirect sovereignty.

The only two great safeguards, which we are permitted to have, for restraining and arresting the usurpations of the Government, and preserving the liberties of the people, "are the positive *restrictions* upon power; and the *responsibility* of those who exercise power, to the people upon whom it operates." Our security, as to any abuse of power in Congress, when it is ranging at large, and seeking its employment and legislation, in the field of the *novel* and *undefined* purposes of the Federal Government, is not to be found, even in the *judiciary* tribunals of the United States.—We are not even to have, the slight chance of a decision of the Supreme Court in our favour. According to Mr. M'DUFFIE, "the *conscience* of each member of Congress, is to be the *tribunal* before which, a vote" of an hundred millions of the people's money for unenumerated purposes, is to be justified. Says Mr. M'DUFFIE, "Shew me, in any of the subdivisions of this comprehensive scheme of representative Governments, a power operating *beyond its responsibility*, and I will shew you a power unknown to the system. A *comet*, let loose from the power of gravitation, which must inevitably destroy the planetary harmony by which that system is so admirably characterized." That unknown power, I can tell Mr. M'DUFFIE, does exist! It is a principle wholly unknown to our system, which distributes power between one common head, and twenty-four subordinate Governments, that there should be no other security against indirect legislation, and the consequent IMPINGEMENT upon the States, than the *consciences* of the national legislators. It is wholly unknown to our system, that the General Government should so legislate, as to gain by a *monied influence*, what it cannot lawfully accomplish, by an exercise of lawful *power*. Influence is power, and whenever the State sovereignties are abolished, it will be accomplished by the mass of influence, which the General Government will ultimately possess, by small but constant accessions, in the exercise of its constructive powers. As to political responsibility of public servants, as a safeguard, it exists but in the imagination.—There is a responsibility, it is true, of our own members of Congress to the people of South-Carolina. But these men can do no more than their duty. When once the people of the Northern and Western States, who constitute the majority, shall decide, that we shall pay tribute to them, what becomes of that safeguard called "*political responsibility?*" Will this save us, from the usurped dominion, of the men of SAGADOHOCK, or of the Illinois? No! Mr. M'DUFFIE will find, that for relief against that odious Tariff, which he so fearlessly, so zealously, and so eloquently opposed, in common with the rest of his colleagues, it will be in vain ever again to look to the ballot boxes of any elections South of the Potomac. To our State Legislature alone must we look, that by its wisdom, and its firm purposes, it may avert from us the evils which encompass us.

On this subject of political responsibility, which is so dazzling in its theory, many of our prominent politicians in Carolina, the most of them excellent men too, have been running into the wildest extravagances. Instead of looking at the Constitution, with the eyes of statesmen, and with a reference to the peculiar circumstances which attended its formation—instead of bearing in mind, that so far from there being any desire, in the great

body of the people, in those days, to have a National Government, with plenary and indefinite powers, and with increased and increasing influence, that the difficulty rather was, to get a Government at all, these gentlemen take up the compact, and examine it in most of its provisions, as lawyers would a deed, with no reference to such a thing as *equity*. Because it professes, in its preamble, to come from the people, and operates upon the people, it is peculiar to these gentlemen to ascribe the existence of the Government, to be the act of the people *en masse*, independent of the State Legislatures, and of its being responsible to the people, and not to the State Legislatures, as if those Legislatures had not the entire agency in calling the Convention, and, as if they could not (had they so willed it) have frustrated all the hopes of that Convention. Hence, it is, that when our Legislature shall raise its voice against any usurped act of the Government, they would protest against any such expression of the public opinion, the Legislature not being the proper organ, without, at the same time, telling us, by, what other expedient, the General Government is to be kept within its own sphere of action and of influence. Should that day ever arrive, which God forbid, that it shall become necessary to resist the usurped power of Congress, how will the people be able to act, excepting under the authority of the State sovereignties? Can the people act of themselves? The Constitution of the United States is not a compact, between the people of the United States, as individuals. If it were, it would be on the plan of the State Governments. There would be no enumeration of powers. As is usual, in all such cases, nothing would belong to the people, but what is expressed in the limitations on the general power, or in a bill of rights. But it is, because the States, in their corporate capacities as *States*, are parties to the compact, that there is an enumeration of objects for the Supreme Government to operate upon. It is Mr. HAMILTON who says, "it is neither a National or a Federal Government, but a composition of both. In its FOUNDATION it is *federal*, not national. In the SOURCES from which the ordinary powers of the Government are drawn, it is partly *federal*, and partly national. In the OPERATION of these powers, it is *national*, not federal; and in the EXTENT of them, it is *federal*, not national."

The very Constitution of the Senate, and the mode of suffrage there practised, demonstrates the importance of preserving the State Governments; for, without them, the Government must stop. But who are to preserve the State Sovereignties, but the State Legislatures? The federative principle is not destroyed. Let only the two Senators, from each State, represented during a session of Congress, be in their seats, and the *result* of the votes on any question, is precisely the same, as if the Senators voted by *States*, as was the case with the Old Congress. When the *States have not* their *veto* upon *every* act of the House of Representatives, in the same manner as if they were assembled in the Common Council of a *pure Confederacy of States*, it is only, when some one State is deprived of the services of one of its Senators, by sickness or absence; it is only at that time, that any difference exists between voting by *States*, and voting *per capita*. And what is more, this *federal* feature of the Government, cannot be obliterated. A majority of three-fourths of the State Legislatures, may adopt, at their pleasure, any amendment to the Constitution; but the equality of suffrage in the Senate, cannot be taken away,

but by the consent of every State in the Union. It is time, then, for our politicians, who have so long been astray on this subject, to come back to correct principles, and to regard the Federal compact, as a covenant between separate and independent States. Let us hope never again to hear the doctrine asserted, that the State Legislatures are not to express an opinion as to the violation of a compact or treaty to which the States are essentially parties.

I cannot take my leave of Mr. M'DUFFIE, without acknowledging to him, as a citizen of the United States, my grateful sense of his untiring efforts in Congress, to restore the purity of the Presidential Election, and to divest the House of Representatives of a trust, which it had abused, and thus to promote the welfare of the first and greatest of Republics. As a man of private incorruptible integrity, I admire Mr. M'DUFFIE, and there are few of his devoted friends, who are more sensible of his public merit, and of his claim to be regarded as an honest public servant, and a statesman of no ordinary stamp, than I am. He has never advocated, as I believe, any public measure, but from the most exalted motives of patriotism. His speech on Internal Improvements, breathes a general spirit, and a feeling, of which every American ought to be proud. Like others, I was transported with the perusal of it—but sober reflection soon taught me, that the doctrines there advanced, were incompatible with the safety of the State sovereignties—and I doubt not, but that the time will come, if it has not already arrived, when Mr. M'DUFFIE will himself perceive, that he has attached to the general phrases in the Constitution, an importance, which it was never designed they should possess. He will, I hope, excuse me, for the liberty I have taken with his opinions, and of necessity with his name. Nothing but my conviction of the dangers that await the Southern States, and the recollection that these opinions, coming from such a man, would have prodigious influence, would, in my own view, have authorized me, to make his speech, the subject of a public examination. I trust, I have stated his positions with the utmost fairness, and my endeavour has been to controvert them.

NO. 21.

The boundaries of power once passed by a Government, which is limited as to its legislation, there is no saying, to what lengths, it will not carry its usurpations. How true is this, as regards the Federal Government. The Government, in the commencement of its career, was as true and as honest to the principles of the Constitution, as could have been desired. But the Constitution was preserved unbroken, only for the first two years of our history. When the bill for the Bank was carried in 1791, the Government then abandoned the clear paths of duty and propriety, and has since deviated, more or less, oftentimes innocently, but of late wilfully, from the views which the people entertained, when they formed the compact. General WASHINGTON'S motives on the Bank question, were honest and patriotic, as they uniformly were, during every portion of his distinguished life. But General WASHINGTON was surrounded, by some of the politicians, who, in the Convention, had contended for a NATIONAL, and not a Federal Government. ALEXANDER HAMILTON, and EDMUND RANDOLPH, were in his confidence and in

his Cabinet. These gentlemen, it is well known, had strenuously contended, the *one* that Congress should "have a *negative* on all the *State* Laws, interfering with its own;" and the *other* that "a Governor in each State, should be *appointed by the General Government*, with a negative upon the State Legislature," in order the better to prevent any such laws being passed in the first instance. There was in the Convention, at one time, a hot contest, whether (in one of Mr. RANDOLPH'S resolutions) the word "*United States*," or the word "*National*," should be used. It is a truth not to be concealed, that even General WASHINGTON sided somewhat with those gentlemen in the Convention, and it certainly is not intended, to derogate an atom from his high fame, when it is said, that he was in favour of an *energetic* Government, and a *strong executive* arm. Nor am I disposed to blame Messrs. HAMILTON and RANDOLPH, for opinions, as I believe, sincerely entertained by them. Many of the best men in the Union, at that time, thought with them, and some of them from our own State. They had all been so sensible of the defects of the Confederation, that it was natural, that they should incline to the opposite extreme, and believe a National Government as best calculated for the exigencies of the Union. It appears, however, that they were all mistaken, and Gen. WASHINGTON amongst the number; and it is fortunate for us, particularly of the South, that all attempts to *consolidate* us all into one nation, failed in the Convention.

On the first question, therefore, which arose under the Constitution, respecting the powers of the Government, it was not to be expected, but that with the previous prepossessions of Gen. WASHINGTON on the subject, he should have decided in favour of a National Bank. But, amongst his followers, have been some, who had not his moderation, his prudence, and his sagacity, and hence it is, that during the last, and the present Administration, we have seen the Government administered in open violation of the Constitution, not by any act immaterial as to its effects upon public liberty, but by acts impairing important and vital interests of the States.

When a limited Government, like that of the United States, has passed all the necessary laws, for the collection and distribution of its revenue, and entered into all the arrangements, to provide for the public debt; happy at home, and respected abroad, it must soon find itself in need of more occupation, than the *ordinary* concerns of defence and commerce can furnish. Commerce once regulated, what else remains to be done, but to leave the rest to the industry and enterprise of our citizens. Our policy too, being that of friendship with all nations, and entangling alliances with none, and amply furnished as we are, with the means of defence, what has the General Government to do, but to make provision for its small army and navy, and to keep its forts and arsenals in repair. Can the mind of an American conceive a happier state of things for his country, than that Congress should sit only five or six weeks, and have as *little employment as possible*, and that to the local Legislatures, it should be left, to extend their care, to all the objects which concern the INTERNAL order and improvement of the States.—

When, in 1788, the people in most of the States, were jealous of the powers conferred on the Federal Government, and were hesitating, whether they would accept the Constitution, Mr. HAMILTON, by way of reconciling them to the Constitution, told them in his *Federalist*, (*No.* 45,) "that the operations of the *Federal* Government would be *most extensive* and important in times of WAR and danger; those of the *State* Governments in times of PEACE and security." No exposition of the Constitution can be more true than this, and more calculated to shew, that in general, the State Governments, would have advantage as to legislation, over the Federal Government, the times of war in a country like America, bearing no proportion to the times of peace. But how stands the fact. Thirty years scarcely elapse, before the General Government commences a great plan of steady operations, by which it is to carry on a system of internal improvements, which will leave to the States, little or nothing to do on the same subject, drawing immense sums out of the pockets of the people by taxation, without a possibility, as already has been elsewhere observed, of its being expended amongst them, in the same proportion, in which it is taken from the several States. It is in PEACE then, as well as in war, that we observe the operations of the General Government IMPORTANT AND EXTENSIVE, with a prospect, at the same time, rapidly opening upon us, that ere long, almost all the subjects of legislation, which the States now regard as exclusively belonging to them, will be gradually drawn towards Congress, under the powerful attraction of the words the "general welfare." Who could have believed, in 1789, that in less than forty years, that several *State* Legislatures, should even entreat that Congress would take under its consideration, measures to remove as an evil of the first magnitude, the FUNDAMENTAL POLITY of the Southern States—that even the subject of *slavery*, should be a fit object for the INDIRECT legislation of a Government, instituted for the purpose of attending to foreign relations.

Let Congress be confined within the proper and the legitimate sphere of its action, and it is manifest, that it would not be occupied, half the time it now consumes in its sessions, nor cost the people half of the sum, that is annually spent at Washington. There *have been* periods, when it might be necessary that the sessions should be somewhat protracted. There was at one time much to do. A system of revenue laws was to be digested and perfected—the Courts of the United States were to be organized—the public debt to be provided for—treaties of commerce to be entered into, and ratified with every nation. A *Government* in fact, was to be put into *complete* operation. But, in our day, the Government is settled and established, and were the National Legislature occupied as it ought to be with its *own business*, and not in *assuming the business* of the State Legislatures, there would be little to do. But it is because the Senate and House of Representatives are without occupation, that instead of adjourning and going in proper time to their

homes, the members are disposed to meddle, with what is not their concern, and that they are *constantly in search*, for some *new subject* for their legislation. This is the true reason, why they expend the public money in protracted sessions, and sow the seeds of discontent and jealousy amongst the States. But this is natural. These men "feel power and forget right," and he must be an indifferent observer, who does not perceive, that unless some check be given to the usurpations of Congress, that there will be no end to the subjects, which, in time, it may not discuss and legislate upon.

NO. 22.

No general course of proceeding can be more destructive of the rights of the States, or of the people, than that adopted by Congress, when it is about to construe its powers. Where real doubts exist, as has frequently been the case, whether any particular power claimed by implication, is within those intended to be granted by the Constitution, this body does not condescend to solicit any aid from its constituents, who are represented in the State Legislatures, but it seizes at once upon the doubtful power. Certainly this is not the course which friendship and good feeling, and even policy would dictate The Government of the United States, notwithstanding all that has been said to the contrary, by the Supreme Court, is not a Government of the people, in the sense in which the Supreme Court would have it. If it were, it would be responsible to the people alone, as its constituents, as is the case under every consolidated Government, and there would be no other security against usurpation, excepting the power of the people to change their rulers, in which case the minority must abide by the will of the majority. A doctrine such as is contended for, is subversive of the end for which the Union was formed. There is an inconsistency in admitting, that the people of the States, in their corporate capacities of States, have certain acknowledged rights under the Constitution, which are guaranteed to them, and also, that they are so clearly recognized in the instrument, as to be prohibited from exercising their sovereignty on certain subjects, and yet that they are not to be regarded as having the right to complain of the usurpations of the Government, as if it were ever before heard, that those who create a delegated Government, have not lawfully the same power, to restrict it, within its limits, after it is created.

This doctrine, of the General Government being "truly and emphatically a Government of the people" which has been so often relied on, as excluding the right of the State Legislatures, to protect the States against the usurpations of Congress, was first suggested by Mr. PINCKNEY, Counsel for the Plaintiff in Error, in *M'Culloch* vs. *The State of Maryland*, and the Chief Justice, with his usual ability and eloquence, has placed the position in so masterly an aspect, as almost to command the universal assent of the Bar. But the position of the Court cannot be sustained. It is as unsound, as the other parts of this opinion already noticed in previous numbers. The Counsel for the Defendants in Error, in speaking of the true nature

of the Federal compact took this ground "That the terms of the grant, did not convey sovereign power generally, but sovereign power limited to particular cases, and with *restrictive means* for executing such powers;" and further, that the powers of the General Government "were delegated, not by the people of the U. States at *large*, but by the people of the respective States, and, that therefore, it was a compact between the different *States*." The Counsel here were certainly right, and the Court as clearly wrong in not admitting the position. The Constitution IS a compact between the States, and there are no parties to it, excepting the people of the different States, in their corporate capacities. The Court, it is true, cautiously disclaims the assertion, that the instrument "proceeds from the American people, as compounded into one common mass," for that would be too untenable; but still, its reasonings do artfully carry us on to the conclusion, that the Constitution does not emanate from, and is not the act of sovereign and independent States, but on the contrary, is as much the act of the people of the United States, as if they were assembled in an aggregate society, to distribute power between the Federal and the State Governments; and that all power derived from such a source, is as sovereign, as if it had remained in the hands of the people, and that all the *incidental*, as well as the *direct* powers, are a part and parcel of any sovereignty conveyed by the instrument. Let us examine this doctrine of the Government being a Government of the people.

In a former number, has been stated, the obvious distinction, between the case of a people without any regular Government, forming a Constitution; and that of a people already associated in so many separate sovereignties, who design to part with power to a common head; the Legislators, in the one case, possessing *all* power not reserved by the people, and in the other, possessing *nothing*, but what is delegated. Situated as were the citizens of America, at the close of the Revolution, there were but two ways, in which the people, could have formed a Government. The first, was, by being assembled in the relation to each other, of individuals of *one great* political society. The second, as associated in *separate* sovereignties. Under one, or the other of these situations of our community, was the Constitution formed. If the powers of the Government, are not derived from the people of the United States, as individuals aggregated in a *general* society, they must then be created by the people in their *corporate* capacities, and so *vice versa*. From no other sources than these, can they be claimed. Now, it is immaterial to me, which of the two modes, the Supreme Court shall decide as having prevailed, in 1788. If it chooses the last, we agree. If the first, it is in its own language, "a political dreamer, who is wild enough, to think of breaking down the lines, which separate the States, and of compounding the American people into one common mass." The Chief Justice, however, thinks, he avoids a dilemma of this nature, by giving the idea, that though the people on this occasion, were not actually compounded into one mass; yet, that in dispensing power to the new Government, they did it as effectually, as

if they had constituted one great community, for on no other principle, than this, can he establish the doctrine, that as to any particular power conferred on Congress, it is as supreme, as the people themselves would be on the subject; a doctrine which has been denied in these numbers. As if aware, that the assemblage of the people in their States, would imply, that the ratification in this way of the Constitution, was the act of the *States*, and not of the people, he justifies this mode of ratification as the most proper, under the circumstances. "They acted upon it, in the only manner, in which they could act safely, effectively, and wisely, on such a subject, by assembling in Convention." It is true, adds he "they assembled in their several States, and where else should they have assembled? If they act, they must act of course in their States. But the measures they adopt, do not, on that account, cease to be the measures of the people, or become the measures of the State Governments." The answer to be given here, is, that the Constitution might have been ratified, (if the Convention had so chosen) in two other ways; but neither of them, would have comported, with the general sentiments, in and out of the Convention, that the new Government should be *Federal*, and not national in its creation. What, for instance, could have prevented the Convention, from proposing, that the State Legislatures should divide their States into election districts, upon some equitable plan agreed upon, and that each district should send a deputy to a General Convention, or that the people in the different States, should give their assent, or dissent, by voting in districts by a general ticket, and that in either case, the votes of three fourths of the whole, should be an acceptance of the Constitution. To these *last* modes there could be no objection, because the Constitution, whether the subject of debate, or not, was to be accepted, or rejected in *whole*. After NAPOLEON had assumed the imperial purple, he was desirous to know, whether his subjects regarded him as an usurper, and he opened books in every part of his dominions, that Frenchmen might inscribe their assent or dissatisfaction of his conduct. This was voting by general ticket, though not by ballot.

It would be no answer, to say, that either mode here proprosed, would have been impracticable, because the *very fact of its being* impracticable to obtain the assent of the people at large, would be *conclusive to shew*, that the assent, if given in *any other* way, could not *possibly* be the act of the people, but of the States. That the people of the United States, were regarded, as acting in their sovereign capacities, as separate States, when they ratified the Constitution, clearly appears, from the rule laid down in the instrument itself, for its ratification. The assent of a *majority* of all the inhabitants of the United States, was not made indispensable, which certainly would have been the case, had the design been that the Constitution should not emanate from the *States*. Under such a view, it might have so happened, that the ratification might not have been complete, though nine States should have assented Four large States, rejecting the Constitution, might have had a greater population than the other

nine. For instance, Massachusetts, New-York, Pennsylvania, and Virginia. These four States, at the first census in 1790, one year after the Government went into operation, had 56 members out of 105, that number being the whole representation in Congress—They were the majority of fifteen States. At the second census in 1800, the same four States possessed 74 out of 141 members, and formed the majority of seventeen States. At the third census in 1810, they formed exactly one half of twenty-three States.

Amongst all the modes of controverting the soundness of a position, there cannot be one more effectual, than to shew the manifest absurdity to which its results would lead. If the Supreme Court is right, that the ratification was the assent of the people, and not of the States, the Convention is chargeable with the absurd proposal of having a Government, which is to bind all the people of the United States, to be put into operation, as soon as a minority of the same people should ratify it. Now, on the other hand, if we consider the Constitution, as emanating from the State sovereignties, and not from the people, there is no difficulty whatever, in any view of the subject. The mode proposed by the Convention, was not only the best mode, but it was the only mode, by which the people, acting as the people of separate States, could give their free and unbiassed assent to the compact.

There was a manifest propriety in the Convention's submitting the Constitution, to the assent of the people, in their State Conventions, and not to the State Legislatures, if it was the intention, that the new Government, was to be received from the States. It is only, when the people are assembled in their conventions, that they are exercising their utmost power of sovereignty. At no other time, do they wholly act in their sovereign capacity; for it is then, that they can *take away* what they before *gave*, and *give* what they had previously *retained*. In the State Legislatures, the people, it is true, exercise the sovereign power of making laws, but the power is limited by the Constitution. The Court says, "from these Conventions, the Constitution derives its whole authority." Strange then it is, that at the very moment, when the people in the different States, are acting in the only possible known way of exercising complete sovereignty, that this moment should be selected by the Court, as an occasion for considering their acts, not as the acts of sovereign States, but as those of the people of the United States at large.

It is very plain, from the reasoning of the Chief Justice, that he regards the State Legislatures, or the State *Governments*, as he also terms them, *essentially*, as the *State Sovereignties*. His words are "The assent of the States, in their sovereign capacity, is implied, in calling a Convention, and thus submitting that instrument to the people. It required not the affirmance, and could not be negatived by the State Governments. The Constitution, when adopted, was of complete obligation, and bound the State Sovereignties." For the want of a distinction between a State Legislature and a State Sovereignty, it is not to be wondered, that the Court should deny the Constitution, to be the act of sovereign and independent States,

as States. There is a difference, and a very material one, between a State Legislature, and a State Sovereignty. To speak of them as the same, is to confound two things which are opposite. It is to call the people the Government, and the Government the people.—True State Sovereignty, is that supreme power in a State, which is without limits. It resides no where but in the people. To the people it belongs, as founded on the "original inherent RIGHTS OF MAN." The State Legislature, on the contrary, is nothing more than that portion of the supreme power, which the people have thought proper to delegate, for the purpose of making the necessary laws, to regulate Society at home and intercourse abroad. A State Legislature is not even the State *Government*, but only a portion of it. If the State Legislature, which is only a part of the Civil Government of the State, be State sovereignty, then the Executive and the judicial powers, are also State sovereignty. The only possible case, in which a State Legislature could be pretended to be a State sovereignty, would be, where, by the terms of a written Constitution, all power whatever is vested in the Legislature, nothing being reserved to the people. Such a written Constitution, would be comprised in one or two short sentences, and would be a novelty.—We have no such in America that I know of.

As we now see the essential difference between the Legislature of a State, and that supreme power, called State sovereignty, we shall readily perceive, in the rise, progress, and final completion of the Federal Constitution, that every thing which *was* done, was in *perfect accordance*, with those notions of Government, which we term republican, and that, had it been otherwise, the rights of the people, as *States*, would have been violated.

The necessities of the people in every State, called for a change in the structure of the existing Governments. How was this change to be effected? By the State Legislatures? Certainly not. The State Legislatures had no right to form a new Constitution. They were competent to form the Confederation, for that was in nature of a league, and it is within the scope of all legislative power, to enter into such a compact. But, when a Constitution is to be formed, Governments are not to be the actors in any way. According to Mr. PAINE, in his "RIGHTS OF MAN," "Government has no right to make itself a party, in any debate, respecting the principles, or modes of forming, or changing Constitutions. It is not for the benefit of those who exercise the powers of Government, that Constitutions, and the Governments, issuing from them, are established. In all these matters, the right of judging and acting, is in those who pay—the people; and not in those who receive. A Constitution is the property of a nation, and not of those who exercise the Government."

But though no one State Legislature, could place its own people, under a new form of Civil Government, in which Government they were to be associated with the people of other sovereign States, yet they had a right to submit proposals to that effect, which they did by sending deputies to the General Convention. The work of the

Convention being finished, the next inquiry was as to the mode of ratification. There were but two modes, proposed in the Convention, by which the people were to be bound as the people of sovereign States. The first, to have the assent of the State Legislatures. The second, of the people of the States in State Conventions. The latter was preferred. Had the Convention considered, that the assent of the State Legislatures, could give a binding efficacy to the new Constitution, it would have betrayed an extreme ignorance of the true origin of all civil government, and of that inherent right of the people alone, to make a Constitution. The assent of the people in conventions, then, was the only way, in which their assent could be obtained, as sovereign and independent States. They do assemble. In each State, a majority of the people decide for that particular State. The vote is transmitted as one vote, out of thirteen. Delaware, the *smallest* State in the Union, has the same influence in making up the majority, without which the Constitution cannot operate, as Virginia, which is the *largest* State. And yet we are told by the Supreme Court, that the binding efficacy which the Constitution received in these proceedings, was not the act of the States, as States. But let us, for the sake of argument, pervert terms, and say, that Legislatures *are* States. Still the acts of the Convention, in such a view, must substantially be regarded as the acts of the States. That sovereign political body, which requires another body to decide for it, any question, which it has the power of itself to decide, is certainly the power, that does the act, and not the substitute. *Qui facit per alium facit per se.*

Suppose, that instead of the present Constitution, Mr. PATTERSON's plan had been adopted in the Convention, which was so to have enlarged the power of the old Government, as to give it the additional power of imposts and stamp duties, and to regulate commerce, and to have a Federal Executive, and a Federal Judiciary, &c. This Government, in the words of the Court, would "be the Government of all. Its powers delegated by all. Representing all, and acting for all." But would any one say, that because it was to act directly on the people, that, on that account, it must be national in its creation. The manner in which a Government is ushered into existence, and the nature of that Government, after it is created, are two distinct things. The mode, in which a Government is to operate upon the people, has really no more to do with an enquiry, as to the source from which it emanates, than the manner of its origin, has to do with questions as to the operation of its powers. The only question is, who ratified it. The people, it is true, did it. Who else could ratify it. But did the people ratify it, as the people at large. The answer has been already given. The votes were not a portion of the aggregate votes of all the individuals in the United States, but the vote as one people. It was a single vote. Who, but a State can give a single vote. What is the characteristic of a confederacy of States, according to our own experience? The voting by States. If South-Carolina, in giving her assent to the compact, votes precisely as she did in the confede-

ration, her influence being one thirteenth of the whole, is it not absurd to say, that this ratification is not a federal act. The Court is at some pains to confute the plain proposition, insisted on by the Counsel for the State of Maryland, that the Constitution is a compact between the States in their sovereign capacities. The Government, says the Court "proceeds directly from the people;" "is ordained and established" in the name of the people; and is declared to be ordained, "in order to form a more perfect union." And what then? Who are the people here meant? The people of the United States as one entire nation, or the people of the Thirteen States. The title or caption of the Constitution, as it is presented to the Conventions, announces it, "as a Constitution framed for the *United States* of America, by a convention of deputies from the States of New-Hampshire," &c. If an argument is to be drawn from what immediately follows in the preamble, "We, the people of the U. States, do ordain and establish this Constitution," I should suppose, the people here meant, must be the people of those thirteen *named* States of America, for which States the Constitution was formed, to wit, New-Hampshire, &c. The Government, being a compound Government, it would be difficult to say, how it could, upon the whole, be better expressed, supposing that its adoption was to be the act of independent States. Again as to union. What is meant by "more perfect union," more than an union of sovereign States upon better terms than the confederation afforded. The Court will not say, that a Consolidated Union was the end in view

The best way to put an end to all argument, is to ask ourselves this simple question—Supposing that it was the real design of the whole convention, that the new Constitution was to be the act of the several States, as States, could it have adopted any other legitimate mode, than that of submitting the instrument to the State Conventions. This question must be promptly answered in the negative, unless we design to maintain the absurdity, that a State Legislature can make a Constitution, which is to associate its people in civil government, with the people of other States. If then, it is clear, that in a State Convention alone, the assent of the people of a State, as a State, can be given to a radical change in the structure of the Government, so as to bind the people of that State, the very circumstance of calling the Convention, incontestibly proves, that its required ratification was to be a State act. It is a loss of time, to attempt to prove what is so plain.

That the Government did not emanate from the people, excepting in their sovereign capacities, as separate States, appears also to be the exposition of the Federalist. In speaking of the real character of the Government, considered in relation to the *foundation*, on which it is to be established, it is said, (Federalist, No. 39) "On the one hand, the Constitution is to be founded on the assent and ratification of the people of America, given by deputies, elected for the special purpose; but on the other, this assent and ratification, is to be given by the people, *not as individuals*, comprising *one entire* nation, but, as composing the distinct and *independent States*, to

which they respectively belong. It is to be the assent and ratification of the several States, derived from the *supreme* authority in each State, the authority of the *people* themselves. The act, therefore, establishing the Constitution, will not be a National, but a FEDERAL act." The Federalist goes on to say, "That it will be a federal, and not a national act, (as the terms are understood by the objectors) the act of the people, as forming *so many independent States*, not as forming one *aggregate* nation, is obvious from this single consideration, that it is to result, neither from a *majority* of the people of the Union, nor from that of a majority of the States. It must result from the *unanimous* assent of the several States, that are parties to it, *differing no otherwise from their ordinary assent*, than in its being expressed, not by the legislative authority, but by the people themselves. Were the people regarded in this transaction, as forming one nation, the will of the majority of the whole people of the United States, would bind the minority, in the same manner as the majority of each State, must bind the minority; and the will of the majority must be determined, either by a comparison of the individual votes, or by considering the will of the majority of the States, as evidence of the will of a majority of the people of the U. States. Neither of these rules has been adopted. Each State, in ratifying the Constitution, is considered as a SOVEREIGN BODY, independent of all others, and only to be bound by its voluntary act. In this relation, the new Constitution will, if established, be a FEDERAL, and not a National Constitution."

Having thus clearly shewn, as I conceive, that the counsel for the Defendants in Error, were right in saying, that the federal compact was the act of the State sovereignties, and that the Supreme Court was decidedly wrong in denying the position, it may not be unprofitable, to correct some popular errors on the subject of civil government being considered as a compact; as on the correction of these, a very important axiom is hereafter to be maintained, to wit, that to the State Legislatures, as States, and not to the people at large, as its constituents, is Congress responsible for the abuse of its powers. These Legislatures have the unquestionable right to keep Congress within the limits of its prescribed powers.

It is an erroneous idea, that wherever civil government exists, that there is any compact between the *people* on the one side, and the *Government* on the other, and that the Government in consequence, has any rights, except when it acts for the people. This subject is placed in an admirable, and an incontrovertible point of view, by THOMAS PAINE, in his "Rights of Man." In the American Constitutions, of which he was treating, he maintains there is no such idea. The compact, says he, in "each instance, was that of the people with each other, to produce and constitute a Government. To suppose, that any Government, can be a *party* in a compact, with the whole people, is to suppose it, to *have existence*, before it can *have a right to exist*." In the confederation then, we must admit, that the compact necessarily was, that of the people of the different States, with each other, in the relation of independent

communities. In the Federal Constitution, it is a mistake to suppose, that the relation is in the least altered, because the people themselves met, to make the compact, instead of doing it through their Legislatures. The act of ratifying the compact by such a mode, so far from weakening, indubitably strengthened the ratification, as an act of an independent State, for it is done by the people themselves, in the most sovereign character, in which they can possibly be recognized. In no State in this Union, is the sovereignty of the State perfectly represented by its Government. The people may constantly be in the exercise of all the legislative, judicial, and executive powers of the Government, and yet, they may not be using their utmost sovereignty. In every American Constitution, there are powers reserved to the people, which Government cannot exercise. It is in convention alone, that State sovereignty is without limits or controul.

The Constitution then, being a compact, between the people of the different States, as States, and not as individuals, it results, that the U. States Government is nothing more than a great trustee, under an irrevocable power of attorney, to perform certain duties, or to execute certain trusts, prescribed to it by the States. Government, says Mr. PAINE, "is not a trade, which any man, or body of men, have a right to set up, and exercise for their own emolument, but is altogether A TRUST, in right of those, by whom the trust is delegated, and by whom it is always resumeable. It has of itself NO RIGHTS. They are altogether *duties*. All power exercised over a nation, must have some beginning. It must be either delegated, or assumed. There are no other sources. ALL DELEGATED power is TRUST, and all assumed power is USURPATION. Time does not alter the nature and quality of either." If this be not truth, in the name of reason, what shall we call by that name. Let us then, apply this doctrine to our subject. The power of the Federal Government, we all admit, is a delegated power, and all delegated power, we must, as freely admit, is a trust. It is the State sovereignties who confer this delegated power, and these also, are the only parties to the federal compact. In this view, what becomes of that doctrine so often advanced, that Congress is not amenable to the States, as State sovereignties, for an abuse of its powers. Was it ever heard, that the parties who create the trust, are not to see that the purposes of the trust deed are fulfilled. Who else is to complain, and to take the measures to keep a trustee to the proper discharge of his duties, if it be not the constituents of the trust estate. Suppose that the directors of any public trading company, were to violate certain fundamental articles of covenant, between the individuals who may compose such a company, and are so supported by the majority of the stockholders, to the injury of the minority; what is the remedy? A Court of Justice, by its writ of *prohibition* or *mandamus*, or *injunction*, or other process, arrests their illegal proceedings. The only difference between the abuse of a private trust, such as has been stated, and that of the great public trusts, contained in delegated sovereign powers,

is, in the nature of the remedy, to be applied. For the first, there are impartial tribunals provided in all regular Governments. For the other, as regards the anomaly in the American plan of Government, it results, from the very nature of the Government, that no such tribunal can be found, and that relief must be sought by other means. For who is to appoint such a tribunal? Not surely, the delegated Government. It would be, to consent to allow the trustee, not merely to appoint the arbiter, who is to judge, whether he has or has not abused his trust, but to name for that purpose, his own servants, who are fed and supported by him. In this view, the States who constituted the Federal Government, can never consent, that the United States tribunals should decide, whether the Federal Government had or had not usurped its powers. Such an assent would involve the absurdity just mentioned. It is to make a party the sole judge in its own cause.

I am aware that it will be said, that the mode of settling all such questions, is specified in the compact, and is a part of it; and that the *second* section of the *third* article of the Constitution, makes the United States Judges, the arbiters in all disputes between the States and Congress. I think not. The only part of the section which can be enlisted on the side of such a construction is, that which extends the judicial power of the United States, to all "cases arising under this Constitution, and the laws of the United States;" and also, that which speaks of "controversies to which the United States shall be a party." I have always thought, and do believe, that had this provision been for any other purpose, than to enable Congress to protect itself, against any exercise of power by the States, prohibited to them by the Constitution, or intended to embrace great and vital questions of sovereignty, between the States and the United States, as to constructive powers, as well as cases of *meum* and *tuum*, that it would not have been so loosely expressed.—This view is considerably strengthened by the circumstance, that on the introduction of these passages, on the 27th and 28th of August, as amendments to the reported draft of the Constitution, there was no opposition, which can only be accounted for, on the supposition, that it was intended to embrace the claims of individuals against the United States, and *vice versa*. We cannot imagine, that so important a provision, as that, by which inherent rights of States were to be taken away, could pass unnoticed, if it were understood to refer to disputes about sovereignty; but we can readily believe, that if the supposed controversy, was to partake of the general nature of the cases provided for in the same section, which are pecuniary suits at law and equity, that there could be no objection.—"Controversies between two or more States." This part of the clause was well understood, and the same reason which might warrant the insertion of this last power, to adjust ordinary controversies between two States, would apply to the exclusion of the idea, that important vital rights were to be the subject of cognizance in the Federal Courts, under the amendments. A State differing with a neighbouring State, *might* be perfectly willing to leave a dispute, about boundaries, &c.

to the decision of the United States Courts, because, as between such parties, the arbiter must be impartial, and this would be the case, in all the other cases in the section, allotted to the cognizance of the Federal Courts. But the case is materially altered, when the question to be propounded, to the servants of the Government, is, whether their masters have, or have not usurped their powers. It is requiring too much of frail mortals, (unless the usurpation be outrageously gross) to ask of them, to decide in the affirmative. It is unreasonable, even to require of them, that if they have honest doubts on the subject, to throw those doubts into any other scale, than that of the Government, to which they are attached from interest.

The absurdity and the danger of any such stipulation on the part of the States, is too apparent, to admit of the idea, of its ever having been intended, and unless it can be shewn as clear as the sun in the firmament, that such was actually the intention of the clause, such a construction ought to be resisted by the States, upon the principle of self-preservation. They have no other recourse. If we, however, look into the journals of the Convention, we shall be satisfied, that it never once entered into the minds of the members to provide for any other disputes, than such as might occur between States as to boundaries or territorial jurisdiction, or between a State and Congress, where the former might be disposed (as was feared) to pass laws, clashing with the expressly delegated powers of Congress. It was anticipated, that disputes between States would occur, respecting territorial jurisdiction. In the confederation, a mode of adjustment had been provided. In the first draft also, of the Constitution, proposed by Mr. PINCKNEY, a power for this purpose, was invested in the Senate. In the reported draft of the Constiution, by the committee of detail, the same power is invested in the Senate. But in neither of them, nor in *any* of the *five* plans submitted to the Convention, is there *any provision* proposed for disputes, involving rights of sovereignty, between the *United States* and any *one State*. None of the proposed plans, as to the settlement of State disputes, being agreed to, it was finally judged proper to make the Federal Judiciary, the tribunal.

There was a strong apprehension in the Convention, that the State laws would interfere with those of the National Legislature, and it was upon this expectation, that Mr. MADISON advocated Mr. PINCKNEY's proposition, that a Congress should have a negative upon all State laws, and because, he moreover believed, "that no tribunal could be found, who could impartially determine the line of State powers, when drawn in doubtful cases." This proposition having been thrice lost in convention, twice on the discussion of Mr. RANDOLPH's resolution, and once again on the 23d of August, it became necessary in the minds of some members, that provision should be made, to prevent the States passing laws, which "might infringe the powers *exclusively* delegated to Congress," for that is the expression in Mr. PINCKNEY's draft.

The Committee of detail not having made any such provision in their reported draft of the Constitution, because it would have been repugnant to their instructions, and the proposition having been repealed on the 23d

of August, as an additional enumerated power, there arose a necessity of a different phraseology of the judiciary clause, when it was under consideration. The judicial power was then extended "to all cases in law and Equity, arising under this Constitution and the laws of the United States," and also to "controversies to which the United States shall be a party."—The provision evidently was intended for the cases, which might arise, from the States, interfering with the powers delegated to Congress. It is impossible to read the secret journals of the Convention, without being struck with the unfounded fears, which at that day seized the bosoms of the majority of the members, as to the danger of the State Legislatures, constantly embarrassing the new Government. Thirty-five years experience has demonstrated that all their apprehensions were as "the baseless fabric of a vision." To prevent the evils which they anticipated from this source was the cause of those very amendments to the judiciary clause, which have been supposed to give the United States Courts cognizance of all disputes as to the extent of the constructive powers of Congress—however vitally such disputes might affect the sovereignty and very existence of some of the States. Mr. HAMILTON, *(Federalist No.* 80*)* sustains this very motive for introducing the above amendments. In speaking of the necessity of some constitutional mode of enforcing the observance of the restrictions on the State Legislatures, he says, that "the power must either be a direct negative on the State laws, or an authority in the Federal Courts to overrule such as might be in manifest contravention of the articles of Union. The latter, appears to have been thought by the Convention, preferable to the former, and I presume will be most agreeable to the States."

In speaking, however, of the motives of the Convention, as to the above amendments to the judiciary section, I am not to be understood, to say, that it is altogether clear, that even the construction here given or admitted, is not too liberal, but merely to contend, that whatever the words may mean, they could not mean, more than to provide a substitute for that favourite measure of some members, a negative upon such State laws, as might be passed, in repugnance to the express prohibitions in the Constitution.—There is a view of this subject, which at this moment strikes me with some force, and which would shew, notwithstanding the preceding reasoning, and Mr. HAMILTON's exposition just quoted, that all these amendments, might have been intended simply to refer to pecuniary claims, preferred by or against the United States, and also, to all suits which must necessarily or ordinarily arise, between one citizen and another, out of the general proceedings of the Government, and the conduct of its officers, agents or servants. The only way, to come at the intentions of the convention, is, to go up to the fountain head, for their first meaning, and to observe whether that meaning was altered, and how far it was altered by its subsequent acts.

In Mr. RANDOLPH's 16th resolution, the outline of the power of the judiciary, is thus given. "To extend to cases, arising under laws, passed by the General Legislature, and to such other questions, as involve the *national* peace and *harmony*." That by the words, "national peace and harmony," was intended, no more than disputes between States as to territorial jurisdiction, and by the words, "cases arising under laws of the United States," the clashing of jurisdiction which might take place between

the Federal and State Judges as to admiralty and other jurisdiction, as to piracies, captures, &c. is evident, from the simple, and yet important fact, that the committee of detail, who heard all the debates, certainly understood the resolution in this sense. In their reported draft of a Constitution, they make provision for the settlement of disputes between States, and for other cases connected with the national harmony, but none whatever as regards collisions between the Federal, and the State Governments, as to powers. We cannot therefore believe, that under these expressions, "national peace and harmony," the Convention ever did intend to include, such important disputes, as collisions about sovereignty. The most rational construction would be, that the cases *arising* under Legislative *enactments*, were such only, as must ordinarily occur, under every Government, and no others. The subsequent amendment to this clause, on the 28th of August, by adding the words "at Law and Equity" seems to establish this exposition, and as some cases of pecuniary interest probably might occur under the "Constitution" as well as of the laws of the United States, this may have been the cause of the addition of that word "Constitution" also to the section. The claim of Massachusetts, against Congress, for militia claims during the late war, would have been a case of Law and Equity, arising under the Constitution, had Congress not have allowed these claims. Other instances might, no doubt, be cited. In the Virginia Convention and North-Carolina Conventions, (I have not seen the debates of any other) when this clause was under consideration, great as were the objections, yet, no speaker anticipated the evil, of any such construction, that the judicial power was to decide questions of jurisdiction and sovereignty between the United States and any particular State. The whole apprehension was, that in process of time, the Federal Judiciary would sweep to its jurisdiction, almost all the subjects of litigation, so as finally to leave to the State Courts, nothing to do. Their fears are likely to be realized, by a decision of Judge STORY's in *Delovio & Boit*. The introduction of the words "controversies, to which the United States shall be a party," it is true, would countenance the supposition, that questions respecting the boundaries of power, were contemplated as fit for the cognizance of the Judiciary. But, on the other hand, it is extremely difficult to conceive, for the reasons already given, in this and a previous number, that disputes about vital sovereignty were intended to be referred to any such tribunal. A sovereign State can never be presumed, in any compact which it enters into with another State, to yield inherent rights of sovereignty. The absurdity and the danger of any State agreeing to entrust the decision of disputes about sovereignty, to an arbiter, to be appointed by the opposite party, is the best of all arguments to shew, that no such intention was ever entertained. What would become of the States, if, under indefinite phrases in the Constitution, they could, in this way, be deprived of all their rights.

I have not forgotten, that as regards disputes relating to the boundary between the Federal and the State jurisdictions, Mr. HAMILTON considers the Supreme Court as the tribunal, which is established for the purpose of ultimately deciding them, and in his thirty-ninth number, he justifies "such a tribunal as essential to prevent an appeal to the sword, and a dissolution of the compact." But, against this short and transitory, or accidental notice of the subject, is to be opposed, the fact, that whenever he has

occasion to answer objections, to the Federal Government, as a Government, likely to usurp power, and thus to endanger public liberty, he never once suggests, that the remedy for such a state of things, is to be sought, elsewhere, "than in that *original right* of self defence, which is *paramount* to *all positive* forms of Government." He calculates, invariably, that "all schemes of usurpation, if attempted by the national rulers, will easily be defeated by the State Governments."

Nor ought there to be any other remedy. It is proper that a tribunal should be at hand, to decide controversies relating to the boundary of jurisdiction, between Congress and the States, because all parties, might be willing, to have the opinion of such a tribunal, as long as it shall, by its proceedings, and the conduct of its members, inspire mutual confidence.—The exposition of any particular clause in the Constitution, by such a tribunal, might have so much weight, as to have the effect of preserving the harmony between both Governments. It is in this view, and in no other that the Supreme Court, ought to be solicited for its opinion. It might also happen, that the decision of the Court might be right, upon all the principles of construction, by which Courts are usually governed; and yet, there may be circumstances, which would not warrant an obedience of the States to its decrees. The General Government might so usurp power, as to be beyond the reach of any ground, on which a Court could pronounce its acts unconstitutional. In a former number, I noticed the Tariff, as an instance. The "Woollens' Bill" is perfectly constitutional, if the Court shall be called upon for its opinion in relation to it, because it must decide, according to the provisions of the Bill, and cannot enter into any notice of the motives of the Congress for passing such a bill. If it should pass, it will, in its shape, and all its provisions, be an act simply "to lay imposts," which is within the enumerated powers of Congress, whilst its design would be to promote a great local interest in particular States. Here is a case in which a State, would commit an act of SUICIDE, were it to admit of the principle, that for so gross a violation of the spirit of the compact, it was to seek no redress, but in the Courts of the United States. Other illustrations might be adduced. Let one suffice. According to the *letter* of the Constitution, the compact may at any time be altered, with the assent of three fourths of the States. There is but one single restriction, now existing, on the power to amend the Constitution, which is, that the *equality* of suffrage in the *Senate*, shall be preserved. Supposing now, that Eighteen States were willing, that the Constitution should be so altered, that a power be conferred on Congress to promote the objects of the Colonization Society, and to purchase and remove gradually, out of the United States, the slaves of the Southern States. This proposition is actually suggested in the last Philadelphia Quarterly Review—or suppose the proposed amendment be, a declaratory clause, that Congress has the right to abolish slavery under the Constitution, on compensation being given to individuals. Other instances might be added, such as amendments which effect a radical change in the Government as to its structure, so as to make it any thing but what the States originally designed it to be. What is there in the *letter* of the Constitution to prevent all these things being done.—Were the Supreme Court called upon to decide, as to the right to make such alterations, would it not be compelled to say, that by the terms of the grant, there is an unlimited power to amend, excepting in one solitary case,

and moreover, might it not also call to its assistance that refined metaphysical doctrine of its own Chief Justice, that "a power to create, implies a power to preserve" and from that power to create, easily deduce "a power to *change*." In such an emergency as this, would any one doubt the right of the six dissentient States, to dissolve the compact, on the simple ground, that an alteration, either in the fundamental polity of a State, or in the Republican principles of the Government, would be a gross violation of the spirit, in which the Constitution was formed. No one can doubt it.

This subject might be pursued almost without end. I have already stated that in all instances of abuse or usurpation of power, on the part of Congress, the State Sovereignties, being parties to the compact, it is their right to remonstrate, and to resist. But some may say, that according to my own previous reasoning, it is the *people* in *convention*, who have this right, and not the State Legislatures, who are not the people, but only a *portion* of the sovereign power of the State. This objection is thus removed:—Under the State constitutions, all power, which is not reserved to the people in a bill of rights, or by positive limitations, is invested in the State Legislatures. Not so in the United States' Government. In the exercise then, of that portion of the supreme power, which is conferred on a State Legislature, by its Constitution, that Body possesses, without a single exception, every right, not expressly forbidden, which the people themselves could possess. Amongst those rights, stands pre-eminent, the sovereign right of demanding that all compacts entered into, with other States, be faithfully fulfilled, and of adopting such measures to enforce such compacts as in their wisdom they shall judge fit. If the people of South-Carolina, in their collective capacity as a State, be a party to the Federal compact, (as is the fact.) they have the undoubted right, to call the General Government to account for an abuse of its delegated powers. If the people have that right, the same right belongs to the Legislature, that body having in this particular, all the rights, and having imposed on it all the duties of the people. And it is a right, which I trust they will not only exercise, but so use it, as to preserve the State.

But view the compact as we will. Let us regard the Federal Government, as it really is, a TRUST; or let us regard it, as has been suggested, as a deed TRIPARTITE, in which the people *en masse* are one party, the people as States another, and the people in one great political community as a third; or let us call it a CONFEDERACY of States; or by any other name we please, there is yet one feature in the system, which every man in the United States has always before his eyes, and that is, that we are governed, as one entire nation, and at the same time exist as twenty-four separate sovereignties, and that a common friendship, after all, is the great bond of our Union. On a difference of opinion then, as to the true meaning of any particular provision in the compact, the same course ought to be adopted, as would be proper between one friendly nation and another. As in the latter case, a conference would be proposed, before any step would be resorted to, as likely to lead to serious misunderstanding or war; so, in the case before us, Congress, before it assumed any great substantive power, such as the power over internal improvements ought, (under that provision, in the Constitution, which empowers it to propose amendments) to have submitted to the State Legislatures, the question, whether such a power belonged to the States, or to Congress, and

thus by soliciting their aid and advice, as to the true intent of all parties, it would have gained for itself, the confidence and the support of the State Legislatures. To both, the power cannot belong, for I have demonstrated, I trust, satisfactorily, in my nineteenth number, that there can be *no division of sovereignty*, on the subject of internal improvements. If Congress be not *exclusively* sovereign, as to *every* purpose for which the Federal Government was created, it cannot be sovereign at all. The concurrence of authority in Legislation, is only as to taxation, which is only a *means* of promoting the objects, for which *Civil Government exists*, and not itself an *end* or object of Government. It cannot exist on any other subject.—The United States' Government is supreme within its sphere of action, and the States equally sovereign as to their reserved powers. This is the decision of the Supreme Court, and cannot be confuted. The fault of the Supreme Court, is not, that it decides the United States' Government to be sovereign for the great purposes of its creation, but because it confers on Congress, as means of executing those powers, contrary to the spirit of the league, powers which have no *necessary*, and *appropriate* connection with those *expressed* objects, to which their Legislation is expressly confined by the terms of the instrument.

Every patriot and friend to his country, must freely admit, that where there are two rules of interpretation, or two modes of adjusting difficulties, *that* must always be the best, and the safest, from which no inconvenience or injustice can arise to either party. The difference between the two modes is this—Under the construction here contended for, there is scarcely an object of any consequence to the States generally, which may not be fairly referred to some one or other of the many enumerated powers, and therefore the measure may be constitutionally adopted. Should it so happen, that there may be an object, for which the Constitution has not provided, if such an object be one of *general* and primary interest, the instrument itself, has provided the means, by which it may be accomplished.—An amendment to the Constitution, may, at any time, be proposed, and if the new power asked for, be necessary to war, foreign negotiation and commerce, (those great ends of the Union,) there is no fear, but what three-fourths of the States will agree to the amendment. The people will always have intelligence enough to discover their true interests. If the assent of three-fourths of the State Legislatures, for this purpose, cannot be obtained, it would prove that the power ought not to be exercised. It is for the happiness of the *people* of the States, that the Federal Government is ordained, *and not for its own sake;* and the people, heard through their State Legislatures, are the best judges, whether any new contemplated measure will, or will not, augment their happiness. If the power be necessary, and it be refused, the people will suffer, as they ought to suffer. By this construction, the Federal Government will be the sun, or centre of a great political system diffusing its light and warmth, to all the State Governments, which harmoniously and beautifully revolve around it, and thus, the order and design of the Convention, will be preserved. But, under the opposite course, which is the one adopted by Congress, viz. that of seizing upon power in all doubtful cases, a discretion is given to select objects for legislation, to which there is no affixing any limits, and the necessity of which may not be seen; a door may thus be opened for extravagance and waste in the public expenditure; the people may be bur

thened with excessive taxation; sectional interests may be promoted by the majority, under the pretext of their being national; sectional *jealousies will be fomented*; an habitual disregard to the State Legislatures will be encouraged; no amendments to the Constitution will be thought of; and strifes and contentions, between the States and Congress, will increase and multiply, until by some great convulsion, we shall all be resolved again into our original elements. Are we not, under the intemperate measures of Congress, rapidly approaching such a crisis?

NO. 23.

If Congress had not regarded itself as omnipotent in legislation, it would not have ventured to name amongst its committees, "a committee on *Agriculture*," as if it possessed an atom of sovereignty to regulate Agriculture any more than it can pass laws on the subject of Negro Slavery, or regulate descents at law. What but a sense of its own omnipotence could prompt this body to think of laying one section of the Union under tribute, to encourage the industry of another portion? And shall we, in the Southern States, who furnish such means of commerce to the Union, by our valuable products; shall an interest so great and so paramount as the Agricultural interest of the South, be prostrated, that the local interests of Massachusetts or Pennsylvania may be promoted? I would insult you, my fellow-citizens, were I to doubt your unanimity in the reply which must be given. From one extreme of the State to the other, your voice has already been heard, and your resolutions expressed in terms not to be mistaken. As for myself, I cannot conceive a measure more fraught with permanent mischief and ruin to the Plantation States, than the Tariff. It is not simply to tax us to support our Northern brethren, but it is also to destroy all our means to acquire the ability to pay those taxes. In these States there are but two interests, and they cherish and support each other. The one is AGRICULTURAL; the other COMMERCIAL. Within the memory of man, and the records of history, no other interests than these ever grew up in our country, and for a century at least to come, it is not hazarding too much to assert, that no other can exist in South-Carolina. In this respect, we not only differ as to *interest* from the Northern States, but we differ from every State and Kingdom in Europe. The cause of the difference is obvious.

In those countries the great produce of the soil is bread stuffs; the population is dense; the soil is cultivated by whites; labour is more or less cheap; and each being likely to raise in abundance, those articles which the others need not, causes an anxiety in all to seek amongst themselves for the means of consuming the surplus produce of their own soil. That a period may occur in the future history of the Northern, Middle and Western sections of this Union, when manufactures may be properly regarded as of primary importance to them, it would be as much a waste of time to deny, as it would be to assert, that in the past periods of European history, they were not sometimes most judiciously encouraged by the fostering care of Government. That there is an opportunity even now of

encouraging manufactures to a certain extent in the Northern States, so as not to interfere with others of *their* local interests of equal magnitude, may be true. I, therefore, have not the smallest disposition to dispute the utility of manufactures in general, as a source of wealth and prosperity, provided all circumstances suit for their introduction into a country. I feel the weight of all that has been said in their favour; and believe that where they are permitted to grow up alongside of other interests, under the protecting care of a Government which has the undoubted power to extend its patronage to them, (as is the case with every consolidated Government) they will give activity and energy, to every languishing branch of internal industry. But however true it is, as a general position, that domestic manufactures is the true policy of nations, who abound with a dense and a crowded population, and in which there is more capital than Agriculture or Commerce, or other occupations, can absorb; yet, as regards the application of the axiom to the Southern States of this Union, and particularly to the plantation or cotton growing States, there is not one word of truth, in all that has been written as to the utility of manufactures, from the beginning of the world until the present day. All the writers who have discussed the subject, have discussed it with the sole view to the interest and circumstances of the countries in which they lived and wrote—countries, the very opposite to these Southern States, in climate, soil, population, production, and agricultural labour.

It is therefore false, under any possible light in which the subject of manufactures can be viewed, as regards the South, that any protection given by Congress to the manufacturers of Pennsylvania, can operate otherwise than as an *indirect* tax upon the people of the Southern States, amounting exactly to the difference between *what they now pay*, and the *cheaper price* at which they might obtain the article, if the *three tariffs* already imposed *were removed*. It is trifling with the understandings of men, to tell them that the Northern manufacturer can supply us with goods upon the same terms as the foreign merchant. He now furnishes, it is true, some coarse fabrics cheaper than the English dealer; but he is protected by duties almost amounting to prohibition of the rival article from abroad.—Take off all the tariffs of 1816, 1820 and 1824, and every manufacturer in the United States, for the protection of whose fabrics these tariffs were imposed, will be a bankrupt without a single exception. If it were otherwise, two and two could not make four; for the protection afforded by these Tariffs is not trifling. It is prodigious. All the bold assertions, therefore, of these men, and their adherents in this southern country, are to be disregarded. Any man of common sense must know, that if the home manufacturer could sell his fabrics for a lower price than is demanded by the foreign dealer for the same goods, that he would not ask for protection. The ground on which further protection is now asked for woollen goods, by the Websters, Everetts & Co. is, that the British having reduced their duty *five pence* or foreign wool, gives the British capitalist an advantage in our market over the home manufacturer. In the name